

FEDERAL TRADE COMMISSION



CONGRESSIONAL BUDGET JUSTIFICATION

FISCAL YEAR 2007



Office of the Chairman

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

February 6, 2006

The Honorable Frank R. Wolf
Chairman
Subcommittee on Science, the Departments of State,
Justice, and Commerce, and Related Agencies
U.S. House of Representatives
Washington, DC 20515

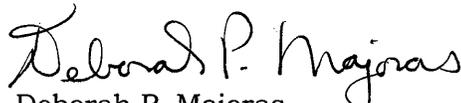
The Honorable Richard C. Shelby
Chairman
Subcommittee on Commerce, Justice, Science,
and Related Agencies
United States Senate
Washington, DC 20510

Dear Chairmen Wolf and Shelby:

This letter transmits the budget justification for the Federal Trade Commission (FTC) in support of the President's fiscal year 2007 budget request.

The FTC's fiscal year 2007 budget requests a program level of \$223,000,000 and 1,074 full-time equivalent (FTE) positions. This is an increase of \$13,000,000 over the fiscal year 2006 enacted level and covers mandatory costs. As the justification materials describe, this budget will permit the FTC to continue to meet the increasing challenges of its Consumer Protection and Maintaining Competition Missions.

By direction of the Commission.


Deborah P. Majoras
Chairman

**Federal Trade Commission
Fiscal Year 2007 Congressional Budget Justification**

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Federal Trade Commission Fiscal Year 2007 Overview Statement

This statement supports the Federal Trade Commission's (FTC) FY 2007 budget request of \$223,000,000 and 1,074 FTE. This amount represents an increase of \$13,000,000 over the FTC's FY 2006 enacted level.

MISSION

The FTC is the only federal agency with jurisdiction to enhance consumer welfare and protect competition in broad sectors of the economy. It enforces the laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The FTC also promotes informed consumer choice and public understanding of the competitive process. The agency's work is critical in protecting and strengthening free and open markets in both the United States and the world.

HIGHLIGHTS OF FY 2005 ACCOMPLISHMENTS

In FY 2005, the FTC took action on a wide variety of significant consumer protection and competition matters. The highlighted actions, detailed below, helped ensure that businesses and consumers alike reaped the full benefits of market competition and product innovation.

Hurricane Relief. The FTC was quick to respond to protect consumers made vulnerable by Hurricanes Katrina and Rita. The FTC joined a federal task force and became the central clearinghouse for consumer complaint data for all levels of law enforcement. Consumers were encouraged to file complaints by phone, by mail, or on the FTC Web site. In addition, through its gasoline monitoring project, the FTC reviewed data on retail and wholesale gasoline prices from various locations across the country and used this information to identify possible anticompetitive conduct during the short-term gasoline product shortage. The FTC investigated possible illegal practices and brought law enforcement actions, as appropriate. The agency offered consumer education in print, on its Web site, and through broadcast public service announcements to prevent victims from being injured by the frauds and scams that proliferated following the disasters. Beyond the immediate need to prevent fraud and deception, the FTC also offered materials to assist hurricane victims in rebuilding their financial lives.

Protecting Consumers In the High-Tech Environment. The FTC has taken the lead to protect consumers from technology-driven threats to the security of their personal data and information, personal computers, and email inboxes.

Data Security. Concerns about data security and identity theft have spiked with recent press reports on data breaches. The FTC is investigating a number of these breaches; it also has an ongoing and active law enforcement program to encourage appropriate security. In November 2004, the FTC charged two mortgage companies in the first cases enforcing the Gramm-Leach-Bliley Safeguards Rule, alleging that they did not have reasonable protections for customers' sensitive personal and financial information. In June 2005, a large wholesale club agreed to settle charges that its failure to take appropriate security measures to protect the sensitive information of thousands of its customers was an unfair practice that violated federal law.

Identity Theft. According to a 2003 FTC staff survey on identity theft, over a five-year period, more than 27 million consumers were victims of identity theft; identity theft has become the number one consumer complaint received in the FTC's database. During FY 2005, the FTC continued to operate the ID Theft Data Clearinghouse and collected more than 255,000 identity theft complaints in its consumer information system, bringing the total to more than 940,000. The FTC's identity theft team conducts outreach and training with criminal law enforcement authorities to assist them in the prosecution of identity thieves, and, since 2000, has distributed nearly 4.5 million paper copies of its two main identity theft education publications, including its new and improved identity theft booklet, and recorded more than 2.7 million visits to the Web versions of these publications.

Fair and Accurate Credit Transactions (FACT) Act. The FTC continued to implement, and use, the Fair and Accurate Credit Transactions (FACT) Act to further address the problem of identify theft. Consumers nationwide now are able to request a free annual credit report. In November 2004, the FTC issued its final rule regarding the proper disposal of consumer report information and records, the final summary of rights for identity theft, the final summary of general consumer rights, and revised furnisher and user notices. In December 2004, the FTC issued a report to Congress on credit report accuracy and completeness. In January 2005, the FTC issued the final regulation to improve required notices in prescreened offers for credit or insurance. And, in June 2005, a new rule required businesses and individuals to take appropriate measures to dispose of sensitive information derived from consumer reports. The FTC also continued to work on the numerous additional rules and reports mandated by the Act.

Spyware. During FY 2005, the FTC issued a report on spyware, and brought several important law enforcement actions to stop marketers who loaded unwanted and risky software onto consumers' personal computers without their knowledge, consent, or instructions about how to remove the unwanted software. FTC staff also developed new tools to detect, locate, and investigate spyware purveyors, and launched other nonpublic law enforcement investigations.

SPAM. Experts have estimated that spam (unsolicited commercial email) costs U.S. businesses between \$10 billion and \$87 billion annually. Additionally, consumers spend countless hours each year dealing with spam. The CAN-SPAM Act provides the FTC with tools to address this issue. In April 2005, the FTC and the California Attorney General brought an action to halt an operation that sent millions of illegal spam messages touting mortgage loans and other products and services. The FTC's Adult Labeling Rule and the CAN-SPAM Act require commercial e-mailers of sexually-explicit material to use the phrase "SEXUALLY EXPLICIT:" in the subject line of the e-mail message and to ensure that the initial viewable area of the message does not contain graphic sexual images. In 2005, the FTC filed suit against a network of individuals and corporations that used spam to sell access to online pornography, and charged seven companies with violating the labeling requirements of the Rule and the Act. The spammers paid \$691,000 to settle the charges and agreed to injunctive relief. The FTC also continued to work on the rulemaking and reporting requirements mandated by the CAN-SPAM Act. In June 2005, the FTC issued a report to Congress on the use of subject line labeling for commercial e-mail as a means to reduce spam, concluding that such labeling would not be an effective way to curb spam. In December 2005, the FTC issued a report to Congress on the effectiveness and enforcement of the CAN-SPAM Act. That report concluded that, while the Act has helped to deliver some improvements, passage of the U.S. SAFE WEB Act, continued education efforts, and improvements in anti-spam technology also are needed.

The “OnGuard Online” Consumer Education Campaign. The FTC, its law enforcement and nonprofit sector partners, and leading private technology companies launched the groundbreaking “OnGuard Online” consumer education campaign to give consumers a one-stop resource for up-to-date and comprehensive tools and information about protecting themselves in the online marketplace.

Examining Factors Affecting Gasoline Price Changes. In July 2005, the FTC issued a report entitled “Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition.” The report analyzes the many factors that influence fluctuations in the prices that U.S. consumers pay for gasoline at their local gas station. It examines a wide range of gasoline price factors – including the cost of crude oil, increasing national and international demand, and federal, state, and local regulations, all of which influence the prices consumers pay at the pump. One of the report’s conclusions is that over the past 20 years, changes in the price of crude oil have led to 85 percent of the changes in the retail price of gasoline in the United States, while other important factors have included increasing demand, supply restrictions, and federal, state, and local regulations such as clean fuel requirements and taxes.

Promoting Healthy Consumers Through Healthy Competition. American consumers paid nearly \$1.8 trillion for health care in 2004 – about 15 percent of gross domestic product (GDP) – through tax dollars, insurance premiums, or out-of-pocket payments. Thus, health care is an industry in which it is critical for the FTC to maintain competition. In 2005, the Commission conditionally approved a \$1 billion acquisition involving two biotechnological companies, subject to a requirement that the firms agree to divest overlapping assets. In another case, an Administrative Law Judge (ALJ) upheld an FTC complaint that charged a physicians’ group practicing in Fort Worth, TX with restraining trade by conspiring to fix prices in certain contracts to provide medical services to the patients of health plans. In addition, under consent orders, five physician organizations consisting of more than 1,000 doctors were barred from collectively negotiating and fixing the prices they charge payors on behalf of their doctor members.

Administering the Merger Review Process. The FTC administers the Hart-Scott-Rodino (HSR) Premerger Notification Program for both the FTC and the Department of Justice (DOJ). Increasing economic activity and a corresponding increase in merger notifications resulted in review of transactions valued at more than \$1.1 trillion in FY 2005. The HSR program protects consumers by identifying potentially anticompetitive mergers and providing the antitrust agencies with the opportunity to prevent harmful mergers from taking place.

Enforcing the National Do Not Call Registry to Stop Unwanted Telemarketing Calls. Since opening in June 2003, the National Do Not Call Registry has registered more than 110 million telephone numbers. The Registry protects consumer privacy by prohibiting most telemarketing calls to consumers who register their telephone numbers on the list. The Registry has been a significant success; one recent accolade came from Yahoo!, which ranked the launch of the FTC’s Do Not Call Web site as one of the top 100 moments on the Web over the last 10 years. According to a Harris Interactive poll published in January 2006, 76 percent of all U.S. adults say that they have registered their telephone numbers and 91 percent of those registered said they have received no or fewer calls than before they registered. Although compliance with this law has been very high, the FTC has received 1.4 million consumer complaints since October 2003, and enforcement remains a top priority. In December 2005, the FTC announced more than \$5 million in civil penalties against companies that violated the Do Not Call Rule.

Evaluating Self-Regulation Efforts and Childhood Obesity. The FTC and the Department of Health and Human Services hosted a workshop on marketing, self-regulation, and childhood obesity in July 2005. The workshop brought together representatives from food and beverage companies, medical and nutrition experts, representatives from media and entertainment companies, consumer groups, advertising specialists, and other key experts for an open discussion on industry self-regulation concerning the marketing of food and beverages to children, as well as initiatives to educate children and parents about nutrition.

Protecting Consumers Against Fraud and Deception. In FY 2005, the FTC filed 77 actions in federal district court to protect consumers against unfair and deceptive trade practices, and obtained 103 judgments ordering more than \$824 million in consumer redress, and fifteen judgments ordering payment of more than \$6.6 million in civil penalties. These cases attacked a wide range of fraud and deception, including bogus weight loss products, advance-fee credit card scams, business opportunity schemes, deceptive spam, fraudulent telemarketing, deceptive credit counseling services, deceptive and unfair debt collection practices, and violations of the Fair Credit Reporting Act. Working with criminal law enforcers also remains a priority and the FTC's Criminal Liaison Unit (CLU) facilitates prosecution of consumer fraud by coordinating with criminal law enforcement authorities. The CLU continued work with the DOJ and the U.S. Attorney's Office in the Southern District of Florida on "Project Biz Opp Flop." Thus far, 32 people who worked for business opportunity firms have been charged criminally with mail fraud, wire fraud, conspiracy, and/or criminal contempt; 14 of these defendants already have entered guilty pleas; nine have been sentenced, with prison terms ranging from 24 to 81 months.

Helping Hispanic Consumers. A Consumer Fraud Survey released by FTC staff in FY 2004 found that Hispanic consumers are disproportionately victimized by fraud. In response, the FTC launched a Hispanic Law Enforcement and Outreach Initiative that has had immediate results. During Hispanic Heritage Month in October 2004, the FTC announced a series of law enforcement actions and a new consumer education campaign designed to address consumer fraud in the Hispanic community. Additional cases were announced in 2005 during the Hispanic Law Enforcement and Outreach Forums in Miami, FL, Phoenix, AZ, and Dallas, TX. The FTC's Hispanic Initiative also includes a significant outreach component that disseminates consumer information in Spanish, provides consumer news to the Spanish-language media, and builds partnerships with organizations, businesses, and leaders in the Hispanic community.

Enhancing International Cooperation. Spammers, spyware operators, fraudulent telemarketers, and other scam artists know no national boundaries, and can strike quickly on a global scale. As a result, the FTC has implemented a comprehensive program to combat cross-border consumer protection law violations. This includes a recently-released report on proposed legislation to improve the FTC's ability to combat cross-border consumer protection law violations. In October 2004, the FTC announced the "London Action Plan on International Spam Enforcement Cooperation," endorsed by 26 agencies from 20 countries and seven private sector organizations from four continents. The FTC continues to develop new bilateral and multilateral enforcement partnerships and to strengthen existing ones. In January 2005, the FTC announced that it had entered into a new consumer protection enforcement memorandum of understanding with its counterpart consumer protection agency in Mexico. The FTC also continues to work closely with Canadian agencies on cross-border telemarketing issues. The FTC's goal is to ensure that consumer protection rules outside the United States focus on practices that distort consumer choice and raise a serious threat to the proper functioning of markets.

The FTC has worked with competition agencies worldwide to promote best practices and minimize policy divergences to ease burdens on firms that operate across the globe. Two key venues for competition officials to work toward a greater consensus are the Organization for Economic Coordination and Development (OECD) and the International Competition Network (ICN), a group launched four years ago by the FTC, the DOJ, and 13 other competition agencies that now numbers almost 90 member agencies.

The FTC also advocates discussion of linkages between competition and consumer policy around the world. The FTC also devoted significant resources to assisting new competition agencies in countries with emerging market economies.

Preventing Deceptive Lending, Deceptive Debt Counseling, and Illegal Debt Collection Practices. The FTC pursues unscrupulous lenders who deceive consumers about loan terms, rates, and fees, and bogus organizations that target consumers with bad credit or significant debt, promising to help them obtain credit or manage their debt. In 2005, the FTC brought several cases against debt counseling, debt collection, and other financial services companies engaged in deceptive or illegal practices. In one case, the FTC charged a company with falsely promoting itself as a nonprofit credit counseling organization. The judge presiding over the company's bankruptcy case allowed the transfer of client accounts to a legitimate third-party credit counselor, protecting consumers who otherwise might have been stranded if it went out of business. In July 2005, the FTC won a \$10.2 million judgment against a debt collection operation and its principals; the judgment amount represented the estimated amount of consumer injury. This was the largest judgment in FTC history for violations of the Fair Debt Collection Practices Act. In addition, a federal district court judge permanently banned the defendants from engaging in debt collection in the future.

Advancing Administrative Litigation. During FY 2005, the FTC had nine antitrust cases pending at some stage of administrative litigation. These antitrust cases involved a variety of consumer issues including physician and dental services, pharmaceuticals, hospital services, transportation of household goods, computer software and hardware, and gasoline. Besides bringing the benefits of increased competition, these cases also provided opportunities for the FTC and the courts to offer detailed analysis and guidance on key policy questions for businesses, the bar, and the public. In January 2005, the Commission issued its first merger decision in administrative adjudication since 1995. The FTC charged that a company had illegally acquired its closest competitor and that the acquisition resulted in either a monopoly or a dominant firm in four U.S. markets. The Commission's order requires the company to create two new divisions that could compete independently in the relevant markets, and to divest one of those divisions within six months. In addition, four consumer protection cases also were in administrative litigation in FY 2005.

Promoting Innovation. The FTC continued efforts to harmonize the application of competition law with the patent system in order to benefit consumers by fostering the invention and development of new goods, services, and processes. These efforts included continued administrative litigation in a significant matter involving alleged abuses of the standards-setting process to exploit patent rights. In FY 2005, the Commission considered an appeal from an ALJ dismissal of the complaint in an adjudicative proceeding. The complaint charged that a defendant violated the antitrust laws by knowingly failing to disclose its relevant intellectual property holdings to a standards-setting organization in which it was a participant. In dismissing the complaint, the ALJ concluded that the defendant's conduct did not amount to deception or a violation of its duties and that complaint counsel did not prove that its conduct violated the antitrust laws. A Commission decision is forthcoming.

Advocating for Competition before the Courts and Other Government Entities. In FY 2005, the FTC sent comments to the governors of California, North Carolina, and North Dakota urging them to veto bills that likely would restrict competition among pharmaceutical companies in ways that could harm consumers. The bills included proposals: (1) to require Pharmacy Benefit Managers (PBMs) to disclose certain information to purchasers of their services, prescribers, or consumers; (2) to restrict a PBM's ability to set up low-cost pharmacy networks; or (3) to prohibit the use of certain cost-reducing drug substitutions. The FTC's PBM efforts have proved successful. Governor Schwarzenegger cited the FTC's comment on the potential harmful effects of the California bill when he vetoed it. While the North Dakota bill passed, it did not contain the provisions to which the FTC objected. In September 2005, the FTC issued a report entitled "Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies." The report, in response to a Congressional request in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, examined whether private-sector entities that offer prescription drug coverage pay more for such drugs when using a mail-order pharmacy owned by a PBM, as opposed to using a mail-order or retail pharmacy that the PBM does not own. The report concluded that the prescription drug plan sponsors generally paid lower prices for drugs purchased through PBM-owned mail-order pharmacies.

Other FTC advocacy efforts contributed in other areas. An intense real estate market has prompted some legislatures—often with pressure from state real estate commissions — to create proposals that impose minimum service requirements on brokers. These proposals place competitive restrictions on limited service brokerages, which offer unbundled services for lower prices. They also limit consumers' ability to choose a lower level of brokerage services. The FTC sent comments about the potential harms of minimum service requirements to parties considering such proposals including the Texas Real Estate Commission (TREC), the governor of Missouri, and the Alabama Senate Members. The FTC's efforts have had mixed success. Although TREC did not pass its proposed regulation, the Texas legislature passed a bill that has a similar effect as TREC's regulation. Despite the FTC's efforts in Missouri, the governor signed the bill. Alabama's legislature, however, did not pass the bill. The FTC also continues to comment on attempts to define the practice of law broadly, which may restrict competition between attorneys and lay service providers in ways that harm consumers. The FTC's advocacies against broad definitions of the unauthorized practice of law continue to be successful.

PLANNED ACTIVITIES IN FY 2006 AND BEYOND

Over the next few years, the FTC will continue to devote resources to significant law enforcement and policy initiatives designed to protect consumers and the competitive process.

CONSUMER PROTECTION MISSION. Through its Consumer Protection Mission, the FTC focuses broad efforts to fight consumer fraud, deception, and unfair practices and to protect consumer privacy, including fighting identity theft and deceptive spam.

Fighting Data Security Breaches and Identity Theft. Privacy continues to be an important concern of American consumers. To address these issues most effectively, in 2006 a new Privacy and Identity Protection Program was established. The FTC's approach in this arena encompasses both enforcement and education, and will focus on identity theft, data security, and enforcement of the Gramm-Leach-Bliley Act. The agency will direct other enforcement efforts at the failure of businesses to take reasonable steps to protect the security of sensitive

personal or financial information and to enforce other representations made to consumers concerning the privacy and security of their personal information.

Fighting Spam and Spyware. Spam increasingly is used to deliver spyware and download viruses onto consumers' computers, and often represents an unwanted intrusion into consumers' privacy. The FTC receives roughly 300,000 spam messages a day from groups and individuals worldwide; to date, more than 285 million spam messages have been sent to the FTC. This spam is stored in a searchable database, enabling the FTC staff and other law enforcement agencies to track trends and identify law enforcement targets. In FY 2006, the FTC will enhance the spam database to provide improved case generation, evidentiary support in litigation, and trend analysis. Separately, the FTC will continue to work with its federal, state, and local law enforcement partners on the Spam Task Force, and will continue to encourage the private sector to develop technological remedies to help reduce spam reaching consumers' inboxes. Additionally, the FTC will continue bringing cases against spyware purveyors and initiatives to educate consumers on how to avoid spam and spyware problems. The FTC also will continue working with ISPs and others to implement sender authentication standards.

Fighting Fraud and Deception. More than one million entries were added to the Consumer Information System database in FY 2005. The database now houses more than five million inquiries and complaints. The FTC continues to target the most prevalent consumer frauds in the cases that it brings by drawing from *Consumer Sentinel*, a secure Web site that provides access to fraud and identity theft complaints to more than 1,425 law enforcement organizations in the United States, Canada, and Australia, and from Internet "surfs" and "sweeps" that ferret out specific claims and solicitations that likely deceive consumers and violate the law. Information from consumer fraud and identity theft surveys will allow the FTC to refine and expand its use of these databases and further target enforcement efforts.

Working with Criminal Law Enforcers to Protect Consumers. The FTC will continue to promote the work of its Criminal Liaison Unit (CLU), dedicated to encouraging criminal prosecution of consumer fraud by coordinating with criminal law enforcement authorities on consumer fraud cases. The CLU identifies law enforcement agencies and case agents for specific types of consumer fraud cases, educates criminal law enforcement authorities about the FTC and its mission, and coordinates training of FTC staff by criminal law enforcement to help them prepare cases for referral and ensure smooth progress of parallel prosecutions.

Enforcing the National Do Not Call Registry to Stop Unwanted Telemarketing Calls. Consumers have registered more than 110 million telephone numbers on the FTC's National Do Not Call Registry. While compliance is high, the FTC will give priority in FY 2006 and beyond to enforcement of the Do Not Call provisions of the Telemarketing Sales Rule to ensure that consumers do not receive unwanted telemarketing calls and the Registry is not used for unintended purposes.

Protecting Children in the Marketplace. The FTC maintains an active program to monitor, report on, and provide educational materials about marketing to children, including advertising and marketing of violent entertainment products, online gambling, pornography, and alcohol, as well as food marketing and childhood obesity. In particular, the FTC analyzes complaints that deal with law violations relating to media violence. The FTC also focuses on children's interests through its enforcement of the Children's Online Privacy Protection Act. The FTC will continue to monitor the entertainment industry's marketing practices. Additionally, the FTC will work with video game publishers and retailers to ensure that Teen- and Mature-rated games are marketed or sold in accord with the rating's age guidelines, and

will educate parents about video game content. Finally, the FTC will review the findings of our 2005 workshop on childhood obesity and the recommendations by the Institute of Medicine concerning industry self-regulation addressing food advertising and marketing practices aimed at children.

Combating Cross-Border Fraud. The FTC will continue to protect U.S. consumers in the global marketplace through international law enforcement and policy initiatives. With respect to law enforcement, cases increasingly involve an international component as defendants, their operations, or their assets are moved offshore. This makes it difficult to locate and stop scams or to provide redress to consumers. The FTC is meeting these challenges by forming and sustaining international partnerships to assist in locating, investigating, and halting international outlaws. On the policy side, the FTC is promoting international development of market-oriented consumer protection policies, when such policies adequately address consumer harm. If legislation, such as the U.S. SAFE WEB Act, is enacted, the FTC will gain improved abilities to combat cross-border consumer protection law violations, and will require resources to enforce the Act.

Focusing on Health Fraud. The deceptive marketing of products that may affect consumer health and safety will continue to be an FTC priority. Over the last decade, the FTC brought more than 100 law enforcement actions challenging false or unsubstantiated claims about the efficacy or safety of a wide variety of dietary supplements and misleading claims for all types of weight loss products. Going forward, the FTC will continue its aggressive program by focusing its law enforcement on violations that create the greatest risks to consumer health.

Using FTC Expertise to Protect Hispanic Consumers. To focus on frauds aimed at Hispanic consumers, the FTC will continue to use the findings of the staff's 2004 fraud survey, ideas generated at the Hispanic Outreach Forum and Law Enforcement Workshops, and partnerships developed as part of the Hispanic Initiative. For example, the FTC will continue to hold regional follow-up workshops to meet with enforcement officials and community-based organizations to discuss law enforcement and outreach to protect Hispanic consumers in that region. The FTC also will continue to expand dedicated space on its Web site devoted to Spanish-language information and to promote the Spanish-language complaint form. To date, the FTC has produced more than 100 consumer and business education pieces in Spanish, and will continue this important initiative. The agency will continue to bring enforcement actions, including sweeps with its law enforcement partners, against scams aimed at vulnerable groups, including other minority groups identified in staff's fraud survey.

Preventing Deceptive Lending Practices, Deceptive Debt Counseling, and Other Credit Schemes. The FTC will continue its law enforcement efforts against those unscrupulous lenders who deceive consumers about loan terms, rates, or fees. The FTC also will continue its law enforcement actions against bogus organizations that target consumers with bad credit or significant consumer debt, deceptively promising to help them manage their debt and instead further damaging these consumers' credit and finances. The FTC also will continue to bring actions against companies that harass, intimidate, and deceive consumers in their debt collection practices.

Enforcing Legislation. Three bills enacted in FY 2004 provided the FTC with tools and responsibilities for addressing spam, identity theft, and non-federally-insured depository institutions. As noted earlier, the CAN-SPAM Act and FACT Act provide important measures to prevent identity theft, help victims recover from identity theft, and enhance the accuracy

of and consumer access to credit information. In addition, the recently enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires the FTC to establish and maintain a toll-free phone number that provides certain disclosures to consumers relating to open-end credit plans. The FTC will continue through 2006 and beyond to implement these laws by issuing rules, meeting statutory requirements, and taking appropriate enforcement actions.

MAINTAINING COMPETITION MISSION

Competition is the ultimate consumer protection. The work of the FTC's competition mission is critical to protect and strengthen the free and open markets that are the cornerstones of a vibrant economy. Robust competition promotes lower prices, higher quality products and services, and greater innovation, all of which benefit consumers.

Reviewing a High Number of Mergers. Economic activity generally and the number of HSR merger filings have increased during FY 2004 and 2005. During FY 2005, the FTC experienced an increase of more than 25 percent in the number of mergers requiring investigation. The total dollar value of merger transactions reported under HSR also increased substantially from \$630 billion in FY 2004 to \$1.1 trillion in FY 2005. We anticipate a demanding merger review workload in FYs 2006 and 2007.

Improving the Merger Review Process. While the FTC has implemented some improvements in this area in recent years, merger review process reform is currently a top priority. The FTC has established an internal task force to examine the merger review process in detail and to recommend further improvements to ease the burden on affected parties and increase internal efficiency, while still meeting the Commission's obligation to collect sufficient information to fulfill the agency's competition mission. The task force has focused, in particular, on productions in response to agency "second requests" under HSR." The additional improvements include seeking methods to identify relevant materials stored electronically, improving the agency's ability to receive electronic productions, developing instructions and specifications for electronic productions, and taking further steps to improve the timeliness and efficiency of the review process.

Offering Commentary on the Horizontal Merger Guidelines. Issued by the FTC and the DOJ's Antitrust Division in 1992, the Horizontal Merger Guidelines reflect the essential factors that are considered in sound merger analysis and describe how those factors should be considered. Both Agencies are now working together on a Commentary on the Guidelines, informed by the experience of the last thirteen years. The Commentary is designed to bring greater transparency to the Agencies' merger analysis and greater certainty to businesses and merger practitioners. Using the Commentary to explain the Agencies' approach to merger analysis is expected to enhance the quality of communications between the government and merging parties during the merger review process.

Enhancing Expertise on the Competitive Effects of Single-Firm Conduct. The FTC has long recognized the public interest in advancing knowledge of challenging legal issues. In recent years, the FTC and the Antitrust Division of the DOJ have conducted a number of public hearings designed to inform policy- and decision-makers on vital issues affecting consumers and the economy - for example, on issues such as antitrust and health care, on competition policy in the real estate industry, and on the interface between antitrust and intellectual property. Beginning in Spring 2006, the Agencies will continue these efforts by holding a series of public hearings designed to examine single-firm conduct under Section 2 of the Sherman Act. Section 2, which proscribes exclusionary or predatory monopoly

conduct, presents some of the most complex issues facing the FTC, the courts, the antitrust bar, and the business community. Hearing participants will discuss the standards used in recent Section 2 cases and consider what economic learning contributes to the analysis with respect to exclusionary or predatory conduct. The primary goal of the hearings will be to define more specifically the boundaries between legitimate single-firm conduct that is procompetitive or benign, and anticompetitive single-firm conduct that may harm consumers.

Promoting Competition in Health Care and Prescription Drugs. The rapidly rising cost of health care is a matter of concern for consumers, employers, insurers, and the nation as a whole. Health-related products and services now account for more than 15 percent of GDP, and that share has grown by 25 percent since 1990. Thus, promoting competition in the health care sector will continue to be a major priority for the FTC. Among other activities, the FTC will continue to stop anticompetitive agreements between physicians and hospital service organizations and monitor hospital and other mergers that may raise the cost of health care. The FTC also will address rising prescription drug prices by monitoring pharmaceutical company mergers and working to ensure the continued availability to consumers of lower-cost generic drugs.

Studying Authorized Generics. The FTC currently is initiating a study on authorized generics. The study is intended to help the agency understand the circumstances under which innovator companies launch authorized generics; collect and analyze data on how competition between generics and authorized generics during the 180-day exclusivity period has affected short-run price competition and long-run prospects for generic entry; and build on the economic literature about the effect of generic drug entry on prescription drug prices.

Preventing Anticompetitive Activity in Energy Industries. The price of gasoline continues to be a concern for consumers, and is a commensurately high priority for the FTC. A recently completed FTC report analyzes the many factors that influence fluctuations in the prices that U.S. consumers pay for gasoline at their local gas station. One of the report's conclusions is that over the past 20 years, changes in the price of crude oil have led to 85 percent of the changes in the retail price of gasoline in the United States, while other important factors include increasing demand, supply restrictions, and federal, state, and local regulations such as clean fuel requirements and taxes. Although these price determinants are beyond its jurisdiction, the FTC will continue to focus closely on gasoline markets and will move quickly to address any anticompetitive activity. To this end, in 2005 the FTC appointed a senior energy counsel to initiate and coordinate the agency's response to developments in the petroleum industry. In addition, under its Gasoline Price Monitoring Project, the FTC will continue to track retail gasoline prices in 360 cities nationwide and wholesale prices in 20 major urban centers to identify unusual changes in gasoline prices; if any such changes are detected, the FTC staff promptly will investigate the cause. If the investigation reveals evidence of anticompetitive conduct, the FTC will not hesitate to take strong enforcement action, as it has in one case recently settled against a major petroleum company in which the allegations involved hundreds of millions of dollars in potential consumer harm. Moreover, in FY 2006 the FTC will continue work on two ongoing related investigations pursuant to recent Congressional directives. One investigation will determine whether the price of gasoline has been or is being manipulated. The other investigation – which the agency has combined with the manipulation inquiry – is examining possible instances of gasoline price gouging in the wake of Hurricane Katrina. The FTC expects to furnish a report to Congress on the findings of these investigations in the spring of 2006, and the agency will take swift and

decisive enforcement action if these investigations unearth violations of the laws that the FTC enforces.

Increasing Our Emphasis on High Technology. The growing importance of technology is placing increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments. FTC antitrust investigations more and more often involve high-technology sectors of the economy, such as those that produce computer hardware and pharmaceutical products. Furthermore, issues in antitrust matters increasingly intersect with intellectual property concerns, raising difficult questions about how to reconcile these two bodies of law, both of which have a goal of promoting innovation. As these trends continue, the FTC requires more and more specialized technical and legal knowledge and expertise. In FY 2006 and beyond, the FTC will enhance its ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing the technical support it receives from independent experts and consultants.

Preventing Misuse of Government Processes. An important part of the FTC's competition agenda includes efforts to identify, investigate, and, where appropriate, prosecute the misuse of government processes. The FTC's activities regarding these types of anticompetitive efforts include, for example, enforcement actions challenging efforts to deter generic drug market entry by improperly listing patents in the Food and Drug Administration's "Orange Book" or otherwise abusing government regulatory processes. The FTC is also focusing on the misuse of government processes involving intellectual property rights, such as when a firm improperly obtains intellectual property rights, or litigates to enforce them in bad faith. In FY 2006 and beyond, the FTC will devote additional resources to scrutinize competitors' misuse of government processes to hamper rivals.

Promoting Global Competition. The FTC will continue to work with competition agencies worldwide to promote best practices and to address and minimize policy divergences to ease burdens on private firms that operate on a global basis, consistent with the needs of competition enforcers to collect sufficient information to conduct their investigations. Given international differences in laws, cultures, and priorities, complete convergence on competition policy is unlikely in the foreseeable future. Nonetheless, the agencies have found significant areas of agreement through participation in international bodies, such as the OECD and the ICN.

Pursuing Ongoing Administrative Litigation. Administrative litigation provides an opportunity for the FTC to apply its institutional expertise to the development of antitrust jurisprudence. Currently, the FTC has several competition matters in administrative litigation, and this litigation workload is expected to continue through FYs 2006 and 2007. Antitrust litigation, whether in an administrative proceeding or in federal court, requires major expenditures for travel, stenographic reporting, and expert witnesses, in addition to significant staff time.

Advocating for Competition before the Courts and Other Government Agencies. The FTC works to eliminate public impediments to a competitive marketplace by persuading other government policy-makers to apply sound competition principles as they make decisions affecting consumer welfare. Among its activities, the FTC expects to file, typically at the request of state legislators, a number of comments on proposed legislation affecting competition in the areas of limited service real estate brokerage, the direct shipment of wine to consumers, and contractual relationships between product suppliers

and distributors. For example, FTC staff will continue to examine issues addressed in the joint FTC and DOJ workshop on Competition Policy and the Real Estate Industry, such as the effect on consumers of restrictions on new real estate brokerage business models. The FTC staff also will conduct a study of the efficacy of its competition advocacy program over the past five years. In addition to these activities, FTC staff will continue to provide guidance on important competition policy issues, through issuing reports and filing *amicus* briefs to help courts resolve important competition issues.

Enforcing FTC Orders. The FTC must maintain an effective compliance program so that consumers receive the benefits of competition obtained through FTC orders issued after the culmination of investigation and litigation. The FTC focuses on devising and drafting effective orders for each individual matter, a highly fact-specific process. In addition, the agency conducts general and historical analyses on the effectiveness of various kinds of merger and nonmerger remedies, such as divestiture orders. The FTC also must litigate, when necessary, to vindicate its authority to order relief to protect competition.

NEEDED RESOURCES - FY 2007

The FTC's FY 2007 budget request for \$223,000,000 supports 1,074 FTE. The increase of \$13,000,000 over the FTC's FY 2006 enacted level consists of -

Mandatory Salary and Contract Expenses [\$6,000,000]. Mandatory salary and contract expenses include -

- The annualized three-month cost of the January 2006 pay increase, and nine-month cost of a January 2007 pay raise at an annual rate of 2.2 percent [\$3,400,000].
- Upward grade classifications pursuant to 5 C.F.R. 531.401 et seq. [\$1,300,000].
- Contract and other non-pay inflation [\$1,300,000].

Consumer Protection Enforcement, Analysis, and Outreach and Maintaining Competition Litigation Support [\$3,800,000].

- Identity Theft and Information Security [\$1,100,000]. To meet the pressing demands of information security and identity theft issues, funds will be needed for experts to assist in information security investigations and to conduct further Identity Theft surveys. Also, additional funds are needed to maintain the current level of services delivered by the Consumer Response Center and the anticipated increase in demand generated by the FACT Act outreach efforts.
- FACT Act study and analysis [\$1,000,000]. As mandated by Congress, the FTC will perform a major, nationwide data gathering of 1,000 consumers' credit reports to determine their accuracy with feedback from the scored consumers.
- Toll-free number for the "Bankruptcy Abuse Prevention and Consumer Protection Law of 2005 (Public Law 109-8) [\$1,000,000]. This Act, enacted in April 2005, requires the FTC to establish and maintain a toll-free number that provides certain disclosures to consumers about open end credit plans via an automated system or live operator.

- Hispanic Outreach [\$300,000]. The FTC will continue to increase its outreach and law enforcement efforts to protect Hispanic consumers. Efforts include travel, translation services, production of education materials and Web tools, and outreach to media and Hispanic consumer and community groups.
- Maintaining Competition Litigation Support [\$200,000]. Antitrust litigation costs continue to rise given the expanding global economy issues, especially for expert witness advisory contracts and stenographic services.
- Combating Fraud [\$100,000]. An important component of the FTC's fraud program is finding and prosecuting those individuals who violate FTC orders. To further these efforts, we need increased funding for travel, training, and surveys.
- International Efforts [\$50,000]. Additional funds are needed for our Canadian telemarketing witness travel program and for new consumer protection issues that have international aspects.
- Do Not Call Registry [\$50,000]. The 50 million telephone numbers placed on the National Do Not Call Registry between June and October 2003 will expire during the summer and early fall of 2008. Funds will be needed in FY 2007 to begin the outreach campaign for "re-registering."

Human Capital, E-gov, and Information Technology Initiatives [\$1,400,000].

- Information Systems Project Managers [\$500,000]. These funds are needed to increase contractor support for applications and systems development project managers. These resources will be used to manage all enhancements, modifications and new deployments of all agency systems, including, but not limited to, e-Premier, Consumer Information System, Do Not Call, and electronic document management. The FTC also will invest in enhanced computer software and hardware that will help the agency review and manage the vast volume of electronic discovery materials received from parties and increase staff's access to investigative data.
- Reassessment/Replacement of the Personnel/Payroll System [\$400,000]. In FY 2005, the FTC began efforts to define its requirements for a new, integrated financial management system. As a part of this process, the current personnel/payroll system, the Federal Personnel and Payroll System, will need to be reassessed to determine its ability to be integrated with the financial management system.
- Part 3 Adjudicative E-filing [\$300,000]. Currently, the FTC contracts to use a web-based filing system for comments on rulemakings, studies, and workshops. The FTC needs additional funds to extend the web-based filing format to filings in Part 3 adjudicative matters.
- Human Capital [\$200,000]. Today's rapidly growing technological and global marketplace requires hiring professional staff with the specialized skills needed to investigate complex economic issues and apply sophisticated legal precedents to antitrust and consumer protection activities. Recruiting and retaining these top candidates is a challenge and high priority at the FTC. The additional funds will be

used to increase recruitment and retention incentives, relocation costs, and award amounts.

Records Management, Facility Maintenance, and Administration Needs [\$1,000,000].

- Records Management [\$500,000]. The continued overhaul of the FTC's records management program and the reduction of records backlog is a multi-year project, requiring contractor support. Work includes, but is not limited to, separating agency records from non-records, developing an electronic records management system, and updating agency record retention schedules.
- Facility Maintenance and Office Equipment Replacement [\$500,000]. Funds are needed for the ongoing and increased maintenance needs of the FTC's buildings and replacement of outdated, worn, and broken furniture.

Physical Security Initiatives [\$800,000].

- Guard Services [\$500,000]. The continued terrorist threat situation and the increasing number of FTC events that are open to the public require additional guard services.
- Command Center [\$300,000]. The FTC needs to relocate the control room and replace and expand much of the current equipment. A control center properly outfitted with equipment and staff will provide protection to FTC buildings and employees from intruders and others who may engage in unlawful or harmful activities.

APPROPRIATIONS LANGUAGE PROVISIONS

Federal Deposit Insurance Corporation Improvement Act. The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) amended the Federal Deposit Insurance Act. As originally enacted, the FDICIA imposed various statutory responsibilities on the FTC that the agency did not have the resources or expertise to perform effectively. Accordingly, since 1992, Congress, with Administration support, has prohibited the FTC from spending funds on some or all of the responsibilities assigned to it under section 151 of the Act.

The requested appropriations language for FY 2007 contains a revised spending restriction, reflecting significant discussion and agreement among the FTC, Government Accountability Office, relevant bank regulatory agencies, and congressional committees, that provides an appropriately narrow role for the FTC under section 151. This role enables the FTC to continue to enforce the FDICIA provisions requiring non-federally-insured depository institutions to disclose that they do not have federal insurance and the federal government does not guarantee that the depositor will get back his or her money, but reinstates the enforcement ban with respect to insurance audit and "look alike" provisions, as well as the shutdown and business plan provisions.

Other Provisions. The requested appropriations language continues in effect provisions in prior-year appropriation acts that (1) allow for the purchase of uniforms and hire of motor vehicles; (2) allow services as authorized by 5 U.S.C. 3109; (3) limit to \$300,000 the amount available for contracts for collection services in accordance with 31 U.S.C. 3718; (4) allow up to \$2,000 for official reception and representation expenses; (5) allow for the collection of offsetting fees; (6) allow for the gross sum appropriated to be reduced as offsetting fees are collected; and (7) allow all funding to be available until expended.

OFFSETTING FEE COLLECTIONS

This submission assumes that total offsetting collections from HSR filing fees and Do Not Call fees will provide the FTC \$138,000,000 in FY 2007. The FTC assumes the \$85,000,000 difference between offsetting collections and the \$223,000,000 request will be funded through a direct appropriation.

HSR Premerger Filing Fees. This submission assumes offsetting HSR fee collections will provide the FTC \$120,000,000 in FY 2007. These fees are authorized by section 605 of Public Law 101-162, as amended effective February 1, 2001, in the FY 2001 Commerce-Justice-State Appropriations Act (Section 630, Public Law 106-553).

Do Not Call Fees. This submission assumes offsetting collections of \$18,000,000 from Do Not Call fees. These fees, first collected in FY 2003, will be used to maintain and enforce a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers and to carry out other Telemarketing Sales Rule activities.

GOVERNMENT PERFORMANCE AND RESULTS ACT (GPRA)

The FY 2007 budget request is based on the FTC's GPRA Strategic Plan for FYs 2003 - 2008 and supported by the FY 2006 and FY 2007 Performance Plans included in this submission. The FTC also will continue to work closely with Congress, the Office of Management and Budget, and its stakeholders to ensure that its strategic goals, objectives, and measures continue to provide relevant information.

PRESIDENT'S MANAGEMENT AGENDA

As described in more detail in a following section also titled "President's Management Agenda," the FTC is committed to managing its resources effectively and achieving immediate, concrete, and measurable results in each of the five management initiatives: human capital; competitive sourcing; e-government; financial management; and integration of budget and performance. Over the past decade, the agency has found new ways to meet growing demands and reach out to more consumers and businesses without an appreciable addition of personnel. To address these issues, the FTC has been engaged in long-term, concerted efforts to work better and smarter. These efforts dovetail with the President's Management Agenda. To date, the agency has established an outstanding record of assessment, realignment, innovation, and improvement. Also, there are several continuing efforts underway to address, among other areas, recruitment and training, diversity and opportunity, program performance and associated costs, and financial systems and associated reporting.

Budget Request Summary

(\$ in thousands)

Budget by Mission:	Fiscal Year 2006		Fiscal Year 2007		Change	
	FTE	Dollars	FTE	Dollars	FTE	Dollars
Consumer Protection	567	\$117,000	567	\$125,000	0	\$8,000
Maintaining Competition	507	93,000	507	98,000	0	5,000
Total	1,074	\$210,000	1,074	\$223,000	0	\$13,000

Budget by Funding Source:

Offsetting Collections				
HSR Filing Fees		\$116,000	\$120,000	\$4,000
Do-Not-Call Fees		23,000	18,000	-5,000
Subtotal Offsetting Collections		\$139,000	\$138,000	-\$1,000
General Fund		71,000	85,000	14,000
Total		\$210,000 *	\$223,000	\$13,000

*Reflects rescissions of \$1 million.

Budget Justification

Summary of Changes
(\$ in thousands)

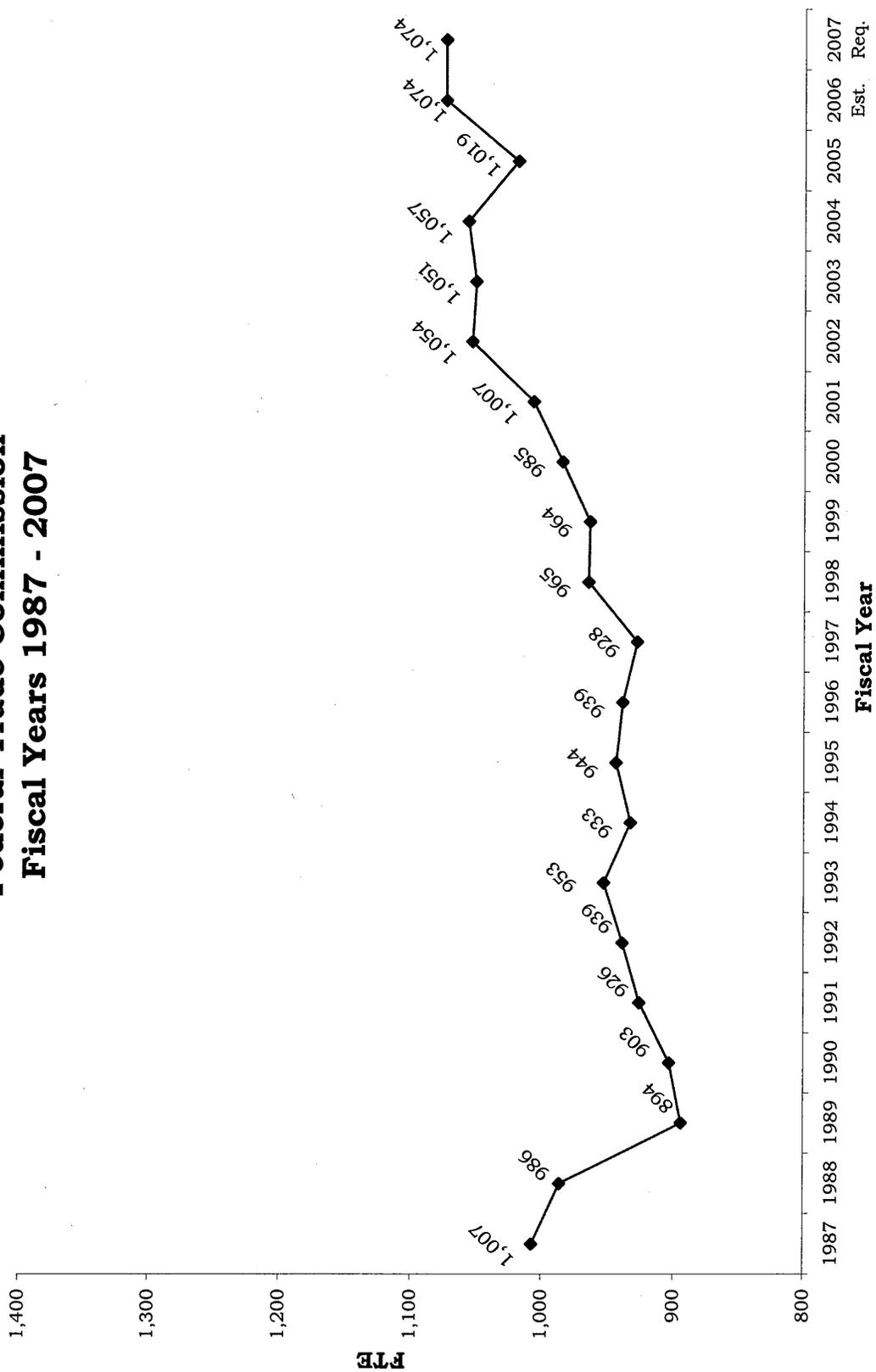
	FY 2006	FY 2007	Change
Budget Authority	\$210,000	\$223,000	+\$13,000
Full-time Equivalents	1,074	1,074	+0

	FTE	Dollars
Explanation of Change:		
A. Mandatory Salary and Contract Expenses:		
Annualized three-month cost of the January 2006 pay increase, and nine-month cost of the January 2007 pay increase.	---	+\$3,400
Upward grade classifications pursuant to 5 C.F.R. 531.401 et seq.	---	+\$1,300
Contract and other non-pay inflation.	---	+\$1,300
Subtotal	---	+\$6,000
B. Non-FTE Program Needs:		
Consumer Protection enforcement, analysis, and outreach and Maintaining Competition litigation support.	---	+\$3,800
Human Capital, e-gov, and information technology initiatives.	---	+\$1,400
Records management, facility maintenance, and administration needs.	---	+\$1,000
Physical security initiatives.	---	+\$800
Subtotal	---	+\$7,000
Total Change	+0	+\$13,000

Full-time Equivalent History

Federal Trade Commission

Fiscal Years 1987 - 2007



Annual Performance Plan Objectives by Program FTE

Consumer Protection Mission

	Fiscal Year 2006				Fiscal Year 2007			
	CP Obj. 1 1.1	CP Obj. 2 1.2	CP Obj. 3 1.3	Prgm. Total Total	CP Obj. 1 1.1	CP Obj. 2 1.2	CP Obj. 3 1.3	Prgm. Total Total
Privacy & Identity Protection	5	27	2	34	5	27	2	34
Financial Practices	4	36	1	41	4	36	1	41
Marketing Practices	11	117	4	132	11	117	4	132
Advertising Practices	6	56	2	64	6	56	2	64
Enforcement	3	41	2	46	3	41	2	46
Planning & Information	43	3	2	48	43	3	2	48
International Consumer Protection	2	7	1	10	2	7	1	10
Consumer & Business Education	0	0	18	18	0	0	18	18
Economic & Consumer Policy Analysis	0	4	1	5	0	4	1	5
Program Management	6	17	3	26	6	17	3	26
CP Mission Support	33	95	15	143	33	95	15	143
Total Mission	113	403	51	567	113	403	51	567

Maintaining Competition Mission

	Fiscal Year 2006				Fiscal Year 2007			
	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total	MC Obj. 1	MC Obj. 2	MC Obj. 3	Prgm. Total
Premerger Notification	15	0	9	24	15	0	9	24
Merger & Joint Venture Enforcement	11	168	11	190	11	169	11	191
Merger & Joint Venture Compliance	1	11	1	13	1	11	1	13
Nonmerger Enforcement	8	108	7	123	8	108	7	123
Nonmerger Compliance	0	3	0	3	0	2	0	2
Antitrust Policy Analysis	2	3	2	7	2	3	2	7
Other Direct Mission Resources	3	14	3	20	3	14	3	20
MC Mission Support	14	102	11	127	14	102	11	127
Total Mission	54	409	44	507	54	409	44	507

**Fiscal Years 2001- 2007
Annual Performance Measures**

	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Actual	FY 2006 Target	FY 2007 Target
Consumer Protection Mission							
Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.							
<i>Objective 1.1—Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</i>							
Measure 1.1.1: (FY 2001-2007) Annual number of consumer complaints and inquiries entered into database.	430,000	680,000	944,000	994,000	1,015,000	950,000	1,000,000
Measure 1.1.2: (FY 2003-2007) Annual number of consumer complaints and inquiries related to identity theft entered into database.	----	----	321,000	314,000	348,000	350,000	375,000
<i>Objective 1.2—Stop fraud, deception and unfair practices through law enforcement:</i>							
Measure 1.2.1: (FY 2001-2007) Dollar savings for consumers from FTC actions which stop fraud.	\$487 million	\$561 million	\$606 million	\$349 million	\$366 million	\$400 million	\$400 million
Measure 1.2.2: (FY 2001-2002) Total expenditures of deceptive or unfair advertising campaigns stopped.	\$86 million	\$40 million	----	----	----	----	----
Measure 1.2.3: (FY 2003-2007) Number of data searches conducted by FTC and law enforcement personnel of the FTC's Consumer Sentinel database.	----	----	27,685	87,000	79,000	40,000	42,000
Measure 1.2.4: (FY 2003-2007) Number of data searches conducted by law enforcement personnel of the FTC's Identity Theft complaints.	----	----	2,167	2,120	1,680	2,100	2,200
<i>Objective 1.3—Prevent consumer injury through education:</i>							
Measure 1.3.1: (FY 2001-2007) Number of education publications distributed to or accessed electronically by consumers.	15.0 million	19.3 million	28.0 million	26.5 million	35.3 million	25.0 million	26.0 million
Measure 1.3.2: (FY 2003-2007) Number of education publications related to Identity Theft distributed to or accessed electronically by consumers.	----	----	3.0 million	3.7 million	6.0 million	3.3 million	3.5 million
Measure 1.3.3: (FY 2003-2007) Number of Spanish-language education publications distributed to or accessed electronically by consumers.	----	----	458,000	737,000	1,157,000	550,000	700,000

Performance Plan

	FY 2001 Actual	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Actual	FY 2006 Target	FY 2007 Target
Maintaining Competition Mission							
Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.							
<i>Objective 2.1—Identify anticompetitive mergers and practices that cause the greatest consumer injury:</i>							
Measure 2.1.1: (FY 2001-2007) Percent of HSR second requests resulting in enforcement action.	68%	68%	70%	55%	52%	60-80%	60-80%
Measure 2.1.2: (FY 2001-2003) Number of nonmerger investigations opened per year.	56	59	50	----	----	----	----
Measure 2.1.3: (FY 2004-2007) Percent of nonmerger investigations which result in enforcement action.	----	----	----	63%	50%	60-80%	60-80%
<i>Objective 2.2—Stop anticompetitive mergers and practices through law enforcement:</i>							
Measure 2.2.1: (FY 2001-2007) Positive outcome of cases brought by FTC due to alleged violations.	94%	100%	100%	100%	95%	80%	80%
Measure 2.2.2: (FY 2001-2003) Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	\$2,500 million	\$726 million	\$292 million	----	----	----	----
Measure 2.2.3: (FY 2004-2007) Dollar volume of commerce in markets in which FTC took action to prevent anticompetitive mergers.	----	----	----	\$8.5 billion	\$61.8 billion	\$40 billion	\$40 billion
Measure 2.2.4: (FY 2001-2003) Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	\$157 million	\$86 million	\$211 million	----	----	----	----
Measure 2.2.5: (FY 2004-2007) Dollar volume of commerce in markets in which FTC took action to prevent anticompetitive conduct.	----	----	----	\$2.6 billion	\$19.4 billion	\$20 billion	\$20 billion
<i>Objective 2.3—Prevent consumer injury through education:</i>							
Measure 2.3.1: (FY 2001-2003) Quantify number of education and outreach efforts.	141	285	306	----	----	----	----
Measure 2.3.2: (FY 2001-2003, FY 2005-2007) Quantify number of hits on antitrust information on FTC Web site.	2.6 million	4.4 million	Over 10 million	----	9.8 million	10 million	10 million
Measure 2.3.3: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to business and legal communities.*	----	----	----	7.7 million	----	----	----
Measure 2.3.4: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to policy makers and the general public.*	----	----	----	0.3 million	----	----	----

*For FY 2004, Objective 2.3 has two different components – educating the legal and business communities about enforcement policies and standards to facilitate compliance with the law, and (2) educating the public in general, as well as policymakers, about the benefits of competition. For this reason, the FTC established two performance measures based on the volume of traffic on the FTC’s Internet site. See Federal Trade Commission Strategic Plan, Fiscal Years 2003 - 2008 at 17. While the underlying rationale remains sound, this distinction has proved far more difficult to implement than first anticipated. Much of the antitrust-related content on the FTC’s Internet site, such as press releases and speeches, is of interest to the general public as well as the business and legal communities. Some material is likely relevant primarily to the business and legal communities, very little (e.g., the FTC’s “Plain English Guide to the Antitrust Laws”) could be said to be of interest only to the general public. Because it is very difficult to make a meaningful distinction between the FTC’s relative success in educating the business and legal communities versus the general public, the agency discontinued Measures 2.3.3 and 2.3.4 and re-established Measure 2.3.2 which is the total volume of antitrust-related Internet traffic on the FTC Web site.

Fiscal Year 2006
Performance Plan

Consumer Protection Mission

Goal 1: To prevent fraud, deception, and unfair business practices in the marketplace.

Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

FY 2006 Budgeted Resources: 113 FTE \$23,000,000

To identify the most prevalent and serious forms of fraud, deception, and unfair business practices, the FTC monitors the marketplace using a multi-faceted approach that involves analyzing consumer complaints received by its databases, conducting surveys to obtain a representative sample of consumer experiences in the marketplace, using technology and web-surfs to learn more about online deception and fraud, and holding workshops and other forums for education purposes.

Data Collection and Analysis

The FTC has created the largest database of consumer complaints in the world. Complaints are collected by the FTC's Consumer Response Center, which responds to calls to its toll-free numbers and to mail and online complaints. The FTC also receives complaint data from a broad array of public and private organizations in the United States and Canada. Through June 2005, the FTC's database had captured more than five million entries.

The FTC reviews and analyzes the available data in order to keep abreast of the latest trends in the marketplace. The FTC will build on its capacity to analyze data quickly to respond to frauds and identity theft in their incipient stages and help prevent consumer injury. The data will be used to provide more information to the public – giving consumers information to protect themselves from scams and identity theft, and informing public policy discussions about consumer protection issues in the marketplace.

The FTC's store of Do Not Call Registry complaints is another important source of information regarding potential violations of the Do Not Call Rule. The complaint database, along with software to identify the scope of Do Not Call violations by individual telemarketers, is critical to our data collection work.

The FTC also maintains a spam database which contains hundreds of thousands of unsolicited commercial e-mail (spam) messages that are forwarded to the FTC's electronic mailbox (spam@uce.gov) by groups and individuals worldwide. The FTC uses this database to enforce the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), which protects consumers' email inboxes from unwanted, deceptive, and abusive spam. The searchable database enables the FTC to track trends and identify law enforcement targets when researching potential cases. The FTC will continue to expand the database's capacity and further develop the capabilities to search and analyze the data contained there.

Law Enforcement and Other Partnerships

Fraud and identity theft complaints are accessible to an increasing number of law enforcement partners. The FTC shares its complaint data through *Consumer Sentinel*, a secure Web site that provides access to fraud and identity theft complaints to more than 1,425 law enforcement organizations in the United States, Canada, and Australia. *Consumer Sentinel* is a unique and effective enforcement tool that permits law enforcers to access this data at their desks. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data obtained through *Consumer Sentinel* enables the FTC and its law enforcement partners to coordinate enforcement efforts and to identify and target the most serious consumer problems resulting from fraud or identity theft. The FTC will continue to expand the complaint database and increase its use by recruiting and training additional law enforcement partners, and will improve its use of data by identifying repeat offenders and sharing this information with law enforcers. The FTC also will continue to work with its international partners to access and share the information contained in *econsumer.gov*, an FTC-created Web site where consumers can file cross-border complaints.

Trends and Methods to Identify Fraud, Deception, and Unfair Practices

Given the speed of technological advances, the FTC pays particular attention to addressing new methods used to perpetuate scams and take advantage of consumers. Most recently, the FTC has focused on spyware and other malware, and will continue to develop tools to detect, identify, and investigate intrusions to consumers' privacy.

The FTC will continue to collect data on consumers' experiences and general inquiries through other methods including surveys, web surfs, copytesting, and other methods of monitoring the marketplace to better target enforcement and education resources. The FTC also will continue to enhance its capacity to track and analyze privacy-related complaints more effectively.

The FTC makes frequent use of workshops, bringing together stakeholders on emerging consumer protection issues, to identify problems and approaches to new areas. Key areas for FY 2006 will include follow-up on progress from the marketing and childhood obesity workshop held in FY 2005. The FTC also will continue to research important topics, such as violent entertainment, and issue reports detailing the state of the problem and potential next steps.

In addition, the FTC will continue to devote resources to identity theft and credit reporting matters and will scrutinize whether companies are complying with the Safeguards Rule and bring enforcement actions if necessary. The FTC also will continue to implement and enforce the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) and the Telemarketing Sales Rule (TSR). The FTC will continue to analyze reports provided by the consumer reporting agencies on the disposition of consumer complaints relating to the accuracy or completeness of consumer reports.

Performance Measurement and Evaluation

In 2006, the FTC will continue to measure its performance by reporting the annual number of consumer complaints and inquiries entered into its central database and those relating to identity theft. These databases directly support criminal prosecutions as the agency's law enforcement partners with criminal jurisdiction search *Consumer Sentinel* to identify malfeasors and victims in connection with investigations or prosecutions.

Finally, the Consumer Protection Mission will continue to use its databases, surveys, and other means to ensure that it addresses the most costly and prevalent forms of fraud, deception, and unfair business practices. FTC staff will use surveys and other tools to assess the nature and prevalence of identity theft and consumer fraud and to judge the effectiveness of agency efforts to assist and educate consumers, victims, law enforcement officials, and industry representatives.

1. GPRA Five-Year Strategies

- Expand the FTC's comprehensive information system (consumer complaint database) to keep pace with the global marketplace.
- Strengthen capabilities to analyze the increasing volume of complaint data.
- Upgrade *Consumer Sentinel's* services to assist law enforcement partners.
- Improve the privacy and security of consumer complaint database information.
- Search for improved methods of collecting information to keep abreast of new consumer protection problems in traditional markets and electronic markets.
- Continue to integrate e-government initiatives into the expanse of mission activities.
- Continue use of workshops to identify problems and solutions, particularly to encourage industry self-regulatory efforts, on a range of emerging areas.

2. FY 2006 Implementation Plan

- Continue implementation of the FACT and CAN-SPAM Acts.
- Develop tools to detect, investigate, and prosecute the latest high-tech consumer protection problems, such as spyware and spam.
- Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*; add to the group of state, local, federal, and international law enforcement agencies accessing information in *Consumer Sentinel*; and train new partners so they can take full advantage of its features.

- Facilitate the exchange of data with law enforcement officials in other countries; and expand the use of *econsumer.gov* by recruiting additional partners, providing more information on the Web site, and increasing complaint collection and sharing.
- Enhance analysis of data to make it more useful to private and public sector partners.
- Enhance the capacity to collect privacy-related complaints in the database.
- Increase the number and utility of identity theft complaints in the database.
- Collect data on consumers' experiences and monitor the marketplace to identify allegedly illegal practices that may not be fully captured by the database in order to better target enforcement and education resources.
- Continue to monitor marketing and advertising that affects children, including marketing of violent entertainment products and alcohol, and food marketing directed to children, as it relates to childhood obesity.
- Identify consumer protection issues emerging as a result of changes in the marketplace, and explore them through public workshops, hearings, surveys, etc.
- Implement recommendations of marketing and childhood obesity workshops.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. FY 2006 Performance Measures

In FY 2006, the agency will:

- Increase the number of consumer complaints and inquiries in the FTC's comprehensive information system by at least 950,000.
- As part of the increase in total consumer complaints and inquiries, enter at least 350,000 consumer complaints and inquiries relating to identity theft.

The FTC continues to focus law enforcement resources on the most serious consumer protection problems identified through its consumer complaint database. The data enables the FTC to rapidly detect and respond to fraud, deception, and other illegal practices, and to help prevent consumer injury in a timely fashion. Furthermore, by sharing its fraud complaints broadly with external partners through *Consumer Sentinel*, the FTC can enhance the effectiveness of law enforcement agencies across the United States, Canada, and Australia. The FTC also continues to focus on identity theft and uses its resources to collect information from identity theft victims and share that information with its law enforcement partners.

4. Program Evaluations

- Assess whether the FTC's law enforcement and education efforts are addressing the leading problem areas identified by the complaint database.
- Determine the extent to which *Consumer Sentinel* services are used by law enforcement partners.
- Review current functions, determine what changes or upgrades to the databases would be helpful, and implement those changes.
- Assess privacy and security protections for the database by reviewing complaints, if any, and evaluating the policies in place.
- Assess industry self-regulatory programs concerning marketing and childhood obesity.

Objective 1.2: Stop fraud, deception, and unfair practices through law enforcement.**FY 2006 Budgeted Resources: 403 FTE \$83,000,000**

The FTC operates a wide range of programs to help stop fraud, deception, and unfair practices. The FTC will continue to focus efforts on consumer privacy and data security; spam, spyware, and high-tech fraud; deceptive marketing of health care products and services; predatory lending and deceptive debt counseling services; liaison with criminal law enforcers; and international law enforcement, among other areas.

Privacy and Data Security

The FTC will continue to focus on the protection of consumers' private information in FY 2006 through the Privacy and Identity Protection Program within the Consumer Protection Mission. Maintaining security of information is a key component to protecting consumer privacy. The FTC exhorts all companies to put in place appropriate information security practices to protect sensitive personal information to prevent breaches. If breaches occur, the FTC will analyze whether they were caused by the failure to take appropriate steps to protect information security and whether enforcement action is therefore warranted. The FTC also will continue to focus on the Do Not Call rule, identity theft, the Children's Online Privacy Protection Act, and pretexting, as well as enforcement of the Gramm-Leach-Bliley Act and the FACT Act. Other enforcement efforts in privacy will center on cases involving claims touting the privacy and security features of products and services.

Spam, Spyware, and Other High-Tech Problems

The FTC will direct substantial resources to spam, spyware, and other high-tech intrusions that plague millions of America's computer users. The FTC will continue to pursue spammers who violate the FTC Act and CAN-SPAM Act. The FTC has filed spyware cases and released a staff report on spyware. The report concludes that industry efforts to address spyware through technological innovation, self regulation, and consumer education, combined with government efforts to address spyware through law enforcement, legislation, and consumer education measures, may help stop spyware. The FTC will continue to bring cases against those who abuse technology, as well as encourage industry efforts and oversee initiatives to educate consumers on how to avoid spam, spyware, and other high-tech problems.

Globalization

In today's global marketplace, the FTC is involved on two fronts: law enforcement and policy development. With respect to law enforcement, cases increasingly involve an international component as defendants, their operations, or their assets are moved offshore. These arrangements make it difficult to locate and stop scams or to provide redress to consumers. The FTC is meeting these challenges by building international partnerships to assist in identifying and pursuing these cases. Within the Bureau of Consumer Protection, the focus on international cases is integrated throughout the organization and is coordinated by staff in the Bureau's International Division of Consumer Protection. As the FTC continues to develop initiatives relating to cross-border fraud, it will work to measure and report its

performance in this area. On the policy side, the FTC is promoting international development of market-oriented consumer protection policies, when such policies adequately address consumer harm.

Hispanic Enforcement Initiative

The FTC will continue its vigorous pursuit of scammers targeting the Hispanic community. During the fiscal year, additional law enforcement actions will be announced and the FTC will continue to work with its partners to develop new ways to fight fraud in the community.

Health Care Products and Services

The deceptive marketing of products that may affect consumer health and safety remains an FTC priority. The FTC will focus on health care products, including dietary supplements. Consumer demand for such products is increasing, and fraudulent or deceptive claims about these products can pose risks to consumers' well-being.

Deceptive Credit Counseling Services and Lending Practices

For most consumers, access to credit is essential to full participation in the nation's economy. The FTC will target schemes that involve deceptive credit counseling and debt management services, as scam artists take money from consumers who already are struggling to make ends meet. Bogus organizations target consumers with bad credit or significant consumer debt, promising to help them manage their debt or obtain credit otherwise unavailable to them. Consumers may pay hundreds of dollars for these services, only to receive nothing in return, or worse, to see their credit damaged even further. Some unscrupulous lenders deceive consumers about loan terms, rates, or fees. The FTC will continue enforcement efforts in collaboration with other law enforcement agencies and outreach to industry and consumers. The FTC also will continue to bring cases against companies engaged in deceptive debt collection practices.

Liaison with Criminal Law Enforcers

The FTC will continue to promote the work of its Criminal Liaison Unit (CLU), dedicated to encourage criminal prosecution of consumer fraud by coordinating with criminal law enforcement authorities on consumer fraud cases. CLU identifies law enforcement agencies and case agents for specific types of consumer fraud cases, educates criminal law enforcement authorities about the FTC and its mission, and coordinates training of FTC staff by criminal law enforcement to help staff prepare cases for referral and ensure smooth progress of parallel prosecutions.

Performance Measurement and Evaluation

In 2006, the FTC will continue to measure its performance by reporting the annual dollar savings for consumers from FTC actions that stop fraud, as well as the annual number of data searches conducted by the FTC and other law enforcers of the FTC's *Consumer Sentinel* database and data searches conducted by law enforcers of the FTC's Identity Theft complaints.

1. GPRA Five-Year Strategies

- Lead a nationwide attack on telemarketing fraud by continuing to coordinate federal and state law enforcement, and by using *Consumer Sentinel* data to identify targets and coordinate with other federal and state agencies to prosecute actions against these targets.
- Target high-tech frauds that have moved to the Internet and that exploit other new technologies, and increase the capacity to respond rapidly, with enforcement and other approaches, to these fast-moving technology-based scams.
- Develop additional international law enforcement arrangements to tackle the growing problem of cross-border fraud.
- Ensure that basic market-oriented consumer protection principles are applied as new markets emerge, when such policies adequately address consumer harm, and recommend regulations and legislation when necessary and appropriate. Develop policies to address new consumer protection issues resulting from changes in the marketplace.
- Focus law enforcement on violations that create the greatest risks to consumer health, safety, and economic well-being.
- Continue to vigorously enforce trade regulation rules, where necessary and appropriate.
- Encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

2. FY 2006 Implementation Plan

- Implement our new Privacy and Identity Protection Program and continue enforcement and education efforts to protect the security of consumers' personal information.
- Stop the most injurious Internet-related scams as they are identified through the *Consumer Sentinel*, the spam database, Internet surfs, and other monitoring activities.
- Continue enforcement activities against spam under the CAN-SPAM Act, spyware, and other high-tech intruders.
- Continue enforcement activities against violators of the National Do Not Call Registry.
- Continue enforcement activities against deceptive subprime lending and credit counseling companies.
- Work with criminal law enforcers to promote criminal prosecution in consumer protection matters; and recruit new local, state, federal, and international law

enforcement partners for anti-fraud initiatives; and conduct joint enforcement sweeps with law enforcement partners.

- Further initiatives to fight cross-border fraud, as the reach of the international program expands throughout all programs within the Bureau of Consumer Protection, and policy in this area develops.
- Continue to ensure that the FTC's Internet Lab keeps pace with technology and supports rapid response law enforcement capability.
- Target law enforcement efforts at advertising and marketing practices that are most injurious to consumers, including national advertising with deceptive health claims and telemarketing and other types of fraud, and identify targets based on complaint data and other forms of monitoring.
- Identify industries where a high percentage of companies are not in compliance with provisions of consumer protection laws or regulations and bring those companies into compliance through law enforcement and business guidance, or by encouraging self-regulatory programs.
- Ensure that there is broad compliance with consumer protection laws, rules, and guides in the electronic marketplace; target law enforcement to the most serious violations.
- Continue to take appropriate action regarding marketing and advertising that affects children, including marketing of violent entertainment products and alcohol, and marketing and childhood obesity.
- Identify those areas which have generated the highest number of consumer complaints and target resources and enforcement efforts to such areas.

3. FY 2006 Performance Measures

In FY 2006, the agency will:

- Save consumers approximately \$400 million by stopping Internet scams and other types of fraud.

Preventing economic injury to consumers is the ultimate goal of the FTC's anti-fraud efforts. The FTC saves consumers money each time a fraudulent operator or business is stopped by successful litigation or settlement with the agency. The FTC increases these consumer savings by leading joint law enforcement initiatives with federal, state, and international partners. The amount of consumer savings will vary each year based on the number and types of fraud stopped.

Consumer savings are calculated by totaling the estimated annual fraudulent sales of defendants in the 12 months prior to the FTC's filing a complaint. The calculation actually may underestimate the agency's impact because it assumes that the fraud would have continued for only one more year and it ignores any deterrent effect of FTC enforcement. It provides, however, a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud.

- Reduce consumer injury through law enforcement by providing law enforcement access to essential data through the *Consumer Sentinel*. In FY 2006, the goal is that FTC and other law enforcement personnel will conduct 40,000 data searches of the FTC's *Consumer Sentinel* complaints.
- Of those 40,000 data searches, 2,100 will be conducted by other law enforcement personnel reviewing the FTC's identity theft complaints.

The FTC's *Consumer Sentinel* and identity theft data provide a rich source of information for the FTC staff and its law enforcement partners as they investigate and pursue instances of potential fraud, deception, and unfair practices. The expanded access to and use of this information is critical as the FTC works to stop these practices. By tracking the number of accesses by both internal and external law enforcement personnel, the FTC hopes to demonstrate the value of the information contained in these databases. Generally, those personnel who are accessing the system are seeking information directly relevant to enforcement action – whether they are building a case, investigating a company, identifying potential witnesses, or gathering information for a sentencing hearing. In particular, the FTC will track the number of accesses that external agencies perform of the identity theft data in evaluating the usefulness of its identity theft programs to law enforcement agencies.

4. Program Evaluations

- Assess the litigation success rate for obtaining preliminary relief in fraud cases.
- Determine the success of leveraging resources through coordinated joint law enforcement initiatives.
- Evaluate the success of self-regulatory programs.
- Determine whether there are new industries or areas of marketing that require law enforcement or that may be appropriate for self-regulation, including peer-to-peer file sharing, and marketing and childhood obesity.

Objective 1.3: Prevent consumer injury through education.**FY 2006 Budgeted Resources: 51 FTE \$11,000,000**Consumer and Business Education

The FTC's education efforts target identified areas of fraud, deception, and unfair business practices and areas where information gaps are greatest because of rapid changes in the marketplace, such as privacy of personal information, dietary supplements and other health products, new technology-based products and services, new types of payment systems, and global transactions. The agency creatively uses new technologies and public and private partnerships to reach new and under-served audiences, particularly those who may not seek information directly from the FTC. The FTC will continue to publicize its consumer complaint and identity theft Web site addresses and toll-free numbers in an ongoing effort to increase public awareness of its programs and inform the public of the ways to contact the FTC to obtain information or file a complaint.

The FTC will expand its consumer education program to reach these new audiences, build new partnerships to help distribute its messages, and continue to create and support education Web sites, including the international site, *econsumer.gov*. In addition, nearly every case that the FTC brings possesses a consumer education component – tailoring the message to the fraud or deception that has occurred.

Hispanic and Other Specialized Outreach

The FTC's Hispanic Outreach Program serves and protects the growing population of Hispanic consumers in the United States. A consumer fraud survey commissioned by the FTC found that Hispanics are about twice as likely as non-Hispanic whites to be victims of consumer fraud. The FTC will continue to expand its comprehensive Web site containing a wealth of information, in English and in Spanish, directed toward the Hispanic community.

In addition to its own outreach, the agency partners with organizations such as the NAACP and the National Council of La Raza to work with minority communities, and with the Department of Defense on *Military Sentinel* – a resource for members of the military and their families. The FTC also participates in the newly created Financial Literacy and Education Commission and will work to educate consumers about financial literacy.

Online Safety and Security Education Initiatives

The FTC also educates consumers about high-tech topics through OnGuard Online, a multimedia, interactive consumer education campaign to help consumers stay safe online. The FTC will continue working with its partners to keep OnGuard Online current with the rapidly changing high-tech marketplace.

Performance Measurement and Evaluation

In 2006, the FTC will continue to measure its performance by reporting the annual number of education publications distributed, including identity theft-related and Spanish-language publications.

In carrying out its functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Public Law No. 106-554) meets basic quality standards.

1. GPRA Five-Year Strategies

- Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- Creatively use technology, including new interactive media, to extend the reach of consumer and business education.
- Increase public awareness of FTC's online education materials and the availability of its online complaint form and toll-free helplines to provide one-on-one information to consumers and increase data collection to support law enforcement.
- Encourage private and public partners to participate in education initiatives.

2. FY 2006 Implementation Plan

- Continue education efforts to promote information security.
- Continue the Hispanic Outreach initiative, and develop additional materials to meet the needs of these consumers.
- Implement a consumer awareness campaign to let consumers know that they should report their privacy-related complaints to the FTC and continue an outreach program to increase consumer awareness of the information required to be provided to consumers by the FACT Act.
- Deliver relevant information to more consumers, industry members, and law enforcement partners faster and more efficiently, and expand coverage of FTC messages, including the online information and toll-free helplines, through marketing, new products, and technology.
- Focus education on high-profile and emerging issues where consumer information gaps are greatest, and on frauds and deception that cause consumers the greatest financial injury.
- Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.

- Through greater outreach, lead more consumers to the FTC's Web site (*ftc.gov*), the "one-stop" government Web site for consumer information (*consumer.gov*) and the interagency Web site *firstgov.gov*.
- Implement, with the Department of Health and Human Services, consumer and business education on marketing and childhood obesity.

3. FY 2006 Performance Measures

In FY 2006, the agency will:

- Provide education messages online and in print to 25 million recipients.

Education programs benefit consumers by alerting them to their rights under various consumer protection laws and providing practical tips on how to recognize and avoid scams and rip-offs. To reach the broadest possible audience, the FTC maximizes its use of the national media, the agency's *ftc.gov* Web site, and the interagency *firstgov.gov* Web site. The FTC's messages also reach the public through the Consumer Response Center and hundreds of partners who distribute FTC materials, link to the FTC Web site, or post FTC messages on their Web sites.

- As part of the 25 million education messages, provide education messages related to identity theft online or in print to 3.3 million recipients.

The FTC coordinates with other government agencies and organizations to develop and disseminate comprehensive consumer education materials for victims of identity theft and those concerned with preventing this crime. The FTC's popular publications about identity theft are available in print and online, and the FTC distributes CDs containing these publications, thus enabling other federal agencies to print and distribute them. Thus, the distribution numbers reported in this measure will be lower than actual numbers.

- Continue to build the agency's Hispanic Outreach Program and, as part of the 25 million education messages, provide Spanish-language education publications to more than 550,000 recipients.

The FTC began this program in 2002 to reach the growing Hispanic population in the United States. The FTC has created a dedicated page of the FTC Web site, *Proteccion para el Consumidor*, to mirror the English-language page, and translated more than 100 consumer publications, including the FTC Consumer Complaint Form and identity theft publications, into Spanish.

4. Program Evaluations

- Determine the number of publications distributed or accessed online to evaluate outreach efforts and identify topics of particular consumer interest.

- Assess whether the appropriate mix of media is being used to communicate consumer education messages and whether the FTC is making the best use of the available media and technology.
- Assess the number and range of public and private organizations that partner with the FTC to do outreach; the more private and public partners the FTC has, and the larger those partners are, the greater its potential to reach different types of audiences, both business and consumer.
- Continue to assess the consumer education needs of the Spanish-speaking population.
- Review the focus of FTC education efforts, and whether the FTC needs to reach new audiences, and adjust them based on changing consumer and business needs.
- Review trends or patterns in complaints, if any, filed under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.

Maintaining Competition Mission

Goal 2: To prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

Objective 2.1: Identify anticompetitive mergers and practices that cause the greatest consumer injury.

FY 2006 Budgeted Resources: 54 FTE \$9,000,000

The FTC's merger enforcement program benefits consumers by preventing anticompetitive mergers that result in higher prices, while not intervening in procompetitive mergers that might produce lower prices and other market improvements. Determining the likely effects of a proposed merger is a complex and demanding task to which the agency devotes significant resources. Most mergers are either competitively neutral or beneficial to consumers, but those few that are anticompetitive can impose significant costs on consumers. Mergers vary tremendously in their complexity and potential anticompetitive effects.

The FTC seeks to identify mergers and business practices that are anticompetitive and to focus its investigative resources on those activities most likely to harm consumers significantly. The goal is to avoid overlooking antitrust problems by focusing too narrowly, but also to avoid spending resources unproductively by investing in too many investigations that do not yield evidence of a competitive problem.

Accordingly, identifying anticompetitive mergers is a top priority in the Maintaining Competition Mission. The premerger notification requirements of the Hart-Scott-Rodino (HSR) Act provide the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Since 2001, when amendments to the HSR Act changed the criteria governing which mergers must be reported under the Act, the FTC devotes more attention to the identification of unreported, usually consummated, mergers that could harm consumers. Following a temporary lull in merger activity in 2001 and 2002, the FTC has been facing a demanding merger review workload as merger volume has increased in 2004 and 2005. Based on historic patterns, the FTC expects a continued high volume of merger work for the agency in FY 2006 and beyond.

As part of the agency's merger program, the FTC (jointly with the Antitrust Division of the Department of Justice (DOJ)) is currently working on a Commentary on the Horizontal Merger Guidelines. The Commentary should bring greater transparency to the agencies' merger analysis. In addition, the agency has established a task force to recommend further improvements to the merger review process. While the FTC has implemented some improvements in the merger review process in recent years, the agency expects to adopt further improvements to ease the burden on affected parties and increase internal efficiency.

Following an unprecedented period of merger activity in the late 1990s and 2000, which placed disproportionate demand on the FTC's Maintaining Competition Mission resources, the agency has renewed its focus on the nonmerger portion of its mission in recent years. Beginning in 2001, the agency significantly expanded its efforts to identify appropriate targets

for nonmerger investigations, restoring the balance between merger and nonmerger activities to a level more consistent with historic patterns.

On the nonmerger side, no statutory program comparable to HSR exists to help antitrust enforcers identify anticompetitive business practices. The FTC must employ a variety of methods to identify potentially anticompetitive practices (for example, receiving consumer and competitor complaints, receiving referrals from other government agencies, and monitoring the trade press). Consistent with its strategic focus, the FTC has identified priorities and sought systematically to develop nonmerger cases in key areas. As with mergers, the agency focuses on industries, including health care and energy, that matter most to consumers. The areas of emphasis include health care, prescription drugs, standards setting, professional associations, and immunities from, and exceptions to, the antitrust laws.

As a complement to its enforcement mission, the FTC also promotes competition principles through a wide variety of activities, such as research and reports, workshops, advocacy filings, and amicus briefs. Through these activities the FTC educates itself about emerging issues and shares information with other policymakers, business leaders, and consumers, providing intellectual leadership on competition issues. An important complement to the FTC's efforts to forestall or eliminate private restrictions on competition are efforts to eliminate public impediments to competition that may reduce consumer welfare. Thus, in response to requests, the FTC advises state and federal entities, as well as the courts, on the potential competitive impact of pending governmental actions focusing on the same critical economic sectors that receive emphasis in law enforcement.

The FTC works to promote cooperation and convergence toward best practices with other competition agencies around the world. The FTC has built a strong network of cooperative relationships with its counterparts abroad, and plays a lead role in key multilateral fora. The FTC works with other nations to protect American consumers who can be harmed by anticompetitive conduct perpetrated outside the United States. The FTC also actively assists new democracies in their transition to market-based economies in developing competition and consumer protection agencies.

1. GPRA Five-Year Strategies

- Administer the HSR premerger notification program and track and maintain the timeliness of merger review under the HSR program.
- Prosecute violations of HSR reporting obligations vigorously in order to preserve the integrity of the reporting process.
- Bring greater transparency to the agency's merger analysis through release of a Commentary on the Horizontal Merger Guidelines, which will clarify how the agency applies the Guidelines in practice and enhance the dialogue between competition agencies, businesses, legal advisers, and the public.
- Improve the merger review process to ease the burden on affected parties and increase internal efficiency, while still collecting sufficient information to fulfill the agency's competition mission – for example, by seeking methods to identify relevant

materials stored electronically, improving the agency's ability to receive electronic productions, developing instructions and specifications for electronic productions, and taking further steps to improve the timeliness and efficiency of the review process.

- Improve use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer or a bankruptcy sale) to determine whether a merger is likely to harm competition, including reducing delays in interagency clearance (i.e., the process used by the FTC and the DOJ's Antitrust Division to determine which of the two will investigate a particular transaction) and timely review of filings to avoid unnecessary extended investigations.
- Continue to integrate e-government initiatives, such as electronic premerger filing and electronic discovery, into the expanse of mission activities.
- Provide periodic data releases on agency merger investigations and challenges, as well as explanations of why the FTC decides not to take action in a particular case.
- Identify emerging trends and focus on potentially anticompetitive business practices or other issues that need to be addressed because of changes in the economy, technology, and the marketplace through hearings, task forces, Bureau of Economics studies, and other means.
- Examine the scope of exemptions to the antitrust laws to identify possible categories of harmful conduct that, while ostensibly protected from antitrust challenge, are in fact not exempt from the antitrust laws.
- Conduct public hearings, conferences, and workshops, bringing together interested parties to enhance understanding of different practices and developments in the marketplace and to identify needed antitrust enforcement initiatives from the information gathered.
- Continue the FTC's historic role of performing research and issuing reports on a range of topics relevant to competition and the marketplace.
- Advise state and federal entities, as well as the courts, on the potential competitive impact of pending governmental actions focusing on the same critical economic sectors that receive emphasis in law enforcement.
- Foster global competition by working with competition agencies worldwide to promote best practices and minimize policy divergences to ease burdens on firms that operate across the globe.
- Submit amicus briefs to help courts resolve competition policy questions.

2. FY 2006 Implementation Plan

A. All Programs

- Ensure timeliness of review. Monitor the time and resources needed to conduct preliminary investigations. Review the progress of all ongoing investigations on at least a monthly basis. For mergers filed under the HSR program, maintain statistics on the average time needed to “clear” transactions that do not require further review. Review and analyze these statistics on a regular basis.
- Articulate FTC policies and procedures through guidelines, commentaries, policy statements, press releases, speeches, reports, and other means to help parties understand legal standards and stay in compliance with the antitrust laws, and to inform potentially aggrieved parties that they may lodge complaints with the FTC.
- Conduct economic studies of the effects of business actions on competition and consumer welfare.
- Conduct public hearings, conferences, and workshops, bringing together interested parties to enhance understanding of different practices and developments in the marketplace and to identify needed antitrust enforcement initiatives from the information gathered.
- Respond to requests from state and federal entities and the courts regarding the potential competitive impact of pending governmental actions.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

B. Identifying Anticompetitive Mergers

- To promote voluntary compliance with HSR premerger notification requirements, vigorously pursue violations. Monitor compliance of merging entities and fully investigate potential violations.
- In the initial review of each HSR filing, determine compliance with reporting requirements; promptly assess whether further review is needed to determine if the transaction may be anticompetitive.
- For transactions requiring further review, use the initial HSR waiting period to investigate and reach a sound and well-informed determination of whether the proposed merger raises sufficiently serious threat of harm to consumers to expand the investigation by issuing requests for additional information (“second requests”) and seeking Commission approval for use of compulsory process authority.

- Continue to refine and improve procedures used in HSR merger investigations to avoid undue burden on merging parties while still obtaining the necessary information to fulfill the agency's competition mission – for example, by improving capability to receive and review second request and other discovery materials in electronic format, adapting model second request language to provide for electronic production, and determining the most effective methods for identifying responsive materials stored in various types of electronic formats.
- Implement further improvements to the merger review process pursuant to recommendations by a task force examining such issues as: the data requested on HSR notification and report forms; the contents of the analysis to aid public comment issued when consent agreements are accepted; and the second request compliance process and its impact on both the agency and practitioners.
- Clarify how the agency applies the Horizontal Merger Guidelines in practice and enhance the dialogue between competition agencies, businesses, legal advisers, and the public through release of a Commentary.
- Continue increased efforts to identify mergers that are not subject to HSR requirements but that are potentially anticompetitive, using techniques such as (1) monitoring the trade press and Internet resources, (2) responding to and following up on case leads from Congressional offices, other Executive Branch agencies, and state and local government, and (3) encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers.

C. Identifying Anticompetitive Conduct

- Consistent with strategic focus, identify priorities and seek systematically to develop nonmerger cases in key industries, including health care and energy, that matter most to consumers.
- Identify potentially anticompetitive nonmerger business practices through the same means used to identify potentially anticompetitive mergers not subject to HSR, as well as pursuing investigative leads developed by staff in other investigations, and using task forces to identify harmful practices in selected areas.
- Continue to hold public hearings on, and conduct in-depth studies of, important competition issues to enhance agency expertise and more precisely distinguish between legitimate procompetitive conduct and anticompetitive conduct that has the potential to harm consumers.

3. FY 2006 Performance Measures

In FY 2006, the agency will:

- Continue effective screening of HSR premerger notification filings to identify those that most likely present antitrust concerns, so that between 60% and 80% of HSR requests for additional information result in enforcement action.¹ In conjunction with this measure, and to facilitate evaluation of results, the FTC will also report the number of second requests issued each year and the number of merger enforcement actions.²
- Effectively target nonmerger investigative resources, so that between 60% and 80% of nonmerger investigations in which the Commission issues a resolution authorizing the use of compulsory process result in enforcement action.³ In conjunction with this measure, and to facilitate evaluation of results, the FTC will also report the number of nonmerger investigations opened and the number in which the Commission authorizes the use of compulsory process each year.

Both measures are indicia of the FTC's success in identifying matters for investigation that are likely sources of harm to consumers. A percentage below 60% may suggest that the FTC is targeting its resources ineffectively by investigating too many competitively benign mergers or practices, while a percentage higher than 80% may suggest that the agency is focusing too narrowly and thus allowing problematic merger transactions to go forward without sufficient review or limiting its focus to only the most obviously anticompetitive business practices.

4. Program Evaluations

- Review and refine data-monitoring systems relevant to (1) the timeliness of the HSR review process, and (2) the degree to which appropriate resources are being devoted to initial review of each matter prior to issuance of an investigative second request.
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions and take corrective action where necessary.

¹ The FTC will compute this measure by dividing the number of second request investigations that result in enforcement action during the relevant fiscal year (without regard to when the investigation commenced), by the total number of second request investigations that concluded during the year with or without enforcement action (again, without regard to when the investigation commenced). "Enforcement action" includes Commission authorization of a complaint for preliminary injunction in federal court, issuance of an administrative complaint, a consent agreement, or the parties' abandonment of a proposed transaction based on FTC antitrust concerns.

² The FTC also investigates mergers that are not subject to HSR reporting requirements, but there is no benchmark directly comparable to the issuance of a second request in those matters, and the overall number of non-HSR merger investigations is too small to permit a meaningful statistical measure.

³ The issuance of a compulsory process resolution indicates that the Commission has found the matter to be serious enough to warrant the use of its compulsory process authority and also generally correlates with those investigations to which the agency devotes meaningful resources.

- Conduct periodic meetings between the Director of the Bureau of Competition and the heads of the litigation divisions to ensure that substantive standards are applied consistently and uniformly.
- Continue to seek improvements in the merger review process to improve further the effectiveness and efficiency of investigations; continue to collect public input to assist in enhancing and refining the process.
- Review and implement recommendations of the FTC's merger process task force, which is currently assessing the FTC merger process in detail, examining such issues as: the data requested on HSR notification and report forms and second requests; the contents of the analysis to aid public comment issued when consent agreements are accepted; and the second request compliance process and its impact on both the agency and practitioners.
- Improve capability to receive and review second request and other discovery materials in electronic format, adapt model second request language to provide for electronic production, and work internally and with other competition agencies to determine the most effective methods for identifying responsive materials stored in various types of electronic formats.
- Assess the significance (quantitatively in terms of the aggregate size of markets investigated and potential dollar savings to consumers, and qualitatively in deterrence value and precedential significance) of the matters investigated each year.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.**FY 2006 Budgeted Resources: 409 FTE \$76,000,000**

The FTC seeks to stop anticompetitive mergers and practices through law enforcement activities. Maintaining competitive markets through effective antitrust law enforcement is integral to a healthy U.S. economy. The FTC's antitrust enforcement thus serves a vital role in protecting consumers' interests in lower prices, better quality, and greater innovation.

The FTC's law enforcement activities promote competition both directly and indirectly. The direct impact of law enforcement occurs, for example, when the agency obtains a preliminary injunction to block an anticompetitive merger, or negotiates a consent agreement to remedy the anticompetitive aspects of a proposed merger or to stop anticompetitive conduct. The indirect – and undoubtedly greater – impact of law enforcement occurs, for example, when corporate executives heed the advice of private antitrust counsel concerning a proposed merger, and decline to proceed with the deal in the face of probable antitrust challenge.

Given the size of the FTC relative to the magnitude of the U.S. economy, deterrence – i.e., voluntary compliance with the law – is essential to the successful pursuit of the FTC's mission. Successful deterrence is a function of three factors: (1) the agency's success in identifying anticompetitive mergers and conduct; (2) the agency's effectiveness in successfully challenging anticompetitive mergers and conduct; and (3) the agency's success in communicating the applicable legal standards to the relevant public. First, the FTC will be less effective in stopping anticompetitive mergers and conduct, whether directly or indirectly, if those who would engage in such activity perceive that it is relatively unlikely to be detected. In this circumstance, the potential benefits of anticompetitive actions are more likely to outweigh the probable costs of an antitrust challenge. Thus, the agency's success on Objective 2.2 is closely correlated with its success on Objective 2.1, identifying anticompetitive mergers and practices.

Second, the FTC's success in deterring anticompetitive actions depends in part on its effectiveness in litigation. Private entities are more likely to pursue an anticompetitive merger or to engage in anticompetitive activity if they perceive that the FTC may not be able successfully to persuade adjudicative authorities that the merger or conduct is illegal, and obtain effective relief as a result.

Third, the FTC's success in deterring anticompetitive actions critically depends on transparency, i.e., its effectiveness in clearly communicating to the business and legal communities the standards and analytical processes that it applies in determining whether to challenge a particular merger or form of conduct. If FTC decision-making is not transparent, then even the most law-abiding parties are more likely to propose an illegal merger inadvertently or unknowingly engage in illegal conduct. Moreover, lack of transparency can harm consumers through over-deterrence, i.e., by causing risk-averse parties to refrain from pursuing a procompetitive merger or from engaging in procompetitive conduct in order to avoid an unintended transgression of an ambiguous legal standard. Thus, the agency's performance in Objective 2.2 is tightly integrated with its performance on Objective 2.3, preventing consumer injury through education.

Ongoing developments continue to place significant demands on FTC resources devoted to direct and indirect enforcement activities. First, long-term trends suggest a continued steady increase in merger activity – particularly in the size, scope, and complexity of individual merger transactions. Although successful deterrence means that only a small fraction of proposed transactions require intensive investigation and an even small number result in litigation, all reported transactions must be reviewed, and the scope and complexity of those at the margin requires increasingly in-depth and sophisticated investigation techniques.

Second, maintaining the litigation effectiveness that is essential to successful deterrence is highly resource intensive, both in terms of staff time and in costs for expert witnesses, travel, stenographic transcription, and other expenses. A temporary lull in the pace of merger activity early in this decade permitted the FTC to renew and update its focus on nonmerger activities, resulting in a substantial increase in the agency’s nonmerger litigation workload. Among the areas that the FTC has recently or is currently addressing are the scope of antitrust exemption doctrines such as *Noerr-Pennington* and state action, restraints on competition among real estate and other professionals, and anticompetitive abuses of the standards-setting process. Moreover, the agency is using adjudicative proceedings to clarify the standards applicable in certain areas, such as mergers of hospitals. Other factors that have contributed to a far higher number of antitrust cases in adjudication in recent years than any period in the previous two decades include (1) changes in the thresholds for HSR premerger notification requirements⁴, (2) the agency’s pursuit of cases involving very large potential financial impact⁵, and (3) the agency’s increased focus on cutting-edge legal issues.⁶

Third, the increasing importance of technology is placing increasing demands on the FTC’s antitrust enforcement mission in both the merger and nonmerger segments. FTC antitrust investigations increasingly involve high-technology sectors of the economy, such as those that produce computer hardware and pharmaceutical products. Moreover, issues in antitrust matters increasingly intersect with intellectual property concerns, raising difficult questions about how to reconcile these two bodies of law, both of which have a goal of promoting

⁴ Although the FTC receives notification of fewer proposed mergers in advance because of modifications in the HSR reporting thresholds, the agency continues to monitor unreported mergers. Unreported mergers are much more likely to have been consummated by the time the FTC can complete an investigation, so any such merger that threatens competition likely will require litigation, rather than a pre-consummation consent agreement, to obtain relief.

⁵ Cases with broad financial stakes can bring tremendous benefits to consumers, but the financial considerations also significantly increase the respondents’ incentives to contest the issues rather than settle. For example, in *Union Oil Company of California*, the Commission recently approved a settlement to resolve charges that the company illegally obtained patents on technology used to produce the low-emissions gasoline required in California to protect air quality. If the company had been permitted to enforce these patents, its competitors would have had to pay hundreds of millions of dollars annually in royalties for the technology, and about 90 percent of that cost likely would have been passed on to consumers in the form of higher gasoline prices.

⁶ Because the FTC has a unique responsibility to help shape antitrust law and policy, as well as enforce it, its cases sometimes focus on areas in which legal standards are not fully developed. Because liability may not be clear cut in these instances, costly litigation is more likely. Nevertheless, cases that add clarity to legal standards can have very substantial long-term benefits for consumers.

innovation. As these trends continue, the FTC requires more and more specialized technical and legal knowledge and expertise.

Fourth, the broadening geographic scope of commerce continues to affect antitrust enforcement. The increasingly worldwide economy is resulting in more transactions involving very large multinational corporations, and requires increased resources for items such as travel, translations of foreign language documents, and coordination with foreign competition authorities.

Notwithstanding these resource demands, antitrust enforcement brings benefits to consumers that far exceed the costs. Merger enforcement saves consumers money by deterring mergers that would likely result in price increases or other anticompetitive consequences⁷ if consummated, or by preventing such mergers through legal challenge. Nonmerger enforcement similarly benefits consumers by preventing or stopping anticompetitive activity that raises prices or otherwise restricts competition.

According to the FTC's 2003-2008 Strategic Plan, the agency will measure its performance in stopping anticompetitive mergers and practices by calculating the amount of commerce involved in markets in which the agency takes enforcement action. While this approach provides a useful means of evaluating one dimension of the breadth and magnitude of the FTC's enforcement efforts, recent experience demonstrates that a narrow focus on a single form of *output* – formal enforcement actions – misleadingly understates the *impact* of the agency's efforts.

It has become more apparent in recent years that FTC antitrust enforcement manifests itself in a range of different ways, including the following:

- the FTC may institute a formal process, such as bringing a preliminary injunction action or approving a consent agreement to block an anticompetitive transaction, remedy anticompetitive aspects of a transaction, or stop anticompetitive conduct;
- in the course of an FTC investigation, parties may decide to abandon a proposed anticompetitive transaction rather than contest a law enforcement action;
- in the course of an FTC investigation, parties may decide to restructure a transaction to cure a competition problem and still be able to proceed with the remainder of the deal without facing an antitrust challenge⁸;

⁷ Consumer harm from anticompetitive conduct most often takes the form of higher prices. In some cases, however, the harm may take some other form, such as curtailment of innovation that would otherwise result in new or better products in the future.

⁸ Such restructuring may take the form of (1) altering the package of assets purchased by the acquiring firm from the acquired firm, or (2) arranging for immediate divestiture of the problematic assets by the acquiring firm to a third party.

- private antitrust counsel may consult about the antitrust consequences of a possible transaction with relevant FTC staff, who then help the parties structure the deal in a way that eliminates any competition issues *before* they formally present the proposed merger to the agency under the HSR process; and
- based on advice from private counsel, business executives may decide not to pursue a possible acquisition that would face probable antitrust challenge.

The FTC has devoted significant attention to increasing the transparency of its decision-making in recent years by, for example: releasing reports and data on merger investigations and challenges; holding workshops and producing a Commentary to assess the practical efficacy of the Horizontal Merger Guidelines; and providing explanations of why the agency decides not to take action in a particular case. Anecdotal evidence suggests that such efforts are leading more frequently to careful structuring of merger transactions to forestall possible antitrust challenge.⁹

While it would be virtually impossible to count the proposed transactions that never go beyond the doorway of the boardroom, the FTC's antitrust enforcement impact clearly extends well beyond those matters that result in formal proceedings. Thus, a true measure of the agency's performance must capture, to the extent knowable, the competition it preserved in markets by clearly conveying its enforcement standards and by demonstrating that it is ready, willing, and able to take whatever steps are necessary to protect consumers' interests.¹⁰

Thus, in evaluating its performance, the FTC will include a qualitative assessment of its overall competition mission activity, including the results of relevant external reviews.

1. GPRA Five-Year Strategies

- Continue to benefit consumers in markets involving billions of dollars in annual sales by challenging anticompetitive mergers and conduct, negotiating consent orders, winning litigated orders, and influencing parties to abandon or modify anticompetitive transactions.
- Negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- Continue to investigate and implement improvements in the FTC's merger investigation process, including the negotiation of remedies.

⁹ According to press reports, for example, a \$14 billion acquisition announced in April 2005 was coupled with a \$5.4 billion divestiture to a third firm, in part "to appease regulators." Jane Wardell, *Major Liquor Firms to Join and Take on Global Leader Diageo*, WASH. POST (April 22, 2005).

¹⁰ Any measure of the FTC's antitrust law enforcement impact may be distorted depending on the amount of deterrence. If the FTC were 100 percent successful in identifying anticompetitive mergers and conduct, if it were able to convey perfect knowledge of its decision-making to the public, and if it were 100 percent successful in obtaining sought-after relief, there would be no need for enforcement.

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- Improve the integration of budget and performance by linking goals and objectives to results; develop improved processes for use and analysis of management data.

2. FY 2006 Implementation Plan

A. All Programs

- Estimate the annual sales in markets in which the FTC protected consumers from anticompetitive mergers or conduct through formal enforcement action or identifiable deterrence.
- Enhance the FTC's expertise in examining whether and when specific types of single-firm conduct are procompetitive or benign, and when they may harm consumers, through a series of public hearings on this subject.
- Enhance the agency's intellectual property expertise in light of the increasing significance of patents and other intellectual property issues in antitrust cases.
- Enhance support of increased antitrust litigation through a strengthened special litigation unit within the Bureau of Competition, staffed by attorneys with substantial litigation experience and expertise, to guide and advise staff conducting administrative or federal court litigation.
- Support increased antitrust litigation by retaining qualified economists to serve as expert witnesses in trials.
- Further enhance the FTC's ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing technical support from independent industry experts.
- Continue support of the FTC's ability to litigate a higher number of complex cases by investing in more sophisticated technology to support litigation, including document management and courtroom presentations.
- Strengthen investment in planning, developing, improving, and conducting agency-wide training programs in economic analysis, negotiation, advanced legal writing, and litigation skills (including basic and advanced deposition practice, written discovery, basic and advanced trial advocacy), as well as mission-specific procedures and substantive law. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures.
- Monitor the timeliness of administrative adjudication and issue to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.

- Collect data, for management review, regarding the FTC's efficiency in conducting investigations, such as (1) the amount of time required to complete the HSR review process, (2) the number of HSR matters requiring issuance of an investigative second request, (3) the number of HSR and significant nonmerger investigations that result in enforcement action, (4) the number of hours of staff time spent on investigations, and (5) other costs associated with investigations.
- Continue to invest in ongoing research and development in antitrust law and policy, including regular assessments of the effectiveness of past FTC enforcement actions. Integrate assessments of investigative and enforcement activity with new learning on law and economic policy to further the FTC's dual objectives of (1) bringing enforcement actions only when anticompetitive effects from the challenged practices or mergers are likely, and (2) not overlooking anticompetitive practices or mergers.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

B. Merger Enforcement

- During the initial HSR review period, carefully identify those merger transactions that are likely to raise potentially significant competitive concerns. Employ HSR second requests and other appropriate investigative techniques during the extended HSR waiting period to obtain documents, testimony, and other evidence.
- In non-HSR investigations, employ appropriate investigative tools other than HSR second requests, to obtain documents, testimony, and other evidence.
- Implement reforms recommended by a merger process task force that is currently assessing the FTC merger process in detail. These reforms will streamline the merger review process by facilitating the rapid identification of the relevant issues, and by allowing the preparation of more focused second requests and the application of consistent investigation timetables.
- Pursue e-government initiatives in merger review, such as determining the most effective methods for identifying company materials stored electronically, improving the agency's ability to receive and review electronic productions, and developing a model letter to modify standard Second Request instructions to permit, and provide specifications for, electronic production.
- Monitor compliance with FTC remedial orders in merger cases, including the implementation of divestitures, licensing, and other affirmative relief within required time periods. Seek civil penalties where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

C. Nonmerger Enforcement

- Employ appropriate investigative techniques, including compulsory process if authorized, to obtain relevant information and to assess whether the practice in question is harming consumers.
- Monitor compliance with FTC remedial orders in nonmerger cases. Seek civil penalties and other relief where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

3. FY 2006 Performance Measures**In FY 2006, the agency will:**

- For cases in which the Commission finds reason to believe the law has been violated, achieve a positive result (including consent orders, litigation victories, and, for mergers, transactions abandoned based on FTC antitrust concerns) in as many of those cases as possible.
- Continue on track toward the FTC's goal to take action to prevent or deter mergers¹¹ likely to harm competition in markets with a total of at least \$200 billion in sales over the five-year Strategic Plan period. To meet this goal, the FTC will need to take action each year against mergers likely to harm competition in markets with an average total of \$40 billion in annual sales.
- Continue on track toward the FTC's goal to take action to prevent or deter anticompetitive conduct in markets with a total of at least \$100 billion in sales over the five-year Strategic Plan period. To meet this goal, the FTC will need to take action each year against anticompetitive conduct affecting markets with an average total of \$20 billion in annual sales.

Because external factors, such as the level of merger activity occurring in the market, may cause results to fluctuate from year to year, the latter two goals are expressed in terms of an aggregate target for the five-year Strategic Plan period, rather than as annual targets.

¹¹ As stated in the agency's Strategic Plan, "the FTC may prevent an anticompetitive result from a proposed merger by (1) conducting successful litigation to block the merger, (2) negotiating a settlement to resolve anticompetitive aspects of the merger while allowing the underlying transaction to go forward, or (3) identifying antitrust concerns sufficient to cause the parties to abandon the transaction without court action. The volume of affected commerce measure does not include transactions abandoned by the parties for business considerations unrelated to antitrust." In addition to those transactions restructured pursuant to a formal consent agreement, and those abandoned without formal action, the FTC believes it is entirely consistent – and more in keeping with GPRA's mandate to measure "impact" – to include transactions that are restructured without formal action due to antitrust concerns.

4. Program Evaluations

- Assess the scope of the FTC's annual merger enforcement activities, as reflected by the volume of commerce on markets in which the agency took merger enforcement action. Determine whether the total volume of commerce in such markets is on track to reach \$200 billion over the five-year Strategic Plan period FY 2004 - FY 2008. Compare the likely consumer welfare impact of merger enforcement to the resources spent.
- Assess the scope of the FTC's annual nonmerger enforcement activities, as reflected by the volume of commerce in markets in which the agency took nonmerger enforcement action. Determine whether the total volume of commerce in such markets is on track to reach \$100 billion over the five-year Strategic Plan period. Compare the likely consumer welfare impact of nonmerger enforcement to the resources spent.
- Assess the FTC's efficiency in conducting antitrust investigations, explore ways to increase efficient use of investigatory resources, and explore whether efficiency in conducting investigations can meaningfully be measured.
- Explore methods of identifying when the FTC has achieved effective deterrence of anticompetitive practices in a market and tracking progress over time.

Objective 2.3: Prevent consumer injury through education.**FY 2006 Budgeted Resources: 44 FTE \$8,000,000**

The FTC increases awareness of antitrust law through guidance to the business community; outreach efforts to federal, state and local agencies, business groups, and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications. In carrying out these functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Public Law No. 106-554) meets basic quality standards.

1. GPRA Five-Year Strategies

- Continue to educate policymakers, consumers, and business leaders about competition issues through a wide variety of activities, such as research and reports, hearings and workshops, advocacy filings, guidelines, advisory opinions, speeches, amicus briefs, and other publications.
- Continue to educate consumers on the importance of marketplace competition.
- Continue to enhance avenues of communication, such as email and the FTC Web site.
- Advise state and federal entities, as well as the courts, on competition issues and the potential competitive impact of pending governmental actions.
- Improve the FTC's capacity to promote consumer welfare by conducting studies that improve the agency's understanding of significant antitrust issues – especially with respect to critical sectors that receive emphasis in law enforcement, such as health care, energy, and others with a major impact on consumers' wallets – and reporting the results of those studies to the public.

2. FY 2006 Implementation Plan

- Bring greater transparency to the FTC's merger analysis by completing work on a Commentary to the Horizontal Merger Guidelines, which will clarify how the agency applies individual provisions of the Guidelines in an integrated manner to determine whether a merger is likely to lessen competition.
- Evaluate the need for and, as appropriate, develop and issue guidelines to help businesses understand and comply with the application of the antitrust laws in certain areas, such as horizontal mergers, international operations, intellectual property, and health care.
- Continue to provide Commission and staff advisory opinions on competition issues; continue to provide guidance in response to informal telephone requests, particularly concerning HSR matters.

- Prepare advocacy comments to inform other governmental entities about competition issues and the competitive impact of pending governmental actions, upon their request.
- Publish a revised and updated antitrust and competition primer that explains to consumers and businesses in plain language why competition in markets is important and how the antitrust laws apply in practice.
- Prepare amicus briefs addressing important competition policy issues under consideration in court proceedings.
- Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” that is, that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality. Expand the use of press releases and other public statements to explain why the Commission elected not to take enforcement action in certain matters to further improve the public’s understanding of the FTC’s enforcement policies.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain FTC policies and procedures.
- Continue to have Commissioners and staff speak at and participate in seminars, panel discussions, and conferences to explain how the FTC analyzes mergers and business practices.
- Continue to conduct economic research to develop knowledge about how markets operate.
- Continue to support outreach efforts to international bodies to explain U.S. antitrust perspectives on competition theories and approaches; continue to aid the development of antitrust laws and programs in developing nations by participating in technical assistance missions.
- Make available on the FTC’s Web site (*ftc.gov*) the guidelines issued by the FTC, advisory opinions, advocacy comments, written releases, texts of speeches, Bureau of Economics Reports, and other materials that explain the FTC’s policies and procedures.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.
- Continue to hold public hearings and workshops to expand understanding of increasingly significant public policy issues, such as factors that affect the price of refined petroleum products, the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare, and the legal implications of single-firm conduct under the antitrust laws.

3. FY 2006 Performance Measures

In FY 2006, the agency will:

- Generate at least 10 million hits annually on the FTC's Web site related to antitrust.

4. Program Evaluations

- Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace.
- Evaluate what antitrust content on the FTC Web site generates the largest amount of public interest, and why, and use this information in setting future priorities.
- Seek input from consumer groups, business groups, bar groups, and other FTC "customers" on the effectiveness of FTC educational efforts.
- Evaluate the transparency of FTC merger review policy by assessing the extent to which significant changes in such policy are communicated to stakeholders.
- Review trends or patterns in complaints, if any, filed with the agency under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.
- Review the results of major competition research initiatives to identify their usefulness in guiding FTC decisions and influencing other policymakers' approaches to competition issues.

Fiscal Year 2007
Performance Plan

Consumer Protection Mission

Goal 1: To prevent fraud, deception, and unfair business practices in the marketplace.

Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury.

FY 2007 Budgeted Resources: 113 FTE \$26,000,000

To identify the most prevalent and serious forms of fraud, deception, and unfair business practices, the FTC monitors the marketplace using a multi-faceted approach that involves analyzing consumer complaints received by its databases, conducting surveys to obtain a representative sample of consumer experiences in the marketplace, using technology and web-surfs to learn more about online deception and fraud, and holding workshops and other forums for education purposes.

Data Collection and Analysis

The FTC's database has grown dramatically, with the number of complaints and inquiries entered increasing each year. The FTC will continue its ongoing efforts to improve and expand the complaint database and increase its use. Further, the FTC will continue to build on its capacity to analyze data quickly to respond to frauds, deception, and unfair business practices, and identity theft in their incipient stages and help prevent consumer injury. The data will be used to provide more information to the public – giving consumers information to protect themselves from scams and identity theft, and informing public policy discussions about consumer protection issues in the marketplace. The FTC also will continue to enhance its capability to track and analyze privacy-related complaints and will use its data mining and analytical skills to develop custom investigative reports that will enable criminal law enforcement agencies to identify and prosecute appropriate identity theft cases. Emphasis also will be placed on tracking Do Not Call Registry complaints and identifying trends in potential violations.

In FY 2007, resources will continue to be devoted to implement and enforce the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act). Hundreds of thousands of unsolicited commercial e-mail (spam) messages are forwarded to the FTC daily by groups and individuals worldwide. Since 1998, the FTC has maintained an electronic mailbox (spam@uce.gov) to which Internet customers are encouraged to forward spam. This spam is stored in a searchable database enabling the FTC staff to track trends and identify law enforcement targets when researching potential cases. The FTC will continue to work to expand the database's capacity, further develop capabilities to search and analyze the data, and thereby protect consumers' email inboxes from unwanted, deceptive, and abusive spam.

Law Enforcement and Other Partnerships

Fraud and identity theft complaints are accessible to an increasing number of law enforcement partners. The FTC shares complaint data through *Consumer Sentinel*, a secure Web site that provides access to fraud and identity theft complaints to more than 1,425 law

enforcement organizations in the United States, Canada, and Australia. *Consumer Sentinel* is a unique and effective enforcement tool that permits law enforcers to access data at their desks. Although the FTC is not empowered to act on behalf of individual consumers, consumer complaint data accessed through *Consumer Sentinel* enables the FTC and its law enforcement partners to coordinate enforcement efforts and to identify and target the most serious consumer problems resulting from fraud or identity theft. The FTC also will continue to work with its international partners to access and share the information contained in *econsumer.gov*, an FTC-created Web site where consumers can file cross-border complaints.

Trends and Methods to Identify Fraud, Deception and Unfair Practices

Consumer privacy, especially in the high-tech marketplace, will remain a priority during fiscal year 2007, increasingly in the areas of data security, spyware, spam, and Do Not Call Rule enforcement. In addition, the FTC will continue to implement and enforce the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) and the Telemarketing Sales Rule (TSR). The FTC will devote resources to identity theft and credit reporting matters and will scrutinize whether companies are complying with the Safeguards Rule and bring enforcement actions if necessary. The FTC also will continue to analyze reports provided by the consumer reporting agencies on the disposition of consumer complaints relating to the accuracy or completeness of consumer reports.

The FTC also will continue to use other means to collect data on consumers' experiences, including surveys, in order to better target enforcement and education resources. The FTC makes frequent use of workshops, bringing together stakeholders on emerging consumer protection issues, to frame issues, discuss approaches, educate the Commission and its staff, and inform policy.

Performance Measurement and Evaluation

The FTC will continue to measure performance by reporting the annual number of consumer complaints and inquiries entered into its central database and those relating to identity theft. These databases directly support criminal prosecutions as the agency's law enforcement partners with criminal jurisdiction search *Consumer Sentinel* to identify malfeasors and victims as part of ongoing investigations or prosecutions.

1. GPRA Five-Year Strategies

- Expand the FTC's comprehensive information system (consumer complaint database) to keep pace with the global marketplace.
- Strengthen capabilities to analyze the increasing volume of complaint data.
- Upgrade *Consumer Sentinel's* services to assist law enforcement partners.
- Improve the privacy and security of consumer complaint database information.
- Search for improved methods of collecting information to keep abreast of new consumer protection problems in traditional markets and electronic markets.

- Continue to integrate e-government initiatives into the expanse of mission activities.
- Continue use of workshops to identify problems and solutions, particularly to encourage industry self-regulatory efforts, on a range of emerging areas.

2. FY 2007 Implementation Plan

- Continue implementation of the FACT and CAN-SPAM Acts.
- Develop tools to detect, investigate, and prosecute the latest high-tech consumer protection problems, such as spyware and spam.
- Recruit new partners in the United States and abroad to contribute complaint data to *Consumer Sentinel*; add to the group of state, local, federal, and international law enforcement agencies accessing information in *Consumer Sentinel*; and train new partners so they can take full advantage of its features.
- Facilitate the exchange of data with law enforcement officials in other countries; and expand the use of *econsumer.gov* by recruiting additional partners, providing more information on the Web site, and increasing complaint collection and sharing.
- Enhance analysis of data to make it more useful to private and public sector partners.
- Enhance the capacity to collect privacy-related complaints in the database.
- Increase the number and utility of identity theft complaints in the database.
- Collect data on consumers' experiences and monitor the marketplace to identify allegedly illegal practices that may not be fully captured by the database in order to better target enforcement and education resources.
- Continue to monitor marketing and advertising that affects children, including marketing of violent entertainment products and alcohol, and food marketing directed to children, as it relates to childhood obesity.
- Identify consumer protection issues emerging as a result of changes in the marketplace, and explore them through public workshops, hearings, surveys, etc.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

3. FY 2007 Performance Measures

In FY 2007, the agency will:

- Increase the number of consumer complaints and inquiries in the FTC's comprehensive information system by at least 1 million.

- As part of the increase in total consumer complaints and inquiries, enter at least 375,000 consumer complaints and inquiries relating to identity theft. The FTC will continue to focus law enforcement resources on the most serious consumer protection problems identified through its consumer complaint database. The data will enable the FTC to rapidly detect and respond to fraud, deception, and other illegal practices, and to help prevent consumer injury in a timely fashion. Furthermore, by broadly sharing its fraud complaints through *Consumer Sentinel* with external partners, the FTC will be able to enhance the effectiveness of law enforcement agencies across the United States, Canada, and Australia. The FTC also will continue to focus on identity theft and uses its resources to collect information from identity theft victims and share that information with its law enforcement partners.

4. Program Evaluations

- Assess whether the FTC's law enforcement and education efforts are addressing the leading problem areas identified by the complaint database.
- Determine the extent to which *Consumer Sentinel* services are used by law enforcement partners.
- Review current functions, determine what changes or upgrades to the databases would be helpful, and implement those changes.
- Assess privacy and security protections for the database by reviewing complaints, if any, and evaluating the policies in place.

Objective 1.2: Stop fraud, deception, and unfair practices through law enforcement.

FY 2007 Budgeted Resources: 403 FTE \$86,000,000

The FTC operates a wide range of programs to help stop fraud, deception, and unfair practices. The FTC will continue to draw from *Consumer Sentinel* and other sources to remain flexible and focus efforts on the newest and most prevalent frauds, scams, deception, and unfair practices.

Privacy and Data Security

The FTC will continue its efforts to protect consumers' private information by educating consumers about how to protect their important data, and enforcing relevant laws when consumers' data is stolen or a company's security is breached. The FTC also will continue to focus on the Do Not Call Rule, identity theft, the Children's Online Privacy Protection Act, and pretexting, as well as enforcement of the Gramm-Leach-Bliley Act and the FACT Act. Other enforcement efforts in privacy will center on cases involving claims touting the privacy and security features of products and services.

Spam, Spyware, and Other High-Tech Problems

The FTC will continue to direct resources to enforce the FTC Act's prohibition on deceptive and unfair practices and the CAN-SPAM Act, as well as working to stop spyware and other high-tech problems that plague consumers. The FTC will continue to bring cases against those who abuse technology and oversee initiatives to educate consumers on how to avoid these problems.

Globalization

The FTC will continue to be involved in law enforcement and policy development efforts on the world stage. With respect to law enforcement, cases increasingly involve an international component as defendants, their operations, or their assets are moved offshore. This makes it difficult to locate and stop scams or to provide redress to consumers. The FTC is meeting these challenges by sustaining international partnerships to assist in identifying and pursuing these cases. As the FTC continues to develop initiatives relating to cross-border fraud, the agency will work to measure and report its performance in this area. On the policy side, the FTC is promoting international development of market-oriented consumer protection policies, when such policies adequately address consumer harm.

Hispanic Enforcement Initiative

The FTC will continue its vigorous pursuit of scammers targeting the Hispanic community, as it continues to take law enforcement action and work with its partners to fight fraud in this community.

Health Care Products and Services

The deceptive marketing of products that may affect consumer health and safety will continue to be an FTC priority. The FTC will focus on health care products, including dietary supplements. Consumer demand for such products is increasing, and fraudulent or deceptive claims about these products can pose risks to consumers' well-being.

Deceptive Credit Counseling Services and Lending Practices

For most consumers, access to credit is essential to full participation in the nation's economy. The FTC will target schemes that involve deceptive credit counseling and debt management services, as scam artists take money from consumers who already are struggling to make ends meet. Bogus organizations target consumers with bad credit or significant consumer debt, promising to help them manage their debt or obtain credit otherwise unavailable to them. Consumers may pay hundreds of dollars for these services, only to receive nothing in return, or worse, to see their credit damaged even further. Some unscrupulous lenders deceive consumers about loan terms, rates, or fees. The FTC will continue enforcement efforts in collaboration with other law enforcement agencies and outreach to industry and consumers. The FTC also will continue to bring cases against companies engaged in deceptive debt collection practices.

Liaison with Criminal Law Enforcers

The FTC will continue to promote the work of its Criminal Liaison Unit (CLU), dedicated to encourage criminal prosecution of consumer fraud by coordinating with criminal law enforcement authorities on consumer fraud cases. CLU identifies law enforcement agencies and case agents for referral of specific types of consumer fraud cases, educates criminal law enforcement authorities about the FTC and its mission, and coordinates training of FTC staff by criminal law enforcement to help staff prepare cases for referral and ensure smooth progress of parallel prosecutions.

Performance Measurement and Evaluation

In 2007, the FTC will continue to measure its performance by reporting the annual dollar savings for consumers from FTC actions that stop fraud, as well as the annual number of data searches conducted by the FTC and other law enforcers of the FTC's *Consumer Sentinel* database and data searches conducted by law enforcers of the FTC's Identity Theft complaints.

1. GPRA Five-Year Strategies

- Lead a nationwide attack on telemarketing fraud by continuing to coordinate federal and state law enforcement, and by using *Consumer Sentinel* data to identify targets and coordinate with other federal and state agencies to prosecute actions against these targets.
- Target high-tech frauds that have moved to the Internet and that exploit other new technologies, and increase the capacity to respond rapidly, with enforcement and other approaches, to these fast-moving technology-based scams.

- Develop additional international law enforcement arrangements to tackle cross-border fraud.
- Ensure that basic market-oriented consumer protection principles are applied as new markets emerge, when such policies adequately address consumer harm, and recommend regulations and legislation when necessary and appropriate. Develop policies to address new consumer protection issues resulting from changes in the marketplace.
- Focus law enforcement on violations that create the greatest risks to consumer health, safety, and economic well-being.
- Continue to vigorously enforce trade regulation rules, where necessary and appropriate.
- Encourage self-regulation and private initiatives, where appropriate, in lieu of regulation or law enforcement.

2. FY 2007 Implementation Plan

- Continue enforcement and education efforts to protect the security of consumers' personal information.
- Stop the most injurious Internet-related scams as they are identified through the *Consumer Sentinel*, the spam database, Internet surfs, and other monitoring activities.
- Continue enforcement activities against spam, spyware, and other high-tech intruders.
- Continue enforcement activities against violators of the National Do Not Call Registry.
- Continue enforcement activities against deceptive subprime lending and credit counseling companies.
- Work with criminal law enforcers to promote criminal prosecution in consumer protection matters; and recruit new local, state, federal, and international law enforcement partners for anti-fraud initiatives; and conduct joint enforcement sweeps with law enforcement partners.
- Further initiatives to fight cross-border fraud, as cases increasingly are global in nature.
- Continue to ensure that the FTC's Internet Lab keeps pace with technology and supports rapid response law enforcement capability.
- Target law enforcement efforts at advertising and marketing practices that are most injurious to consumers, including national advertising with deceptive health claims and telemarketing and other types of fraud, and identify targets based on complaint data and other forms of monitoring.

- Identify industries where a high percentage of companies are not in compliance with provisions of consumer protection laws or regulations and bring those companies into compliance through law enforcement and business guidance, or by encouraging self-regulatory programs.
- Ensure that there is broad compliance with consumer protection laws, rules, and guides in the electronic marketplace; target law enforcement to the most serious violations.
- Continue to take appropriate action regarding marketing and advertising that affects children, including marketing of violent entertainment products and alcohol, and marketing and childhood obesity.
- Identify those areas which have generated the highest number of consumer complaints and target resources and enforcement efforts to such areas.

3. FY 2007 Performance Measures

In FY 2007, the agency will:

- Save consumers approximately \$400 million by stopping Internet scams and other types of fraud.

Preventing economic injury to consumers is the ultimate goal of the FTC's anti-fraud efforts. The FTC saves consumers money each time a fraudulent operator or business is stopped by successful litigation or settlement with the agency. The FTC increases these consumer savings by leading joint law enforcement initiatives with federal, state, and international partners. The amount of consumer savings will vary each year based on the number and types of fraud stopped.

Consumer savings are calculated by totaling the estimated annual fraudulent sales of defendants in the 12 months prior to the FTC's filing a complaint. The calculation actually may underestimate the agency's impact because it assumes that the fraud would have continued for only one more year and it ignores any deterrent effect of FTC enforcement. It provides, however, a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud.

- Reduce consumer injury through law enforcement by providing access to essential data for law enforcement purposes through the *Consumer Sentinel*. In FY 2007, the goal is that FTC and other law enforcement personnel will conduct 42,000 data searches of the FTC's *Consumer Sentinel* complaints.
- Of those 42,000 data searches, 2,200 will be conducted by other law enforcement personnel reviewing the FTC's identity theft complaints.

The FTC's *Consumer Sentinel* and identity theft data provide a rich source of information for FTC staff and its law enforcement partners as they investigate and pursue instances of potential fraud, deception, and unfair practices. The expanded access to and use of this information is critical as the FTC works to stop these

practices. By tracking the number of accesses by both internal and external law enforcement personnel, the FTC hopes to demonstrate the value of the information contained in these databases. Generally, those personnel who are accessing the system are seeking information directly relevant to enforcement action – whether they are building a case, investigating a company, identifying potential witnesses, or gathering information for a sentencing hearing. In particular, the FTC will track the number of accesses that external agencies perform of the identity theft data in evaluating the usefulness of its identity theft programs to outside law enforcement agencies.

4. Program Evaluations

- Assess the litigation success rate for obtaining preliminary relief in fraud cases.
- Determine the success of leveraging resources through coordinated joint law enforcement initiatives.
- Evaluate the success of self-regulatory programs.
- Determine whether there are new industries or areas of marketing that require law enforcement or that may be appropriate for self-regulation.

Objective 1.3: Prevent consumer injury through education.

FY 2007 Budgeted Resources: 51 FTE \$13,000,000

Consumer and Business Education

Consumer and business education is the first line of defense against fraud, deception, and unfair business practices. The FTC's education efforts target identified areas of fraud and deception, and areas where information gaps are greatest because of rapid changes in the marketplace, such as privacy of personal information, dietary supplements and other health products, new technology-based products and services, new types of payment systems, and global transactions. The agency creatively uses new technologies and private and public partnerships to reach new and under-served audiences, particularly those who may not seek information directly from the FTC. The FTC will continue to publicize its consumer complaint and identity theft Web site addresses and toll-free numbers in an ongoing effort to increase public awareness of its programs and inform the public of the ways to contact the FTC to obtain information or file a complaint.

The FTC will expand its consumer education program to reach these new audiences, build new partnerships to help distribute its messages, and continue to create and support education Web sites, including the international site, *econsumer.gov*. In addition, nearly every case that the FTC brings contains a consumer education component with a message tailored to the fraud or deception that has occurred.

Hispanic and Other Specialized Outreach

The FTC's Hispanic Outreach Program serves and protects the growing population of Hispanic consumers in the United States. The FTC's outreach and education efforts to reach these consumers will continue. The FTC will use its comprehensive web site directed at the Hispanic community along with other media to reach this population.

The agency partners with organizations such as the NAACP and the National Council of La Raza to work with minority communities. The FTC also partners with the Department of Defense on *Military Sentinel* – a resource for members of the military and their families. The FTC is also a participant in the Financial Literacy and Education Commission and will work to educate consumers about financial literacy.

Online Safety and Security Education Initiatives

The FTC also will continue to educate consumers about new high-tech concerns, threats, and best practices by using the OnGuard Online campaign and other education tools.

Performance Measurement and Evaluation

In 2007, the FTC will continue to measure its performance by reporting the annual number of education publications distributed, including identity theft-related and Spanish-language publications.

In carrying out its functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Public Law No. 106-554) meets basic quality standards.

1. GPRA Five-Year Strategies

- Focus consumer and business education efforts on areas where fraud, deception, unfair practices, and information gaps cause the greatest injury.
- Creatively use technology, including interactive media, to extend the reach of consumer and business education.
- Increase public awareness of FTC's online education materials and the availability of its online complaint form and toll-free help lines to provide one-on-one information to consumers and increase data collection to support law enforcement.
- Encourage private and public partners to participate in education initiatives.

2. FY 2007 Implementation Plan

- Continue education efforts to promote information security.
- Continue the Hispanic Outreach initiative, and develop additional materials to meet the needs of these consumers.
- Continue the consumer awareness campaign to let consumers know that they should report their privacy-related complaints to the FTC and continue the outreach program to increase consumer awareness of the information required to be provided to consumers by the FACT Act.
- Deliver relevant information to more consumers, industry members, and law enforcement partners faster and more efficiently, and expand coverage of FTC messages, including the online information and toll-free helplines, through marketing, new products, and technology.
- Focus education on high-profile and emerging issues where consumer information gaps are greatest, and on frauds and deception that cause consumers the greatest financial injury.
- Continue efforts to identify and reach under-served audiences, businesses, and law enforcement offices.
- Through greater outreach, lead more consumers to the FTC's Web site (*ftc.gov*), the "one-stop" government Web site for consumer information (*consumer.gov*) and the interagency Web site *firstgov.gov*.

3. FY 2007 Performance Measures

In FY 2007, the agency will:

- Provide education messages online and in print to 26 million recipients.

Education programs benefit consumers by alerting them to their rights under various consumer protection laws and providing practical tips on how to recognize and avoid scams, rip-offs, and deception. To reach the broadest possible audience, the FTC maximizes its use of the national media, the agency's *ftc.gov* Web site, and the interagency *firstgov.gov* Web site. The FTC's messages also reach the public through the Consumer Response Center and hundreds of partners who distribute FTC materials, link to the FTC Web site, or post FTC messages on their Web sites.

- As part of the 26 million education messages, provide education messages related to identity theft online or in print to 3.5 million recipients.

The FTC has coordinated with other government agencies and organizations to develop and disseminate comprehensive consumer education materials for victims of identity theft and those concerned with preventing this crime. The FTC's most popular publication, "Take Charge: Fighting Back Against Identity Theft," is available in print and online. The FTC also distributes CDs containing this publication, thus enabling other federal agencies to print and distribute them. Thus, the distribution numbers reported in this measure will be lower than actual numbers.

- Continue to build the agency's Hispanic Outreach Program and, as part of the 26 million education messages, provide Spanish-language education publications to more than 700,000 recipients.

The FTC began this program in 2002 to reach the growing Hispanic population in the United States. The FTC has created a dedicated page of the FTC Web site, *Proteccion para el Consumidor*, to mirror the English-language page, and translated more than 100 consumer publications, including the FTC Consumer Complaint Form and identity theft publications, into Spanish.

4. Program Evaluations

- Determine the number of publications distributed or accessed online to evaluate outreach efforts and identify topics of particular consumer interest.
- Assess whether the appropriate mix of media is being used to communicate consumer education messages and whether the FTC is making the best use of the available media and technology.
- Assess the number and range of public and private organizations that partner with the FTC to do outreach; the more private and public partners the FTC has, and the larger those partners are, the greater its potential to reach different types of audiences, both business and consumer.

- Continue to assess the consumer education needs of the Spanish-speaking population.
- Review the focus of FTC education efforts, and whether the FTC needs to reach new audiences, and adjust them based on changing consumer and business needs.
- Review trends or patterns in complaints, if any, filed under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.

Maintaining Competition Mission

Goal 2: To prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.

Objective 2.1: Identify anticompetitive mergers and practices that cause the greatest consumer injury.

FY 2007 Budgeted Resources: 54 FTE \$10,000,000

The FTC's merger enforcement program benefits consumers by preventing anticompetitive mergers that result in higher prices, while not intervening in procompetitive mergers that might produce lower prices and other market improvements. Determining the likely effects of a proposed merger is a complex and demanding task to which the agency devotes significant resources. Most mergers are either competitively neutral or beneficial to consumers, but those few that are anticompetitive can impose significant costs on consumers. Mergers vary tremendously in their complexity and potential anticompetitive effects.

The FTC seeks to identify mergers and business practices that are anticompetitive and to focus its investigative resources on those activities most likely to harm consumers significantly. The goal is to avoid overlooking antitrust problems by focusing too narrowly, but also to avoid spending resources unproductively by investing in too many investigations that do not yield evidence of a competitive problem.

Accordingly, identifying anticompetitive mergers is a top priority in the Maintaining Competition Mission. The premerger notification requirements of the Hart-Scott-Rodino (HSR) Act provide the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Since 2001, when amendments to the HSR Act changed the criteria governing which mergers must be reported under the Act, the FTC devotes more attention to the identification of unreported, usually consummated, mergers that could harm consumers. Following a temporary lull in merger activity in 2001 and 2002, the FTC has been facing a demanding merger review workload as merger volume has increased in 2004 and 2005. Based on historic patterns, the FTC expects a continued high volume of merger work for the agency in FY 2006 and beyond.

As part of the agency's merger program, the FTC (jointly with the Antitrust Division of the Department of Justice (DOJ)) is currently working on a Commentary on the Horizontal Merger Guidelines. The Commentary should bring greater transparency to the agencies' merger analysis. In addition, the agency has established a task force to recommend further improvements to the merger review process. The agency expects continually to improve the merger review process to ease the burden on affected parties and increase internal efficiency.

Following an unprecedented period of merger activity in the late 1990s and 2000, which placed disproportionate demand on the FTC's Maintaining Competition Mission resources,

the agency has renewed its focus on the nonmerger portion of its mission in recent years. Beginning in 2001, the agency significantly expanded its efforts to identify appropriate targets for nonmerger investigations, restoring the balance between merger and nonmerger activities to a level more consistent with historic patterns.

On the nonmerger side, no statutory program comparable to HSR exists to help antitrust enforcers identify anticompetitive business practices. The FTC must employ a variety of methods to identify potentially anticompetitive practices (for example, receiving consumer and competitor complaints, receiving referrals from other government agencies, and monitoring the trade press). Consistent with its strategic focus, the FTC has identified priorities and sought systematically to develop nonmerger cases in key areas. As with mergers, the agency focuses on industries, including health care and energy, that matter most to consumers. The areas of emphasis include health care, prescription drugs, standards setting, professional associations, and immunities from, and exceptions to, the antitrust laws.

As a complement to its enforcement mission, the FTC also promotes competition principles through a wide variety of activities, such as research and reports, workshops, advocacy filings, and amicus briefs. Through these activities the FTC educates itself about emerging issues and shares information with other policymakers, business leaders, and consumers, providing intellectual leadership on competition issues. An important complement to the FTC's efforts to forestall or eliminate private restrictions on competition are efforts to eliminate public impediments to competition that may reduce consumer welfare. Thus, in response to requests, the FTC advises state and federal entities, as well as the courts, on the potential competitive impact of pending governmental actions, focusing on the same critical economic sectors that receive emphasis in law enforcement.

The FTC works to promote cooperation and convergence toward best practices with other competition agencies around the world. The FTC has built a strong network of cooperative relationships with its counterparts abroad, and plays a lead role in key multilateral fora. The FTC works with other nations to protect American consumers who can be harmed by anticompetitive conduct perpetrated outside the United States. The FTC also actively assists new democracies in their transition to market-based economies in developing competition and consumer protection agencies.

1. GPRA Five-Year Strategies

- Administer the HSR premerger notification program and track and maintain the timeliness of merger review under the HSR program.
- Prosecute violations of HSR reporting obligations vigorously in order to preserve the integrity of the reporting process.
- Continue to bring greater transparency to the agency's merger analysis and enhance the dialogue between competition agencies, businesses, legal advisers, and the public.
- Continue to improve the merger review process to ease the burden on affected parties and increase internal efficiency, while still collecting sufficient information to fulfill the agency's competition mission – for example, by seeking methods to identify relevant

materials stored electronically, improving the agency's ability to receive electronic productions, developing instructions and specifications for electronic productions, and taking further steps to improve the timeliness and efficiency of the review process.

- Continue to improve use of the initial 30-day period after HSR filings (or 15 days for a cash tender offer or a bankruptcy sale) to determine whether a merger is likely to harm competition, including reducing delays in interagency clearance (i.e., the process used by the FTC and the DOJ's Antitrust Division to determine which of the two will investigate a particular transaction) and timely review of filings to avoid unnecessary extended investigations.
- Integrate e-government initiatives, such as electronic premerger filing and electronic discovery, into the expanse of mission activities.
- Provide periodic data releases on agency merger investigations and challenges, as well as explanations of why the FTC decides not to take action in a particular case.
- Identify emerging trends and focus on potentially anticompetitive business practices or other issues that need to be addressed because of changes in the economy, technology, and the marketplace through hearings, task forces, Bureau of Economics studies, and other means.
- Examine the scope of exemptions to the antitrust laws to identify possible categories of harmful conduct that, while ostensibly protected from antitrust challenge, are in fact not exempt from the antitrust laws.
- Conduct public hearings, conferences, and workshops, bringing together interested parties to enhance understanding of different practices and developments in the marketplace and to identify needed antitrust enforcement initiatives from the information gathered.
- Continue the FTC's historic role of performing research and issuing reports on a range of topics relevant to competition and the marketplace.
- Advise state and federal entities, as well as the courts, on the potential competitive impact of pending governmental actions focusing on the same critical economic sectors that receive emphasis in law enforcement.
- Foster global competition by working with competition agencies worldwide to promote best practices and minimize policy divergences to ease burdens on firms that operate across the globe.
- Prepare and submit amicus briefs to help courts resolve competition policy questions.

2. FY 2007 Implementation Plan**A. All Programs**

- Ensure timeliness of review. Monitor the time and resources needed to conduct preliminary investigations. Review the progress of all ongoing investigations on at least a monthly basis. For mergers filed under the HSR program, maintain statistics on the average time needed to “clear” transactions that do not require further review. Review and analyze these statistics on a regular basis.
- Articulate FTC policies and procedures through guidelines, commentaries, policy statements, press releases, speeches, reports, and other means to help parties understand legal standards and stay in compliance with the antitrust laws, and to inform potentially aggrieved parties that they may lodge complaints with the FTC.
- Conduct economic studies of the effects of business actions on competition and consumer welfare.
- Conduct public hearings, conferences, and workshops, bringing together interested parties to enhance understanding of different practices and developments in the marketplace and to identify needed antitrust enforcement initiatives from the information gathered.
- Respond to requests from state and federal entities and the courts regarding the potential competitive impact of pending governmental actions.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

B. Identifying Anticompetitive Mergers

- To promote voluntary compliance with HSR premerger notification requirements, vigorously pursue violations. Monitor compliance of merging entities and fully investigate potential violations.
- In the initial review of each HSR filing, determine compliance with reporting requirements; promptly assess whether further review is needed to determine if the transaction may be anticompetitive.
- For transactions requiring further review, use the initial HSR waiting period to investigate and reach a sound and well-informed determination of whether the proposed merger raises sufficiently serious threat of harm to consumers to expand the investigation by issuing requests for additional information (“second requests”) and seeking Commission approval for use of compulsory process authority.

- Continue to refine and improve procedures used in HSR merger investigations to avoid undue burden on merging parties while still obtaining the necessary information to fulfill the agency's competition mission – for example, by improving capability to receive and review second request and other discovery materials in electronic format, adapting model second request language to provide for electronic production, and determining the most effective methods for identifying responsive materials stored in various types of electronic formats.
- Continue to implement further improvements to the merger review process pursuant to recommendations by a task force examining such issues as: the data requested on HSR notification and report forms; the contents of the analysis to aid public comment issued when consent agreements are accepted; and the second request compliance process and its impact on both the agency and practitioners.
- Continue to clarify how the agency applies the Horizontal Merger Guidelines in practice and enhance the dialogue between competition agencies, businesses, legal advisers, and the public.
- Continue increased efforts to identify mergers that are not subject to HSR requirements but that are potentially anticompetitive, using techniques such as (1) monitoring the trade press and Internet resources, (2) responding to and following up on case leads from Congressional offices, other Executive Branch agencies, and state and local government, and (3) encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers.

C. Identifying Anticompetitive Conduct

- Consistent with strategic focus, identify priorities and seek systematically to develop nonmerger cases in key industries, including health care and energy, that matter most to consumers.
- Identify potentially anticompetitive nonmerger business practices through the same means used to identify potentially anticompetitive mergers not subject to HSR, as well as pursuing investigative leads developed by staff in other investigations, and using task forces to identify harmful practices in selected areas.
- Continue to hold public hearings on, and conduct in-depth studies of, important competition issues to enhance agency expertise and more precisely distinguish between legitimate procompetitive conduct and anticompetitive conduct that has the potential to harm consumers.

3. FY 2007 Performance Measures

In FY 2007, the agency will:

- Continue effective screening of HSR premerger notification filings to identify those that most likely present antitrust concerns, so that between 60% and 80% of HSR requests for additional information result in enforcement action.¹ In conjunction with this measure, and to facilitate evaluation of results, the FTC will also report the number of second requests issued each year and the number of merger enforcement actions.²
- Effectively target nonmerger investigative resources, so that between 60% and 80% of nonmerger investigations in which the Commission issues a resolution authorizing the use of compulsory process result in enforcement action.³ In conjunction with this measure, and to facilitate evaluation of results, the FTC will also report the number of nonmerger investigations opened and the number in which the Commission authorizes the use of compulsory process each year.

Both measures are indicia of the FTC's success in identifying matters for investigation that are likely sources of harm to consumers. A percentage below 60% may suggest that the FTC is targeting its resources ineffectively by investigating too many competitively benign mergers or practices, while a percentage higher than 80% may suggest that the agency is focusing too narrowly and thus allowing problematic merger transactions to go forward without sufficient review or limiting its focus to only the most obviously anticompetitive business practices.

4. Program Evaluations

- Review and refine data-monitoring systems relevant to (1) the timeliness of the HSR review process, and (2) the degree to which appropriate resources are being devoted to initial review of each matter prior to issuance of an investigative second request.
- Review significant deviations from the statistical benchmarks for timely and efficient review of merger transactions and take corrective action where necessary.

¹ The FTC will compute this measure by dividing the number of second request investigations that result in enforcement action during the relevant fiscal year (without regard to when the investigation commenced), by the total number of second request investigations that concluded during the year with or without enforcement action (again, without regard to when the investigation commenced). "Enforcement action" includes Commission authorization of a complaint for preliminary injunction in federal court, issuance of an administrative complaint, a consent agreement, or the parties' abandonment of a proposed transaction based on FTC antitrust concerns.

² The FTC also investigates mergers that are not subject to HSR reporting requirements, but there is no benchmark directly comparable to the issuance of a second request in those matters, and the overall number of non-HSR merger investigations is too small to permit a meaningful statistical measure.

³ The issuance of a compulsory process resolution indicates that the Commission has found the matter to be serious enough to warrant the use of its compulsory process authority and also generally correlates with those investigations to which the agency devotes meaningful resources.

- Conduct periodic meetings between the Director of the Bureau of Competition and the heads of the litigation divisions to ensure that substantive standards are applied consistently and uniformly.
- Continue to seek improvements in the merger review process to improve further the effectiveness and efficiency of investigations; continue to collect public input to assist in enhancing and refining the process.
- Continue to review and implement recommendations of the FTC's merger process task force, which is currently assessing the FTC merger process in detail, examining such issues as: the data requested on HSR notification and report forms and second requests; the contents of the analysis to aid public comment issued when consent agreements are accepted; and the second request compliance process and its impact on both the agency and practitioners.
- Continue to improve capability to receive and review second request and other discovery materials in electronic format, adapt model second request language to provide for electronic production, and work internally and with other competition agencies to determine the most effective methods for identifying responsive materials stored in various types of electronic formats.
- Assess the significance (quantitatively in terms of the aggregate size of markets investigated and potential dollar savings to consumers, and qualitatively in deterrence value and precedential significance) of the matters investigated each year.

Objective 2.2: Stop anticompetitive mergers and practices through law enforcement.**FY 2007 Budgeted Resources: 409 FTE \$79,000,000**

The FTC seeks to stop anticompetitive mergers and practices through law enforcement activities. Maintaining competitive markets through effective antitrust law enforcement is integral to a healthy U.S. economy. The FTC's antitrust enforcement thus serves a vital role in protecting consumers' interests in lower prices, better quality, and greater innovation.

The FTC's law enforcement activities promote competition both directly and indirectly. The direct impact of law enforcement occurs, for example, when the agency obtains a preliminary injunction to block an anticompetitive merger, or negotiates a consent agreement to remedy the anticompetitive aspects of a proposed merger or to stop anticompetitive conduct. The indirect – and undoubtedly greater – impact of law enforcement occurs, for example, when corporate executives heed the advice of private antitrust counsel concerning a proposed merger, and decline to proceed with the deal in the face of probable antitrust challenge.

Given the size of the FTC relative to the magnitude of the U.S. economy, deterrence – i.e., voluntary compliance with the law – is essential to the successful pursuit of the FTC's mission. Successful deterrence is a function of three factors: (1) the agency's success in identifying anticompetitive mergers and conduct; (2) the agency's effectiveness in successfully challenging anticompetitive mergers and conduct; and (3) the agency's success in communicating the applicable legal standards to the relevant public. First, the FTC will be less effective in stopping anticompetitive mergers and conduct, whether directly or indirectly, if those who would engage in such activity perceive that it is relatively unlikely to be detected. In this circumstance, the potential benefits of anticompetitive actions are more likely to outweigh the probable costs of an antitrust challenge. Thus, the agency's success on Objective 2.2 is closely correlated with its success on Objective 2.1, identifying anticompetitive mergers and practices.

Second, the FTC's success in deterring anticompetitive actions depends in part on its effectiveness in litigation. Private entities are more likely to pursue an anticompetitive merger or to engage in anticompetitive activity if they perceive that the FTC may not be able successfully to persuade adjudicative authorities that the merger or conduct is illegal, and obtain effective relief as a result.

Third, the FTC's success in deterring anticompetitive actions critically depends on transparency, i.e., its effectiveness in clearly communicating to the business and legal communities the standards and analytical processes that it applies in determining whether to challenge a particular merger or form of conduct. If FTC decision-making is not transparent, then even the most law-abiding parties are more likely to propose an illegal merger inadvertently or unknowingly engage in illegal conduct. Moreover, lack of transparency can harm consumers through over-deterrence, i.e., by causing risk-averse parties to refrain from pursuing a procompetitive merger or from engaging in procompetitive conduct in order to avoid an unintended transgression of an ambiguous legal standard. Thus, the agency's performance in Objective 2.2 is tightly integrated with its performance on Objective 2.3, preventing consumer injury through education.

Ongoing developments continue to place significant demands on FTC resources devoted to direct and indirect enforcement activities. First, long-term trends suggest a continued steady increase in merger activity – particularly in the size, scope, and complexity of individual merger transactions. Although successful deterrence means that only a small fraction of proposed transactions require intensive investigation and an even small number result in litigation, all reported transactions must be reviewed, and the scope and complexity of those at the margin requires increasingly in-depth and sophisticated investigation techniques.

Second, maintaining the litigation effectiveness that is essential to successful deterrence is highly resource intensive, both in terms of staff time and in costs for expert witnesses, travel, stenographic transcription, and other expenses. A temporary lull in the pace of merger activity early in this decade permitted the FTC to renew and update its focus on nonmerger activities, resulting in a substantial increase in the agency's nonmerger litigation workload. Among the areas that the FTC has recently or is currently addressing are the scope of antitrust exemption doctrines such as *Noerr-Pennington* and state action, restraints on competition among professionals, and anticompetitive abuses of the standards-setting process. Moreover, the agency is using adjudicative proceedings to clarify the standards applicable in certain areas, such as mergers of hospitals. Other factors that have contributed to a far higher number of antitrust cases in adjudication in recent years than any period in the previous two decades include (1) changes in the thresholds for HSR premerger notification requirements⁴, (2) the agency's pursuit of cases involving very large potential financial impact⁵, and (3) the agency's increased focus on cutting-edge legal issues.⁶

Third, the increasing importance of technology is placing increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments. FTC antitrust investigations increasingly involve high-technology sectors of the economy, such as those that produce computer hardware and pharmaceutical products. Moreover, issues in antitrust matters increasingly intersect with intellectual property concerns, raising difficult questions about how to reconcile these two bodies of law, both of which have a goal of promoting

⁴ Although the FTC receives notification of fewer proposed mergers in advance because of modifications in the HSR reporting thresholds, the agency continues to monitor unreported mergers. Unreported mergers are much more likely to have been consummated by the time the FTC can complete an investigation, so any such merger that threatens competition likely will require litigation, rather than a pre-consummation consent agreement, to obtain relief.

⁵ Cases with broad financial stakes can bring tremendous benefits to consumers, but the financial considerations also significantly increase the respondents' incentives to contest the issues rather than settle. For example, in *Union Oil Company of California*, the Commission recently approved a settlement to resolve charges that the company illegally obtained patents on technology used to produce the low-emissions gasoline required in California to protect air quality. If the company had been permitted to enforce these patents, its competitors would have had to pay hundreds of millions of dollars annually in royalties for the technology, and about 90 percent of that cost likely would have been passed on to consumers in the form of higher gasoline prices.

⁶ Because the FTC has a unique responsibility to help shape antitrust law and policy, as well as enforce it, its cases sometimes focus on areas in which legal standards are not fully developed. Because liability may not be clear cut in these instances, costly litigation is more likely. Nevertheless, cases that add clarity to legal standards can have very substantial long-term benefits for consumers.

innovation. As these trends continue, the FTC requires more and more specialized technical and legal knowledge and expertise.

Fourth, the broadening geographic scope of commerce continues to affect antitrust enforcement. The increasingly worldwide economy is resulting in more transactions involving very large multinational corporations, and requires increased resources for items such as travel, translations of foreign language documents, and coordination with foreign competition authorities.

Notwithstanding these resource demands, antitrust enforcement brings benefits to consumers that far exceed the costs. Merger enforcement saves consumers money by deterring mergers that would likely result in price increases or other anticompetitive consequences⁷ if consummated, or by preventing such mergers through legal challenge. Nonmerger enforcement similarly benefits consumers by preventing or stopping anticompetitive activity that raises prices or otherwise restricts competition.

According to the FTC's 2003-2008 Strategic Plan, the agency will measure its performance in stopping anticompetitive mergers and practices by calculating the amount of commerce involved in markets in which the agency takes enforcement action. While this approach provides a useful means of evaluating one dimension of the breadth and magnitude of the FTC's enforcement efforts, recent experience demonstrates that a narrow focus on a single form of *output* – formal enforcement actions – misleadingly understates the *impact* of the agency's efforts.

It has become more apparent in recent years that FTC antitrust enforcement manifests itself in a range of different ways, including the following:

- the FTC may institute a formal process, such as bringing a preliminary injunction action or approving a consent agreement to block an anticompetitive transaction, remedy anticompetitive aspects of a transaction, or stop anticompetitive conduct;
- in the course of an FTC investigation, parties may decide to abandon a proposed anticompetitive transaction rather than contest a law enforcement action;
- in the course of an FTC investigation, parties may decide to restructure a transaction to cure a competition problem and still be able to proceed with the remainder of the deal without facing an antitrust challenge⁸;
- private antitrust counsel may consult about the antitrust consequences of a possible transaction with relevant FTC staff, who then help the parties structure the deal in

⁷ Consumer harm from anticompetitive conduct most often takes the form of higher prices. In some cases, however, the harm may take some other form, such as curtailment of innovation that would otherwise result in new or better products in the future.

⁸ Such restructuring may take the form of (1) altering the package of assets purchased by the acquiring firm from the acquired firm, or (2) arranging for immediate divestiture of the problematic assets by the acquiring firm to a third party.

a way that eliminates any competition issues *before* they formally present the proposed merger to the agency under the HSR process; and

- based on advice from private counsel, business executives may decide not to pursue a possible acquisition that would face probable antitrust challenge.

The FTC has devoted significant attention to increasing the transparency of its decision-making in recent years by, for example: releasing reports and data on merger investigations and challenges; holding workshops and producing a Commentary to assess the practical efficacy of the Horizontal Merger Guidelines; and providing explanations of why the agency decides not to take action in a particular case. Anecdotal evidence suggests that such efforts are leading more frequently to careful structuring of merger transactions to forestall possible antitrust challenge.⁹

While it would be virtually impossible to count the proposed transactions that never go beyond the doorway of the boardroom, the FTC's antitrust enforcement impact clearly extends well beyond those matters that result in formal proceedings. Thus, a true measure of the agency's performance must capture, to the extent knowable, the competition it preserved in markets by clearly conveying its enforcement standards and by demonstrating that it is ready, willing, and able to take whatever steps are necessary to protect consumers' interests.¹⁰

Thus, in evaluating its performance, the FTC will include a qualitative assessment of its overall competition mission activity, including the results of relevant external reviews.

1. GPRA Five-Year Strategies

- Continue to benefit consumers in markets involving billions of dollars in annual sales by challenging anticompetitive mergers and conduct, negotiating consent orders, winning litigated orders, and influencing parties to abandon or modify anticompetitive transactions.
- Continue to negotiate merger and nonmerger consent orders and win litigated orders that have significant remedial, precedential, and deterrent effects.
- Continue to investigate and implement improvements in the FTC's merger investigation process, including the negotiation of remedies.
- Continue to improve the integration of budget and performance by linking goals and

⁹ According to press reports, for example, a \$14 billion acquisition announced in April 2005 was coupled with a \$5.4 billion divestiture to a third firm, in part "to appease regulators." Jane Wardell, *Major Liquor Firms to Join and Take on Global Leader Diageo*, WASH. POST (April 22, 2005).

¹⁰ Any measure of the FTC's antitrust law enforcement impact may be distorted depending on the amount of deterrence. If the FTC were 100 percent successful in identifying anticompetitive mergers and conduct, if it were able to convey perfect knowledge of its decision-making to the public, and if it were 100 percent successful in obtaining sought-after relief, there would be no need for enforcement.

objectives to results; develop improved processes for use and analysis of management data.

2. FY 2007 Implementation Plan

A. All Programs

- Estimate the annual sales in markets in which the FTC protected consumers from anticompetitive mergers or conduct through formal enforcement action or identifiable deterrence.
- Enhance the FTC's expertise in examining whether and when specific types of conduct are procompetitive or benign, and when they may harm consumers, through public hearings and studies on important competition issues.
- Enhance the agency's intellectual property expertise in light of the increasing significance of patents and other intellectual property issues in antitrust cases.
- Enhance support of increased antitrust litigation through a strengthened special litigation unit within the Bureau of Competition, staffed by attorneys with substantial litigation experience and expertise, to guide and advise staff conducting administrative or federal court litigation.
- Support increased antitrust litigation by retaining qualified economists to serve as expert witnesses in trials.
- Further enhance the FTC's ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing technical support from independent industry experts.
- Continue support of the FTC's ability to litigate a higher number of complex cases by investing in more sophisticated technology to support litigation, including document management and courtroom presentations.
- Strengthen investment in planning, developing, improving, and conducting agency-wide training programs in economic analysis, negotiation, advanced legal writing, and litigation skills (including basic and advanced deposition practice, written discovery, basic and advanced trial advocacy), as well as mission-specific procedures and substantive law. Ensure that lead attorneys and managers collect any important lessons learned at the close of each significant negotiation and litigation and transmit them to appropriate personnel for incorporation in training programs and model pleadings.
- Review the progress of all ongoing investigations on at least a monthly basis. Monitor time and resource expenditures.
- Monitor the timeliness of administrative adjudication and issue to the public on a quarterly basis a status report on the progress of all cases before the administrative law judges.
- Collect data, for management review, regarding the FTC's efficiency in conducting

investigations, such as (1) the amount of time required to complete the HSR review process, (2) the number of HSR matters requiring issuance of an investigative second request, (3) the number of HSR and significant nonmerger investigations that result in enforcement action, (4) the number of hours of staff time spent on investigations, and (5) other costs associated with investigations.

- Continue to invest in ongoing research and development in antitrust law and policy, including regular assessments of the effectiveness of past FTC enforcement actions. Integrate assessments of investigative and enforcement activity with new learning on law and economic policy to further the FTC's dual objectives of (1) bringing enforcement actions only when anticompetitive effects from the challenged practices or mergers are likely, and (2) not overlooking anticompetitive practices or mergers.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.

B. Merger Enforcement

- During the initial HSR review period, carefully identify those merger transactions that are likely to raise potentially significant competitive concerns. Employ HSR second requests and other appropriate investigative techniques during the extended HSR waiting period to obtain documents, testimony, and other evidence.
- In non-HSR investigations, employ appropriate investigative tools other than HSR second requests, to obtain documents, testimony, and other evidence.
- Implement reforms recommended by a merger process task force that is currently assessing the FTC merger process in detail. These reforms will streamline the merger review process by facilitating the rapid identification of the relevant issues, and by allowing the preparation of more focused second requests and the application of consistent investigation timetables.
- Pursue e-government initiatives in merger review, such as determining the most effective methods for identifying company materials stored electronically, improving the agency's ability to receive and review electronic productions, and developing a model letter to modify standard Second Request instructions to permit, and provide specifications for, electronic production.
- Monitor compliance with FTC remedial orders in merger cases, including the implementation of divestitures, licensing, and other affirmative relief within required time periods. Seek civil penalties where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

C. Nonmerger Enforcement

- Employ appropriate investigative techniques, including compulsory process if authorized, to obtain relevant information and to assess whether the practice in question is harming consumers.
- Monitor compliance with FTC remedial orders in nonmerger cases. Seek civil penalties and other relief where appropriate if the respondent fails to fulfill its obligations under the order in a timely fashion.
- Modify orders when warranted by changed conditions of fact or law or when otherwise required in the public interest.

3. FY 2007 Performance Measures**In FY 2007, the agency will:**

- For cases in which the Commission finds reason to believe the law has been violated, achieve a positive result (including consent orders, litigation victories, and, for mergers, transactions abandoned based on FTC antitrust concerns) in as many of those cases as possible.
- Continue on track toward the FTC's goal to take action to prevent or deter mergers¹¹ likely to harm competition in markets with a total of at least \$200 billion in sales over the five-year Strategic Plan period. To meet this goal, the FTC will need to take action each year against mergers likely to harm competition in markets with an average total of \$40 billion in annual sales.
- Continue on track toward the FTC's goal to take action to prevent or deter anticompetitive conduct in markets with a total of at least \$100 billion in sales over the five-year Strategic Plan period. To meet this goal, the FTC will need to take action each year against anticompetitive conduct affecting markets with an average total of \$20 billion in annual sales.

Because external factors, such as the level of merger activity occurring in the market, may cause results to fluctuate from year to year, the latter two goals are expressed in terms of an aggregate target for the five-year Strategic Plan period, rather than as annual targets.

¹¹ As stated in the agency's Strategic Plan, "the FTC may prevent an anticompetitive result from a proposed merger by (1) conducting successful litigation to block the merger, (2) negotiating a settlement to resolve anticompetitive aspects of the merger while allowing the underlying transaction to go forward, or (3) identifying antitrust concerns sufficient to cause the parties to abandon the transaction without court action. The volume of affected commerce measure does not include transactions abandoned by the parties for business considerations unrelated to antitrust." In addition to those transactions restructured pursuant to a formal consent agreement, and those abandoned without formal action, the FTC believes it is entirely consistent – and more in keeping with GPRA's mandate to measure "impact" – to include transactions that are restructured without formal action due to antitrust concerns.

4. Program Evaluations

- Assess the scope of the FTC's annual merger enforcement activities, as reflected by the volume of commerce in markets in which the agency took merger enforcement action. Determine whether the total volume of commerce in such markets is on track to reach \$200 billion over the five-year Strategic Plan period FY 2004 - FY 2008. Compare the likely consumer welfare impact of merger enforcement to the resources spent.
- Assess the scope of the FTC's annual nonmerger enforcement activities, as reflected by the volume of commerce on markets in which the agency took nonmerger enforcement action. Determine whether the total volume of commerce in such markets is on track to reach \$100 billion over the five-year Strategic Plan period. Compare the likely consumer welfare impact of nonmerger enforcement to the resources spent.
- Assess the FTC's efficiency in conducting antitrust investigations, explore ways to increase efficient use of investigatory resources, and explore whether efficiency in conducting investigations can meaningfully be measured.
- Explore methods of identifying when the FTC has achieved effective deterrence of anticompetitive practices in a market and tracking progress over time.

Objective 2.3: Prevent consumer injury through education.**FY 2007 Budgeted Resources: 44 FTE \$9,000,000**

The FTC increases awareness of antitrust law through guidance to the business community; outreach efforts to federal, state and local agencies, business groups, and consumers; development and publication of antitrust guidelines and policy statements; and speeches and publications. In carrying out these functions, the FTC strives to ensure that any publicly disseminated data or information subject to the Data Quality Act (section 515 of Public Law No. 106-554) meets basic quality standards.

1. GPRA Five-Year Strategies

- Continue to educate policymakers, consumers, and business leaders about competition issues through a wide variety of activities, such as research and reports, hearings and workshops, advocacy filings, guidelines, advisory opinions, speeches, amicus briefs, and other publications.
- Continue to educate consumers on the importance of marketplace competition.
- Continue to enhance avenues of communication, such as email and the FTC Web site.
- Advise state and federal entities, as well as the courts, on competition issues and the potential competitive impact of pending governmental actions.
- Improve the FTC's capacity to promote consumer welfare by conducting studies that improve the agency's understanding of significant antitrust issues – especially with respect to critical sectors that receive emphasis in law enforcement, such as health care, energy, and others with a major impact on consumers' wallets – and reporting the results of those studies to the public.

2. FY 2007 Implementation Plan

- Evaluate the need for and, as appropriate, develop and issue guidelines or commentaries to help businesses understand and comply with the application of the antitrust laws in certain areas, such as horizontal mergers, international operations, intellectual property, and health care.
- Continue to provide Commission and staff advisory opinions on competition issues; continue to provide guidance in response to informal telephone requests, particularly concerning HSR matters.
- Publish revised and updated consumer outreach materials, as necessary, to explain to consumers and businesses in plain language why competition in markets is important and how the antitrust laws apply in practice.

- Prepare advocacy comments to inform other governmental entities about competition issues and the competitive impact of pending governmental actions, upon their request.
- Prepare amicus briefs addressing important competition policy issues under consideration in court proceedings.
- Monitor the content of complaints, press releases, and analyses to aid public comment to ensure they are “transparent,” that is, that they explain in sufficient detail and with sufficient clarity the evidence and theory of a case, within the constraints of confidentiality. Expand the use of press releases and other public statements to explain why the Commission elected not to take enforcement action in certain matters to further improve the public’s understanding of the FTC’s enforcement policies.
- Make available prepared texts of speeches; as appropriate, develop other materials that explain FTC policies and procedures.
- Continue to have Commissioners and staff speak at and participate in seminars, panel discussions, and conferences to explain how the FTC analyzes mergers and business practices.
- Continue to conduct economic research to develop knowledge about how markets operate.
- Continue to support outreach efforts to international bodies to explain U.S. antitrust perspectives on competition theories and approaches; continue to aid the development of antitrust laws and programs in developing nations by participating in technical assistance missions.
- Make available on the FTC’s Web site (*ftc.gov*) the guidelines issued by the FTC, advisory opinions, advocacy comments, written releases, texts of speeches, Bureau of Economics Reports, and other materials that explain the FTC’s policies and procedures.
- Follow a basic standard of data quality, including objectivity, utility, and integrity for the information used in measuring performance.
- Continue to hold public hearings and workshops to expand understanding of increasingly significant public policy issues, such as factors that affect the price of refined petroleum products, the implications of antitrust and patent law and policy for innovation and other aspects of consumer welfare, and the legal implications of single-firm conduct under the antitrust laws.

3. FY 2007 Performance Measures

In FY 2007, the agency will:

- Generate at least 10 million hits annually on the FTC's Web site related to antitrust.

4. Program Evaluations

- Assess whether education and outreach efforts target the right audiences and address the issues that have the most impact on the marketplace.
- Evaluate what antitrust content on the FTC Web site generates the largest amount of public interest, and why, and use this information in setting future priorities.
- Seek input from consumer groups, business groups, bar groups, and other FTC "customers" on the effectiveness of FTC educational efforts.
- Evaluate the transparency of FTC merger review policy by assessing the extent to which significant changes in such policy are communicated to stakeholders.
- Review trends or patterns in complaints, if any, filed with the agency under the Data Quality Act to determine appropriate techniques or strategies for improving the quality of publicly disseminated data or information that are subject to the Act.
- Review the results of major competition research initiatives to identify their usefulness in guiding FTC decisions and influencing other policymakers' approaches to competition issues.

President's
Management
Agenda

President's Management Agenda

In 2001, the Administration announced a strategy for improving the management of the federal government called the President's Management Agenda (PMA). It focuses on five areas of management weakness across the government for which improvements and the most progress can be made. Although the FTC has not yet been evaluated by the Office of Management and Budget (OMB), the agency is committed to this strategy and is managing its resources effectively and achieving immediate, concrete, and measurable results in each of the five PMA initiative areas: human capital; competitive sourcing; e-government; financial management; and integration of budget and performance.

Demands on the agency have grown dramatically over the past decade as commerce has become increasingly electronic and the economy has become high-tech and global. During this period, the agency has found new ways to meet these growing demands and reach out to more consumers and businesses without an appreciable addition of personnel. To address these issues, the FTC has been engaged in long-term, concerted efforts to work smarter and more effectively. The FTC continues to work to improve management and program performance. The agency has a solid record of assessment, realignment, innovation, and improvement. There are several efforts underway to address, among other areas, recruitment and training, diversity and opportunity, program performance and associated costs, and financial systems and associated reporting.

Initiative: Human Capital Management

- **Knowledge Management.** The FTC is engaged in a systematic program to improve staff training of all types – professional, managerial, technical, and administrative. Training is a key component to working smarter and improving productivity. It is also critical in managing FTC attrition by developing staff knowledge that would otherwise be lost due to turnover. New and innovative training programs have resulted in increased interest and participation from all segments of the workforce. In FY 2005, the FTC conducted its first-ever all-agency new attorney and economist training program. It was an ambitious program, conducted off-site, by senior FTC staff from across the agency over a three-day period. Forty-two new staff members participated in and benefitted from this training opportunity. The Training Council, which includes representatives of the agency's major offices and bureaus, guides most of the training and development programs at the FTC. In FY 2005, the agency offered a series of classes to improve writing skills for law professionals as well as for employees in other occupations. We also developed a three-hour workshop on the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (the No FEAR Act), and presented this training as mandatory for all agency employees.
- **Leadership.** As a key part of its management improvement efforts, the FTC implemented several training programs. The *Manager Series* is the cornerstone of the agency's management development and is mandatory for all supervisors and managers. The program focuses on employee relations, performance management, and labor relations. The *Leadership Series* introduces participants to contemporary issues and concepts for today's manager. The *Best Practices in Management and*

Leadership Series provides participants with current theory and best practice approaches to important areas of human resource management. The *Performance Management: Ideas into Action* initiative emphasizes a comprehensive approach to performance management, from establishing performance plans through preparing performance evaluations. The course is based on a five-step performance management model and matches each step with the FTC's performance policy. In FY 2005, a collaborative effort between a major bureau and the human resources staff produced the first four in a series of one-hour "supervisory nuts and bolts" in-services; each session targets a specific supervisory item or issue (e.g., managing time and attendance) for full exploration, and results in usable material the supervisor can retain and refer to on an as-needed basis. In addition, the agency offered a new advanced leadership seminar on a trial basis. The course provides a facilitated forum wherein seasoned managers can explore new concepts and techniques in leadership. One goal of the new class is to create a cadre of leadership mentors within the agency.

- **Performance Management.** The FY 2004 implementation of a revised performance management system along with the revised performance management system for the Senior Executive Service led to the initiation in FY 2005 of further efforts to retool performance management in the FTC. Recognizing the need to provide timely and honest performance feedback to employees at all levels, and with full acceptance from key management officials, the agency has focused this year on providing first-line supervisors with better tools for assessing employee accomplishments and work products, and for working with employees in those areas identified as opportunities for improvement. We expect to continue this effort through the coming fiscal year.
- **Core Competencies.** In the rapidly growing electronic and global marketplace, the FTC needs professionals with specialized skills to investigate complex economic issues and apply sophisticated legal precedents to antitrust and consumer protection litigation. Attorneys account for approximately 53 percent of the FTC's permanent workforce, and Ph.D. economists account for an additional 8 percent. These professionals are supported by staff with technical skills and expertise, such as paralegals, data analysts, and computer specialists, and a core complement of staff with management and operational skills. The FTC is working to recruit and retain highly qualified individuals by offering hiring and relocation bonuses, moving expenses, competitive starting salaries, and significant cash awards, as well as non-monetary benefits such as time off, training and development opportunities, and assignments to challenging, high-profile cases. The agency is identifying core competencies to recruit applicants with specific knowledge and skills needed to support its mission, particularly in the legal area.
- **Continuing Assessment of Support Workforce.** Across the FTC, a number of support staff will retire over the next five years, and the development of new technology will allow for accomplishment of more administrative tasks electronically. The agency will transfer these support positions to the front lines of the missions, either in law

enforcement or consumer education. The FTC is focusing on training and employee development for staff who are not yet ready to retire, but who are performing tasks that could be automated. It is also analyzing statistics for potential retirements among the supervisory and management ranks and developing strategies for successful management succession.

- **Workforce Mix.** In 1996, the agency began an Honors Paralegal Program to relieve attorneys of the routine tasks in investigations and litigation that do not require a law degree and to allow them to focus on complex matters of policy, analysis, and strategy. Honors Paralegals are hired at the GS-7 level and generally work for the agency for one to three years under term appointments before moving on to law school or other graduate-level educational programs. All of the bureaus and offices that employ attorneys, including the Bureaus of Competition and Consumer Protection and the Office of the General Counsel, participate in the program, which has approximately 50 Honors Paralegals at any given time. The Bureau of Economics established a similar program, focusing on recent college graduates with degrees in economics, to provide technical support to Ph.D. economists. The mix of new attorneys and economists and seasoned professionals is under regular review. The right mix is needed to develop and mentor new professionals and to provide the expertise required to handle the complex challenges facing the FTC. Recruitment efforts are fine-tuned by assessing the number of support positions and junior and senior professionals needed to support the missions.
- **Automated Staffing.** In FY 2005, the FTC acquired "QuickHire," an automated staffing system that will allow applicants to apply for open positions on-line. The system, which we call Federal Trade-Staffing and Employment Express (or FT-SEE), is being implemented in phases based on job series and ease of transition to the new process. As more recruitment actions are conducted through the system, we anticipate realizing a reduction in human resources staff time needed for the more clerical, repetitive tasks of the hiring process, which in turn will allow staff to concentrate more productively on those aspects that require contemplation and analysis. Using a job-specific question-and-answer format, FT-SEE will collect applicant information that shows whether the applicants' experiences and education fulfill the specific mandatory requirements of the vacant position. Staff will then be able to evaluate further the credentials of those applicants who have at least the specific mandatory requirements for the position. Because the system provides an automated database of applicant information, we expect our ability to produce various management reports will improve in direct proportion to our increasing use of the system in the recruitment process.
- **Telework.** In February 2003, the FTC initiated a two-year telework pilot program. Since its inception, 53 FTC employees have participated in the program under either an episodic or regular schedule. The agency conducted a survey of participating employees and their managers. Both groups reported positively in terms of productivity and enhanced morale. Based on the feedback, we have decided the

telework program should continue as a permanent agency program, and we will issue a formal policy that modifies the pilot consistent with lessons learned from the pilot. The agency plans to survey periodically participating employees and their managers and to seek feedback from employees and supervisors who have not participated to date to determine if further changes to the program are warranted.

- **Senior Executive Service (SES).** In December 2003, the Human Resources Management Office informed FTC executives of a new SES compensation system proposed by the Office of Personnel Management (OPM). The performance-based pay system took effect in January 2004, and all FTC executives moved to an open pay range at their current rate of pay with some performance-based increases for certain individuals. After interim SES performance system regulations were published in July 2004, the agency sought and received provisional certification from OMB and OPM for a higher pay range to compensate high-performing executives. With the agency SES performance management system still evolving, the FTC sought and received provisional certification for fiscal year 2005 as well. As we become even more experienced with the new SES framework, we will continue to revise our performance management program to align better our executive accomplishments with agency mission objectives, to fix more clearly accountability, and to connect more clearly compensation with accomplishment.

Initiative: Competitive Sourcing

- **Federal Activities Inventory Reform (FAIR) Act.** The FTC identified 58 commercial FTE in its 2005 FAIR Act inventory (see <http://www.ftc.gov/ftc/who.htm> Special Notices). The agency continues to look for opportunities to compete commercial positions. One area of focus will be the functions currently performed by clerical and administrative staff who will retire over the next five years.
- **Reimbursable Support Service Arrangements.** The FTC streamlined clerical support, administrative, and technical functions, and replaced positions with reimbursable support service arrangements with other federal agencies. The areas in which these changes occurred include significant agency services such as payroll/personnel, accounting/payment system operations, health units, retirement counseling, and the transit subsidy program.
- **Performance-Based Service Contracting.** The FTC will award performance-based service contracts during FY 2006 for the following re-competed requirements: the National Do Not Call Registry, Computer Help Desk Services, and Records Management Services. Additionally, all new requirements for services are reviewed for consideration as performance-based service contracts.

Initiative: Expanding e-Government

- **National Do Not Call Registry.** The FTC commemorated the two-year anniversary of the National Do Not Call Registry in June 2005. The Registry makes it easier and more efficient for consumers to stop receiving telemarketing calls they do not want. Consumers have registered more than 110 million phone numbers with the FTC, and about 60 percent were registered on the Internet. Registration is free and is available in both English and Spanish. In FY 2004, the Association for Federal Information Resource Management Awards Committee recognized the FTC for its outstanding work on the Do Not Call Registry. The Registry also received an American Council for Technology Intergovernmental Solutions award at the 2004 Management of Change Conference. In FY 2005, Yahoo! ranked the launch of the FTC's Do Not Call Web site as one of the top 100 moments on the Web over the last 10 years.
- **e-Government.** The FTC has been a leader in the use of technology and the Internet to inform citizens of its mission without having to enlarge its workforce significantly. Starting in the mid-1990s, the FTC began building interlinked public consumer protection Web sites, many in connection with other domestic or foreign law enforcement agencies, to educate consumers and to collect and analyze data on a broad range of consumer protection issues, including high-tech fraud and identity theft. In FY 2004, the FTC installed a new version of its search engine on the agency's Web site, allowing more flexible searching and providing improved access to Web site content. To ensure the continued relevance of information the FTC communicates to the public, the FTC instituted a program in FY 2005 to review and update the style and structure of the content found on the Agency's publicly-accessible Web sites. For example, the Hart-Scott-Rodino premerger notification site, found at <http://www.ftc.gov/bc/hsr/hsr.htm>, was redesigned.
- **Integrated One-Stop Systems.** The FTC Web site provides a wide array of information about the actions and operations of the agency and direct access to consumer and business education information and publications. In the last several years, electronic distribution of education materials has surpassed print distribution. The site also permits citizens to file online complaints about consumer fraud and identity theft. These complaints are used to target the agency's law enforcement and education efforts. Consumers currently can access the Web site (including the complaint form) in four languages. Through the <http://www.consumer.gov/sentinel> link, consumers can view summary data collected by the FTC, such as the scams that garner the most consumer complaints; the scams that cost consumers most; the number of identity theft complaints, by state; the types of identity theft most frequently reported; and how to spot and avoid fraud and deception online and off. The FTC Web site also has a direct link to the government-wide public site, <http://www.firstgov.gov>, and to the Small Business Administration's (SBA) one-stop services: the U.S. Business Advisor (<http://www.business.gov>) and SBA's online business guide to legal and regulatory information (<http://www.businesslaw.gov>).

- **Citizen Information Access.** The FTC for many years has recognized that the complexity of the federal government makes it difficult for citizens to know where to go for information and assistance on consumer issues. In 1997, the FTC led a group of five agencies with consumer protection responsibilities to create a Web site, <http://www.consumer.gov>, as a "one-stop" link to a broad range of federal consumer information resources available online. *Consumer.gov* links to documents located on the Web sites of its participating federal agencies – which have grown from the original five to approximately 180 agencies. This site has become the portal for interagency consumer information that the federal government provides to the public through <http://www.firstgov.gov>.
- **Cross-Agency Information Sharing.** The FTC Consumer Response Center receives consumer complaints and inquiries through two toll-free telephone lines, postal mail, and the Internet. Information from these complaints and inquiries is collected in a database, which contains approximately five million entries. In FY 2005, the FTC's Consumer Response Center was ranked #1 among all Federal call centers offering similar services for its services on the FTC Help and Identity Theft response lines. The FTC also developed and hosts a secure Web site, *Consumer Sentinel*, that makes certain fraud consumer complaints accessible to other federal, state, local, and international law enforcement partners. The fraud and identity theft complaints in the database are accessible to approximately 1,425 law enforcement partners (*e.g.*, the FBI, the Postal Inspection Service, 50 State Attorneys General, the Secret Service, Social Security Administration Inspector General, and U.S. Attorney Offices). In FY 2004, the agency implemented a Web service to update the FTC Identity Theft database with records from the National White Collar Crime Center. Collecting this information in one database and sharing it electronically with other agencies reduces redundancy and helps the law enforcement community identify general trends in consumer fraud issues, track the illegal activities of specific businesses, and coordinate investigations and litigation. In February 2003, *Consumer Sentinel* received an Excellence.Gov finalist award from the Industry Advisory Council's E-Gov Shared Interest Group, in partnership with the Federal CIO Council.
- **Electronic Filing of Premerger Information.** The Electronic Filing Application (e-Premmerger) System permits electronic filing of required information about proposed mergers and acquisitions under the Hart-Scott-Rodino Premerger Notification Act. A single integrated system is more efficient for business filers as well as taxpayers. Businesses need only file at a single location to provide the required information to both the FTC and DOJ, and taxpayers do not need to support two redundant systems. The FTC has managed the development and deployment of this integrated bi-agency system and will operate this system on behalf of the FTC and DOJ. The system is operational, and once the Form and web page are updated to reflect recent amendments to the HSR rules, and amendments to the HSR rules to provide for the electronic filing alternative are published, it will be available to accept electronic filings. The final rulemaking and changes are expected to be completed in February 2006.
- **Electronic Filing for Administrative Litigation.** The FTC implemented a consistent e-filing protocol for administrative litigation matters. E-filing will increase efficiency in the processing of adjudicative filings and in posting them to the FTC Web site. The new

protocol ultimately will enable the FTC's Records and Filings Office (RFO) to determine whether to discontinue manually scanning administrative litigation filings.

- **Reducing Litigation Burden.** The growing use of sophisticated electronic systems and software in litigation matters requires the FTC to keep its technology current to permit the agency to present its cases in various courts as effectively as possible. The FTC has developed the ability to interface with computerized document production systems that allow law firms to provide documents and information to the agency more efficiently. In addition, the FTC has initiated an across-the-board review of the mergers and acquisitions review process. The results of this review will be used to make improvements in internal processes and modernize the tools utilized by staff attorneys.
- **Efficiencies in Public Comment Processing.** In FY 2004, the FTC implemented a standard protocol for processing public comments on proposed agency actions, which includes receiving paper and electronic comments, scanning paper comments, logging the comments into the agency's management information system, distributing them to staff, redacting personally identifiable information, formatting comments for posting on the FTC's Web site, and sending comments to the public record. In FY 2005, the Records and Finance Office (RFO) within the FTC's Executive Director's Office greatly expanded its use of Web forms for submission of electronic comments – utilizing Web forms not only for rulemaking proceedings, but also for agency workshops and studies. The RFO was also actively involved in the interagency group working on the first release of the government-wide electronic rulemaking system, the Federal Docket Management System (FDMS). FDMS will greatly expand the current capabilities of regulations.gov and will enable federal agencies to organize and manage rulemaking dockets (including public comments) electronically.
- **Developing e-Procurement.** The FTC's planned and ongoing procurement enhancements are designed around the Integrated Acquisition Environment (IAE), one of the Administration's e-government initiatives. The FTC conducts the majority of its acquisition processes electronically including issuance of solicitations and receipt of proposals. The FTC will continue to identify acquisition tasks suitable for electronic processing.
- **Implementing e-Travel.** In FY 2004, the FTC contracted with an e-Travel service provider and began work to implement a Web-based e-travel system. It will provide FTC staff with an automated reservation system and a paperless travel authorization and expense report process, which will be integrated with the agency's accounting system. Full implementation is expected in early FY 2006.
- **Improving Productivity.** The FTC is embarking on development of an efficient and effective document management system, which will be deployed by early FY 2006. The fundamental system goal is to streamline and automate the process of sending documents and other information through any electronic channel (*e.g.*, Internet, database, e-mail), in any spoken language, regardless of its original data format. The cycle of creating, editing, approving, publishing, and removing outdated content traditionally has been time-consuming and inefficient. Upon deployment of the document management system, the agency will re-engineer work processes to enable

targeted and accurate interchange of electronic information without technological and administrative barriers. In FY 2005, organization-specific repositories were developed to improve the management of critical documents.

- **Computer Security.** Computer security continued to receive major emphasis during FY 2005. The FTC strengthened security controls on individual desktop computers, servers, and switches; established baseline installations for servers and workstations; conducted a Data Security Assessment and an Infrastructure Redundancy Assessment to continue to improve the security posture of the FTC; and refined the Computer Security Incident Response Team policy and processes. The annual Inspector General evaluation concluded that the FTC's computer network is more secure now than at the same time last year.
- **Infrastructure Enhancements.** In FY 2004, the FTC researched, tested, and installed performance testing tools that allow real-time monitoring of information technology infrastructure, so that system failures are identified as they occur. In addition, the agency installed load balancer devices to support all Web servers. The load balancer distributes requests for services among a group of servers, resulting in a more responsive system in the event of a system failure. New redundant high performance servers were installed to improve the reliability and availability of the FTC's critical applications. In FY 2005, the FTC tested and installed a storage area network providing the ability to consolidate storage across many servers and applications. A test and acceptance network was implemented to provide an environment to validate and upgrade processes and procedures prior to production implementation. In addition, the agency installed a Blackberry Enterprise solution, which consists of Blackberry devices distributed to clients and two Blackberry servers to allow agency staff quick access to e-mail when out of the office. Legacy firewall and Web server architectures were replaced to improve reliability and availability of the agency Web site and critical applications. Also, the relational database management system was upgraded in preparation for the upgrade of several major applications.

Initiative: Improved Financial Performance

- **Audited Financial Statements.** Before there was a statutorily mandated requirement, the FTC prepared Audited Financial Statements in a timely manner that complied with government-wide accounting standards for nine consecutive years (1997 - 2005). Each year, the agency has received an unqualified opinion with no material weaknesses. The FTC's audited financial statements for FYs 1998 - 2005 can be viewed at <http://www.ftc.gov/oig/oigaudit.htm>. Beginning in FY 2004, the financial statements, notes, and other required supplementary information formed Part III of the agency's Performance and Accountability Report (see **Linking Goals and Objectives to Results** below).

- **Accurate and Timely Financial Information.** The FTC maintains a small, highly skilled, in-house financial staff and contracts with the Department of Interior's National Business Center for more routine accounting, payroll, personnel, and voucher payment services. The result is the best use of agency resources and a significant improvement in the accuracy and timeliness of financial data available to agency managers. The FTC meets all Treasury, OMB, and agency financial reporting deadlines.
- **Federal Accounting and Transaction Standards.** The FTC is in general compliance with all federal accounting principles and standards. The FTC's accounting system conforms in all material respects with the principles, standards, and related requirements specified in the Federal Financial Management Improvement Act of 1996. The Joint Financial Management Improvement Program has evaluated and qualified the American Management System's Federal Financial System (FFS) software used by the FTC through the National Business Center.
- **Integrating Financial and Performance Management Systems.** The FTC maintains a data warehouse, updated daily, that accommodates both financial and program performance data. Costs are related to mission activities in the data warehouse, which supports day-to-day operations. Efforts are continuing to improve the integration of the data by tying a broader range of costs (e.g., training, information technology, performance awards, furnishings) to program performance activities in the financial system.
- **Purchasing Improvements.** The FTC improved financial services for credit card transactions. Financial staff were trained on a new and interactive online verification and reconciliation system for credit card transactions. Guidance and instructions were developed and issued. To ensure FTC credit card users are familiar with the new process, training and certification requirements were established. The FTC also expanded the use of GSA Advantage, an online supply purchasing system, to its operating bureaus. This system permits online purchase of supplies at a competitive price through a streamlined and paperless acquisition process.
- **Debit Cards.** The FTC has implemented a small pilot program for the use of debit cards to pay for authorized expenses. The agency plans to use debit cards to pay invitational travelers for per diem travel expenses for meals and incidentals and for local taxi allowances. We are considering other uses of the card.

Initiative: Integrating Budget and Performance

- **Integrating Planning/Evaluation and Budget.** The FTC assigns responsibilities to its budget staff according to program area. The FTC's Budget Office works closely with the programs to build budget plans that ensure the most efficient use of the agency's resources to achieve the goals of the annual Government Performance and Results Act (GPRA) Performance Plan. The agency also monitors implementation of operating plans by programs through the use of financial systems and periodic reports. The Budget Office conducts detailed reviews of the status of programs' budget execution throughout the fiscal year to ensure that funds are sufficient to meet objectives. The FTC requires

program managers to report on GPRA Performance Measures each quarter, and the FTC's Commissioners review this information twice a year.

- **Linking Goals and Objectives to Results.** In November 2005, the FTC published its third Performance and Accountability Report (PAR) linking its FY 2005 goals, objectives, performance, and audited financial statements. In addition, the FTC's Strategic Plan for FYs 2003 - 2008, developed under the GPRA, identifies five-year strategies and performance measures that are an integral part of each fiscal year's budget request. The Strategic Plan articulates strategies and measures that effectively relate to outcomes and that integrate budget and performance. The annual GPRA Performance Plans provide an assessment of the savings and benefits to consumers and businesses expected from the requested level of resources. Budget requests are tied to the GPRA objectives, and all requests to increase resources are justified in the Performance Plan and are tied to programs. The FTC's PARs, Strategic Plan, and Performance Plans can be viewed at <http://www.ftc.gov/opp/gpra/index.htm>.
- **Aligning Budget Accounts and Program Activities.** The agency allocates resources to programs based on program goals and workload projections. As workload projections change throughout the year, the agency shifts resource allocations accordingly, making certain to comply with congressional parameters. The FTC uses its annual GPRA Performance Plan as the guideline to align agency resources to achieve targets. FTC budget staff work closely with program managers to ensure alignment of budget accounts, staff, and program activities to support program goals.
- **Integrating Technology.** The FTC implements a life cycle management approach to managing and developing agency technology. Through this approach, the agency identifies existing products and services, determines how frequently each should be reassessed, and schedules reassessments for the next several years. When a new project is proposed, technical staff evaluate its cost and relative need, and, if the project is justified, make a recommendation to senior program managers. Review and decision-making by program managers ensures that technological projects are aligned with the agency mission and integrated with performance in budget requests.
- **Improving Integration.** The agency is working to improve the link between performance and budget, both by refining the selection and the measurement of performance goals and measures and by developing improved management processes for data use and analysis. Over time, this work will enhance agency performance by improving the quality, access, and timeliness of management information throughout the FTC.
- **Financial Management 5-Year Strategic Plan.** In FY 2004, the FTC adopted a 5-year strategic plan to institute a state-of-the-art, integrated core financial management system that encompasses accounting, budget, acquisitions, and performance measurement requirements. The goal is to offer FTC managers and staff accurate and timely financial management data and flexible query and reporting tools in a one-stop, easy-to-navigate system. In FY 2005, the Financial Management Office completed its "as-is" function diagramming and began efforts to define its requirements for a new financial management system.

Consumer Protection Mission

Consumer Protection Mission

Budget by Program

(\$ in thousands)

	Fiscal Year 2006		Fiscal Year 2007	
	FTE	Dollars	FTE	Dollars
Privacy & Identity Protection	34	\$4,600	34	\$4,700
Financial Practices	41	7,100	41	8,400
Marketing Practices	132	23,200	132	24,100
Advertising Practices	64	8,500	64	8,900
Enforcement	46	6,200	46	6,500
Planning & Information	48	11,300	48	13,300
International Consumer Protection	10	1,300	10	1,500
Consumer & Business Education	18	3,000	18	3,500
Economic & Consumer Policy Analysis	5	600	5	700
Program Management	26	3,500	26	3,600
	424	\$69,300	424	\$75,200
Subtotal Direct Mission				
Mission Support	143	47,700	143	49,800
	567	\$117,000	567	\$125,000
Total Mission				

The Consumer Protection Mission is advanced by five law enforcement programs – Privacy and Identity Protection, Financial Practices, Marketing Practices, Advertising Practices, and Enforcement – augmented by Planning and Information, International Consumer Protection, Consumer and Business Education, Economic and Consumer Policy Analysis, and Program Management. Staff in the Commission’s seven regions also support the mission by bringing a variety of consumer protection cases in the programs and maintaining important contacts for state Attorneys General and other state and local consumer protection officials.

Privacy and Identity Protection Program

The mission of the Privacy and Identity Protection Program is to protect the privacy and security of consumers’ sensitive personal information, while balancing the benefits to consumers and competition from the flow of information in our marketplace economy, and to help consumers prevent, mitigate, and remediate the damage caused by theft of their identities. This program uses a mixture of law enforcement, consumer and business education, victims’ assistance, information gathering, industry outreach, and technical assistance to Congress to accomplish this mission.

- **Consumer Privacy:** The Privacy and Identity Protection Program takes a leading role in nationwide efforts to protect consumers from unfair, deceptive, or other illegal practices related to their privacy. A central part of this program is law enforcement under Section 5 of the FTC Act, including cases in which companies have misrepresented their policies about the use or security of personal information they collect from consumers or failed to take appropriate steps to protect the security of sensitive personal information. In addition to its enforcement efforts, the Commission has continued to encourage the development of effective self-regulatory approaches in this area. Through workshops, testimony, reports, and consumer and business education, the Commission seeks to understand and respond to developments, including new technologies that affect consumer privacy. In the area of financial privacy, the Commission enforces its rule implementing the privacy provisions of the Gramm-Leach-Bliley Act. The Commission also enforces its Safeguards Rule, which requires financial institutions to implement reasonable administrative, technical, and physical safeguards to protect customer records and information.

- **Accuracy and Privacy of Credit Information:** The Privacy and Identity Protection Program works to ensure the accuracy and privacy of consumer financial information that is used to screen applicants for loans, jobs, and insurance. This effort is pursued through enforcement of the Fair Credit Reporting Act (FCRA), which holds credit bureaus and furnishers of information responsible for the accuracy of credit information, gives consumers the right to check and correct their credit reports, limits how such financial information can be used, and requires reasonable procedures to ensure that such information is obtained only by entities with a permissible purpose to use it. The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) made sweeping changes and additions to the FCRA, and the program is engaged in the rulemakings, studies, and other proceedings required by that statute.

- **Identity Theft:** The Identity Theft and Assumption Deterrence Act of 1998 charged the FTC with developing a centralized consumer complaint and education service for victims of identity theft. The FTC's Privacy and Identity Protection Program is the leading source of information for consumer assistance and law enforcement training in this area. The mission's toll-free number enables callers to report incidents of identity theft and receive information on ways to minimize their exposure to identity theft and repair the harm inflicted by this crime. These complaints are entered into the FTC's Identity Theft Data Clearinghouse, which domestic law enforcers can access through the *Consumer Sentinel* system. Through fiscal year 2005, the Clearinghouse contains more than 940,000 identity theft complaints. Moreover, the program has distributed nearly 4.5 million print and electronic copies of our two main ID Theft consumer education booklets. The program participates in a network of public and private sector efforts that address the problem of identity theft. The program has conducted training sessions on identity theft issues for more than 2,780 law enforcement officials from more than 980 agencies.

Financial Practices Program

The Financial Practices Program promotes truthfulness and fairness in the provision of financial services and the use of financial information. Financial services play important roles in the daily lives of virtually all Americans, who use credit cards, borrow money, or otherwise engage in financial transactions. The Financial Practices Program identifies and

addresses these issues, so that consumers continue to benefit from the widespread availability of financial services.

- **Lending Fraud:** The Financial Practices Program leads nationwide efforts to enforce laws against deceptive or fraudulent lending or loan servicing practices, particularly in the subprime lending market. Discrimination in credit granting or pricing violates the Equal Credit Opportunity Act, which the FTC enforces.
- **Debt Collection:** Abusive debt collection practices can contribute to personal bankruptcy, job loss, and other financial problems, and are prohibited by the Fair Debt Collection Practices Act. The program uses enforcement and education to raise the standards in this area.
- **Credit Counseling:** While credit counseling can provide financially distressed consumers with valuable assistance, some firms mislead consumers about who they are, what they do, or how much they charge. Victims of the deception may find themselves in even more dire financial straits than before. Along with our law enforcement partners, the program works to protect consumers in this critical area.
- **Costs of Credit:** Another focus of the program is ensuring that consumers have accurate cost information before they enter into credit transactions – information that permits them to compare offers and make informed purchasing decisions. The Commission pursues this goal by challenging deceptive advertising about credit terms, including enforcement of the Truth-in-Lending Act.
- **Deception Relating to Other Financial Services:** The program broadly targets deception in the provision of a diverse array of financial products and services and payment systems.

Marketing Practices Program

The Marketing Practices Program fights schemes that use high and low technology to defraud consumers. The program studies trends, brings law enforcement actions, conducts regulatory and policy reviews, and educates consumers about deceptive practices relating to sales of consumer goods and services. The priorities of the program reflect fraudulent and deceptive schemes causing the greatest harm to consumers.

- **Internet Fraud:** The Marketing Practices Program leads the FTC's law enforcement effort to stop fraud from overrunning the Internet. The core of the program rests on staff training to keep pace with the latest Internet schemes; undercover surveillance; and rapid law enforcement response when fraudulent schemes are detected. Marketing for all non-health related goods and services are included in this program.
- **Spam:** The Marketing Practices Program coordinates the FTC's development of law enforcement strategies to deter the deceptive or unfair use of unsolicited commercial email, typically sent in bulk. The program also studies and prepares reports on aspects of the spam problem, and works with domestic and international partners to identify the most egregious spam problems and take action to stop them. The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), addresses a wide range of practices relating to spam. The CAN-SPAM Act prohibits falsifying either the content or the source of e-mail; prohibits abusive means

of obtaining e-mail addresses to send a high volume of unwanted messages; requires that commercial e-mail be so identified; requires senders of commercial e-mail to allow recipients to “opt out” of future e-mail messages; and requires a warning label for e-mail with sexually oriented material. The CAN-SPAM Act directed the FTC to report to Congress on the feasibility of a Do Not Spam Registry and created new enforcement approaches and penalties.

- **Telemarketing Fraud:** The Marketing Practices Program enforces the FTC’s Telemarketing Sales Rule (TSR), and uses Section 5 of the FTC Act to halt deceptive telemarketing schemes. Working closely with the regional offices, state Attorneys General, and other public and private sector partners, the program targets areas for law enforcement, organizes enforcement sweeps, and helps publicize consumer and business education information to reduce telemarketing fraud.
- **Do Not Call:** The Marketing Practices Program developed the FTC’s Do Not Call amendments to the TSR, and leads the enforcement, compliance, and education programs to implement these amendments.
- **Telecommunications and New Technologies:** The Marketing Practices Program enforces Section 5 of the FTC Act to challenge practices that use various components of the telecommunications system to victimize consumers. Studying new communications technologies helps staff anticipate opportunities for fraud and stop those frauds when they emerge. The convergence of various applications onto single devices, whether for communications, payment, entertainment, or other purposes, raises important consumer protection issues, and the program is leading the agency’s work to stay abreast of these developments.
- **Investment Opportunity Fraud:** The Marketing Practices Program enforces the FTC’s Franchise Rule and uses Section 5 to combat fraudulent and deceptive practices in the sale of franchises, business opportunities, and other investment opportunities. In order to use FTC resources most effectively, the program coordinates with the Securities and Exchange Commission and state authorities and concentrates FTC resources on frauds and schemes that fall outside of those other authorities’ jurisdictions.
- **Warranties and Contracts:** The Marketing Practices Program has responsibility for enforcement of the Magnusson-Moss Warranty Act and its implementing rules.

Advertising Practices Program

The Advertising Practices Program enforces the nation’s “Truth-in-Advertising” laws. Whether ads appear on television or radio, in newspapers or magazines, or on the Internet, these laws require companies to tell the truth and to back up their claims with reliable, objective evidence. The program uses a variety of tools to protect consumers from misleading claims, including bringing law enforcement actions in federal and administrative courts, providing guidance to industries, advocating effective self-regulation by the advertising industry and better ad screening by the media, and providing consumer and business education. Working to protect consumers’ health, safety, and economic interests, the program’s efforts span a broad range of products and practices.

- **Advertising in New Media:** New technologies have opened new avenues for companies to communicate useful product information to prospective customers. Although the medium may be innovative, the FTC Act's basic principle that advertising must be truthful and substantiated remains applicable. The Commission has taken a lead role in addressing the privacy, security, and other risks of consumer harm associated with new technologies, recently spyware and peer-to-peer file sharing in particular. The Advertising Practices Program has held public workshops, issued reports, brought law enforcement actions, encouraged industry self-regulation, and engaged in consumer education to prevent harm from the risks of spyware and peer-to-peer file sharing.
- **Advertising for Foods, Over-the-Counter Drugs, Dietary Supplements, and Medical Devices:** The Advertising Practices Program devotes substantial resources to ensuring the accuracy of health claims in advertising and takes action against companies making deceptive representations. The program also works with the dietary supplement industry by providing guidance to encourage accuracy in claims for these products. In recent years, the FTC has scrutinized the marketing of health care products advertised through infomercials and other forms of mass media marketing. In addition to traditional law enforcement actions, the FTC creates education materials to help companies develop adequate substantiation and information to help consumers spot deceptive claims.
- **Health Care and Weight Loss:** Each year consumers spend billions of dollars purchasing pills, potions, new technologies, and therapies for health and weight loss. The Commission works with other federal agencies and other partners to combat misleading claims by providers of these products and services. Law enforcement actions are accompanied by innovative initiatives such as the Red Flags Initiative, a campaign to assist media outlets in voluntarily screening weight-loss product ads containing claims that are too good to be true. Other program activities include reporting on trends in weight loss advertising, holding workshops to explore ways to reduce fraudulent weight loss advertising and to evaluate industry efforts to decrease childhood obesity, and conducting consumer education campaigns to assist consumers in avoiding fraudulent weight loss products.
- **Marketing Violent Entertainment to Children:** The Commission has long been a leader in protecting children from unfair or deceptive advertising and marketing practices. In recent years, the program has been an important voice in the ongoing debate about the marketing of violent entertainment to children. The Advertising Practices Program conducted a 15-month study of the marketing of violent movies, music, and video games to children, culminating in a September 2000 report, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*. Pursuant to Congressional requests, the program has completed follow-up reports and surveys and held a workshop on whether violent R-rated movies, explicit-content labeled music, and M-rated electronic games are advertised in popular teen media and whether ratings information is included in the advertising. The program has created a page on the Commission's Web site providing information on this issue, as well as access to an online consumer complaint form.
- **Tobacco and Alcohol Advertising:** The Advertising Practices Program leads the Commission's efforts to stop the deceptive or unfair marketing of tobacco and alcohol.

The program also administers federal laws governing the rotation of health warnings on ads and packaging for cigarettes and smokeless tobacco; publishes reports on cigarette and smokeless tobacco advertising and marketing; and enforces the “broadcast ban” on advertising for smokeless tobacco. It monitors self-regulation of the alcohol advertising industry and encourages improved standards and compliance; the program has completed two reports to Congress on this issue.

Enforcement Program

The Enforcement Program focuses on deceptive advertising and marketing practices that cause consumers economic losses and on enforcing Commission orders prohibiting unfair or deceptive practices. The program coordinates the Hispanic Law Enforcement Initiative, which addresses the growing problem of deceptive advertising aimed at Spanish-speaking consumers. It also ensures that individuals and companies ordered to stop unfair or deceptive practices do, in fact, stop, and brings actions for civil and criminal contempt for violations of federal court orders and civil penalty actions for violations of administrative orders. Targeted practices recently have included deceptive health claims for supplements made in violation of FTC orders; deceptive marketing of work-at-home and other business opportunities marketed to Hispanic consumers, and English language and vocational instructional programs; and negative option marketing of various services and products. The program also enforces laws and rules that require sellers to provide consumers with the critical information required for accurate comparisons and informed decisions. As an adjunct, the program regularly reviews these rules to keep them current. Finally, the program coordinates the Class Action Fairness Project.

- Hispanic Law Enforcement Initiative:** The Enforcement Division coordinates this initiative to prosecute unfair or deceptive practices targeting Hispanic consumers. The program monitors Spanish language media and complaints filed by Hispanic consumers to identify deceptive advertising and practices. The program has initiated law enforcement actions against a variety of frauds targeting Hispanics, including frauds targeting immigrants, such as fake international driver’s permits, bogus English-language courses, and green card lotteries; financial frauds such as advance fee credit cards and purported credit repair services; work-at-home and business opportunity scams; and health fraud, including bogus weight loss products and “miracle” health cures. The program also holds periodic workshops in Hispanic communities across the country to bring local law enforcement, consumer groups, and Hispanic community leaders together to identify consumer protection problems affecting Spanish-speaking consumers and discuss ways to address them more effectively in the future.
- Project Scofflaw:** The Commission challenges fraudulent and misleading practices in federal court and obtains orders that forbid future deceptive practices, provides redress to consumers, and imposes additional relief as appropriate. Because defendants subject to these orders sometimes engage in serious order violations, strong enforcement measures such as civil or criminal contempt actions may be necessary. The Enforcement Program coordinates “Project Scofflaw,” which systematically tracks defendants under FTC-related federal court orders, identifies violators, pursues civil contempt remedies as appropriate, and works with criminal authorities to prosecute violators for criminal contempt. Since Project Scofflaw began in 1996, 30 defendants have been sentenced to a total of 124 years of incarceration

or home detention. In addition, since 1996, defendants have been ordered to pay \$66 million in restitution.

- **Compliance with Commission Orders:** Violations of the FTC Act may result in an administrative order, directing the responsible individuals or companies to stop their unlawful practices. The program monitors those under order to ensure that they stop their deceptive practices and fulfill any affirmative obligations, such as providing redress to injured consumers. Oversight of companies' practices is accomplished by reviewing reports that companies must submit shortly after the Commission issues the order to demonstrate that they have changed their conduct. At other points in time, investigations are conducted to assess whether companies under order are in compliance. If a company's practices violate an order, the program typically contacts the company to make sure it understands its obligations. This usually results in full compliance. In some instances, however, because of the egregiousness or willfulness of the violative conduct, formal action and civil penalties are sought to stop and deter additional violations.
- **Criminal Liaison Unit:** The Criminal Liaison Unit (CLU) is dedicated to encouraging criminal prosecution of consumer fraud by coordinating with criminal law enforcement authorities on consumer fraud cases. CLU identifies law enforcement agencies and case agents for specific types of consumer fraud cases, educates criminal law enforcement authorities about the FTC and its mission, and coordinates training of FTC staff by criminal law enforcement to help staff prepare cases for referral and ensure smooth progress of parallel prosecutions.
- **Practices Causing Economic Injury:** The program has prosecuted fraud artists preying on consumers concerned about finding jobs and financial assistance for college. Specifically, the program has targeted firms advertising nonexistent U.S. Postal Service jobs as a way to sell useless exam materials and telemarketers who falsely promise "guaranteed" college grants or scholarships. It also has challenged the deceptive telemarketing of work-at-home opportunities, including telemarketing that targets Spanish-speaking consumers. Consumer education plays an important role in addressing these types of fraud. The Commission, in cooperation with the Departments of Justice and Education, submits a report annually to Congress on scholarship fraud. The program also targets firms that offer products and services, such as memberships in buying clubs or discount health services, on a free trial or negative option basis without adequately disclosing that consumers' credit or debit cards will be charged unless they cancel before the end of the trial period or the next product shipment.
- **Products and Services (Over)Promising Health Benefits:** The Enforcement program monitors infomercials and other advertising for exercise devices that deceptively promise quick and easy weight loss, initiating law enforcement and other follow-up action as appropriate. The program also has targeted the deceptive marketing of skin patches and supplements that purportedly provide health benefits such as weight loss. In addition, the program has targeted firms making allegedly deceptive claims that electronic devices eliminate or repel pests, such as rodents, mosquitoes, and other insects.
- **Rule Enforcement:** The Enforcement Program enforces a variety of laws, rules, and guidelines that require sellers to provide consumers with important pre-purchase

information. For example, the Energy Rules require the disclosure of energy costs of home appliances, octane ratings of gasoline, estimated cruising range and general descriptive information for alternative fuel vehicles, and the efficiency rating of home insulation; the Mail or Telephone Order Rule requires sellers to ship merchandise within the time promised or let consumers know there will be a delay; the Environmental Marketing Guides tell marketers how to advertise the environmental benefits of their products without misleading consumers; and the Care Labeling Rule requires clothing to be labeled with cleaning instructions. Through educational efforts and answers to direct inquiries, the program helps consumers and businesses understand their rights and obligations. If a company's practices significantly violate a rule, the program pursues formal action and civil penalties.

- **Regulatory Reform:** Keeping rules and guides up-to-date so they continue to be meaningful, and repealing outdated, unnecessary ones is an important role of the program, accomplished by reviewing all rules and guides every 10 years. Of the non-statutory rules and guides in effect in 1992, more than half have been rescinded. Of those rules and guides reviewed and retained, most were updated, streamlined, or consolidated, in some cases to harmonize requirements with international standards to facilitate international trade. The Commission recently amended the R-value Rule and completed its review of the regulations issued pursuant to the Hobby Protection Act. The Commission currently is considering whether to revise several other rules and guides.
- **Class Action Fairness Project:** The program monitors consumer class action settlements nationally to identify cases that may not provide appropriate benefits to consumers and where class counsel may be benefitting at the expense of class members. The focus is on matters that provide non-pecuniary benefits to the class and actions that piggy-back on FTC cases. The Commission files amicus briefs or intervenes in class actions as appropriate to assist courts in their review of proposed class action settlements. The program held a workshop on "Protecting Consumer Interests in Class Actions" in 2004.

Planning and Information Program

The Planning and Information Program develops, analyzes, and supplies information to assist in targeting law enforcement and educational efforts, measuring the impact of mission activities, and allocating resources. The program is responsible for various projects and functions, including:

- **Consumer Sentinel:** *Consumer Sentinel* is a multi-national, multi-state consumer fraud database that provides law enforcement with secure Internet access to nearly 2.7 million consumer fraud complaints (not including Do Not Call Registry complaints) as of September 2005. Currently, more than 1,425 law enforcement organizations across the U.S., Canada, and Australia have access to this tool. The site provides law enforcement access to telemarketing, direct mail, and Internet complaints from the FTC's CIS database and from various law enforcement partners. The site also provides other information useful for investigations and prosecutions. A public view of *Consumer Sentinel*, located at www.consumer.gov/sentinel, provides the public with consumer fraud trend data, and information on how *Consumer Sentinel* serves the public. Statistics also are provided in response to law enforcement, media, and Congressional requests.

- **Consumer Response Center and Consumer Information System:** The Consumer Response Center responds to consumer complaints and inquiries received by the toll-free consumer complaint lines, 877- FTC-HELP and 877-ID-THEFT, and postal and electronic mail. Information from these complaints is collected in the Consumer Information System (CIS) and used to target law enforcement and consumer and business education programs. In fiscal year 2005, one million complaints and inquiries (not including Do Not Call Registry complaints) were added to the FTC's database.
- **National Do Not Call Registry:** The program is responsible for operation and maintenance of the National Do Not Call Registry. Through this registry, subsequently adopted by the Federal Communications Commission, consumers can elect not to receive telephone solicitations from telemarketers. Telemarketers are required to scrub their calling lists to remove any telephone numbers included in the registry. The registry has logged more than 110 million telephone numbers.
- **Internet Lab:** To stay abreast of the technology used to defraud and mislead consumers, the mission established an Internet Lab. Built as a stand-alone network, the Lab is essential to attorneys' and investigators' ability to use technology to detect and capture deceptive activity (e.g., phishing sites; spyware) that harms consumers. The Lab maintains a database of unsolicited commercial e-mail (spam), submitted by the public to spam@uce.gov, that is used by FTC investigative staff. The spam database currently receives, on average, more than 300,000 new pieces of spam every day. The total number of spam sent to the FTC has grown from 700,000 in 1998 to more than 285 million. The Lab also is used to facilitate surf days, support litigation, and provide training.
- **Operations:** The program administers the core financial, administrative, and litigation support activities of the consumer protection mission. In addition, the program manages the agency's consumer protection redress activities and the Bureau's bankruptcy and redress programs, which support litigation throughout the bureau. These efforts seek to maximize recovery of assets for consumer redress. Another important responsibility is the coordination of strategic planning and performance measurement. Strategic planning is integrated with budgeting to provide a roadmap to guide staff activities and accomplish the mission's goals and objectives.

International Consumer Protection Program

The International Consumer Protection Program addresses consumer protection issues associated with the globalization of the marketplace. It works to build international consumer protection enforcement cooperation and to foster the development of an international market-based consumer protection model that focuses on maximizing economic benefit and consumer choice, and on protecting consumers from significant harm.

- **International Enforcement Cooperation:** With advances in technology, spammers, spyware operators, fraudulent telemarketers, and other scam artists can strike quickly on a global scale, victimize thousands of consumers in a short time, and disappear nearly without a trace – along with their ill-gotten gains. Not surprisingly, an increasing number of complaints the FTC receives involve international transactions, and an increasing number of law enforcement investigations the FTC undertakes involve some international component. As a result, the Commission has

implemented a comprehensive program to combat cross-border consumer protection law violations. For example, the FTC is working with Congress on a legislative recommendation that would improve the FTC's ability to combat cross-border consumer protection law violations. The FTC continues to develop new bilateral and multilateral enforcement partnerships and to strengthen existing ones. In January 2005, the FTC announced that it had entered into a new consumer protection enforcement memorandum of understanding (MOU) with its counterpart consumer protection agency in Mexico. The FTC also continues to work closely with Canadian agencies on cross-border telemarketing issues. It is building a network of cooperation to combat illegal spam. During 2004, the FTC formed the "London Action Plan on International Spam Enforcement Cooperation," endorsed by 26 agencies from 20 countries and 7 private sector organizations from four continents. London Action Plan participants share information, investigative techniques, and enforcement strategies through periodic conference calls. The FTC also announced a trilateral MOU on spam enforcement cooperation in July 2004 with agencies in Australia and the UK, and in February 2005, the FTC announced a similar MOU with a Spanish data protection agency.

- **Promoting Market-Oriented Consumer Protection Policies:** The International Program advocates U.S. consumer protection policies abroad so that we can protect U.S. consumers and defend U.S. consumer interests. As compared with the approach of other countries, the U.S. approach to consumer protection emphasizes vigorous enforcement of the key rules that protect consumers from significant harm. This approach helps legitimate businesses by reducing their compliance costs, and these cost savings can be passed on to consumers. Consumers also benefit because lower compliance costs for businesses will encourage entry into the marketplace, thereby increasing competition, increasing consumer choice, and lowering prices. Finally, consumers benefit from government policies that protect them from significant harm, such as harm that results from fraud and deception. For these reasons, engaging in international discussions and initiatives on consumer protection policy is important. Examples of the FTC's work in this area include international discussions on consumer redress, promoting truthful health advertising, explaining the merits of the U.S. approach to privacy, and supporting international initiatives to promote linkages between competition and consumer policies.

Consumer and Business Education Program

The Consumer and Business Education Program plans, develops, and implements creative, practical, plain language campaigns that are mission-related and directed to both broad and segmented consumer and industry audiences. These efforts encourage informed consumer choice and competitive business practices in the marketplace, and are essential to help minimize consumer injury and obtain compliance with the law. To leverage limited resources, the program partners with businesses, trade associations, consumer groups, and other government agencies when appropriate; exhibits at national conferences and conventions; and produces public service messages for radio, print, and the Internet. A consumer and/or business education component is integrated into each major consumer protection law enforcement initiative. Specific efforts include:

- **Mission Promotion:** The Consumer and Business Education Program's activities brand the FTC as the nation's consumer protection champion. Through public

information campaigns, the program helps consumers recognize and avoid fraud and deception, and increases consumer awareness of the agency's toll-free telephone number and the online complaint form.

- **Publications Program:** Every year, the Consumer and Business Education Program produces an estimated 100 new or revised publications to alert consumers and businesses to their rights and responsibilities in the marketplace. These publications, presented in a variety of formats, are disseminated through a network of thousands of intermediaries who order bulk copies for their own constituents. The program distributes millions of print copies of its publications each year, and consumer and business information on the agency's Web site logs more than a million unique page views each month. The program produces consumer information that is released to thousands of broadcast, print, and online media, and hosts abbreviated audio versions of its print publications on the agency Web site. The program is widely recognized for excellence by other government communications professionals.
- **Hispanic Outreach:** To reach the growing population of Hispanic consumers in the U.S., the program instituted a Hispanic Outreach initiative in 2002. The program disseminates consumer and business information in Spanish, provides consumer news to the Spanish-language media, and builds partnerships with national and community leaders, organizations, associations, and government agencies. The centerpiece of the initiative is a Web site, www.ftc.gov/ojo, that mirrors the English-language page. The program also coordinates workshops on outreach and enforcement with regional offices, local law enforcement partners and community-based organizations.
- **Non-traditional Education Program:** The program uses a variety of non-traditional methods for disseminating its practical, plain-language information. For example, the program produces:
 - ▶ “Teaser” Web sites that mimic fraudulent sites in an attempt to reach consumers at “the teachable moment” – when they are searching online for a particular product or service. The program creates products and services that are “too good to be true” but that attract consumer attention. After one click, the site explains that the consumer could have been scammed. The “gotcha” page links to the relevant consumer information. (Examples: www.wemarket4u.net/sundaestation; www.wemarket4u.net/fatfoe)
 - ▶ Electronic cards take advantage of special days by allowing consumers to share consumer protection messages with family and friends. (Examples: the Father's Day card at www.ftc.gov/dad or www.ftc.gov/padre shares some tips on avoiding phishing scams; the Mother's day card at www.ftc.gov/mom or www.ftc.gov/madre focused on tips for keeping personal information secure.)
 - ▶ Web “banner” public service messages that are posted on the FTC Web site, distributed and marketed to partners and news media, and are available for downloading.
 - ▶ Classified “ads” that, sent to newspapers, run on a space-available basis.

- **Financial Literacy and Education Commission:** The FLEC was established under the FACT Act to improve financial literacy and education in the United States. The FTC is one of 19 agencies that participates on the FLEC, contributing its expertise to both the Web site subcommittee and Content Working Group and the National Strategy Working Group. The Web site – www.mymoney.gov – and its accompanying toll-free Hotline – 1-888-MYMONEY – debuted in October 2004 and links to more than 60 FTC publications in English and Spanish.
- **National Consumer Protection Week:** Since 1999, the program has taken the lead in organizing National Consumer Protection Week (NCPW) on behalf of the agency. The purpose of NCPW is to help local jurisdictions highlight consumer protection and education efforts. Other organizations on the steering committee include AARP, Consumer Federation of America, Council of Better Business Bureaus, Federal Consumer Information Center, National Association of Attorneys General, National Consumers League, National Association of Consumer Agency Administrators, U.S. Postal Service, and the U.S. Postal Inspection Service.
- ***www.consumer.gov*:** The Consumer and Business Education Program launched this “one stop” site for federal consumer information with four partner agencies in December 1997. Today, the site links to consumer information, arranged topically, from more than 180 federal agencies. It also has become the consumer information portal for *firstgov.gov*. *Consumer.gov* houses special initiatives, such as the federal government’s ID Theft Clearinghouse Web site, and the Partnership for Healthy Weight Management’s Web site. The *consumer.gov* Web site houses two additional important microsites: *consumer.gov/sentinel* and *econsumer.gov*, which support the mission’s information and complaint collection activities and give consumers an opportunity to learn about trends in fraud and consumer protection activities locally, nationally, and internationally.

Economic and Consumer Policy Analysis Program

The Economic and Consumer Analysis Program supports economic projects and advocacy activities that foster understanding of consumer good markets and consumer protection policy choices. The program also aims to ensure that consumer interests are represented before various governmental and self-regulatory bodies dealing with consumer-related issues. Among the types of activities supported by the program are:

- **Advertising Research and Data Development:** To advance the development of sound advertising policy this program supports data and research projects analyzing how advertising claims and policies affect consumers’ and firms’ decisions. Recent studies examined the effects of different types of disclosures on consumer understanding of advertising claims for foods and dietary supplements and the nature of food advertising to children. The program also supports the on-going study of nutrition-related claims in food advertising to allow us to better evaluate longer-term advertising issues.
- **Economic Studies of Markets for Consumer Goods and Services:** The program also supports targeted economic studies of issues in consumer goods markets that are important to improving our understanding of key consumer protection issues. Recent

examples include a completed study of consumer understanding of proposed RESPA disclosure forms, and an ongoing study of consumer shopping behavior and use of disclosure forms in obtaining mortgages. The program also supports workshops with outside experts in relevant areas, such as the research roundtable on developments in the internet auction market.

- **Economic Support of Consumer Protection Advocacy:** This program also includes support for Bureau of Economics staff to provide input for advocacy comments on issues related to the consumer protection mission. In recent years, the program has supported comments to the FDA on trans fatty acids in nutrition labeling; the link between weight management and food labels; direct-to-consumer prescription drug advertising; qualified health claims in the labeling of foods and dietary supplements; to the Federal Reserve Board on changes to Regulation E, which governs the use of electronic payment mechanisms; and to the US Mint on the use of civil penalties for misuse of words, letters, symbols, and emblems of the Mint.

Program Management

The goal of the Consumer Protection Mission is to identify, prevent, and stop fraud, deception, and unfair business practices in the marketplace. Under the Mission's strategic plan, resources are devoted to three broad objectives: (1) monitoring the marketplace to identify illegal practices and emerging "frontier" issues and educate Commission staff about them; (2) stopping fraud, deception and unfair practices through law enforcement, regulation, and guidelines, and by encouraging industry self-regulation; and (3) educating consumers and businesses. This program is responsible for the overall management of the Mission and the accomplishment of its goals and objectives.

Since 1995, the Consumer Protection Mission has engaged in mission-wide strategic planning. The benefits have been striking – clear goals for managers and staff, coordination of efforts across the Bureau and the Regional Offices, a greater ability to target resources to confront the most serious problems, the creation of new programs to meet new challenges, and increased efficiency and productivity. In all its activities, the Consumer Protection Mission leverages its resources through private and public sector partnerships and the use of new technologies.

Maintaining Competition Mission

Maintaining Competition Mission

Budget by Program

(\$ in thousands)

	Fiscal Year 2006		Fiscal Year 2007	
	FTE	Dollars	FTE	Dollars
Premerger Notification	24	\$3,300	24	\$3,400
Merger & Joint Venture Enforcement	190	26,200	191	27,200
Merger & Joint Venture Compliance	13	1,800	13	1,900
Nonmerger Enforcement	123	16,800	123	17,500
Nonmerger Compliance	3	400	2	300
Antitrust Policy Analysis	7	900	7	1,000
Other Direct Mission	20	2,700	20	2,800
Subtotal Direct Mission	380	\$52,100	380	\$54,100
Mission Support	127	40,900	127	43,900
Total Mission	507	\$93,000	507	\$98,000

The Maintaining Competition Mission seeks to prevent anticompetitive mergers and to assure that the marketplace is free from anticompetitive business practices. The mission is carried out through six law enforcement-related programs -- the Premerger Notification Program, the Merger and Joint Venture Enforcement Program, the Merger and Joint Venture Compliance Program, the Nonmerger Enforcement Program, the Nonmerger Compliance Program and the Antitrust Policy Program. In each program, staff seek to protect consumers' interests by preventing anticompetitive conduct or mergers without interfering with businesses' legitimate activities.

Premerger Notification Program

Mergers and joint ventures (for convenience, "mergers") can generate efficiencies, and most mergers are either procompetitive or competitively neutral. Mergers that are anticompetitive, however, can raise consumer prices by millions of dollars every year. Such mergers can also significantly diminish product quality and output, consumer choice, and innovation. To find anticompetitive mergers, the FTC relies primarily on the premerger notification required by the Hart-Scott-Rodino ("HSR") Act. To distinguish between mergers that threaten free markets and those likely to promote them, the FTC uses sophisticated economic analysis and thorough factual investigation.

- **Protection against Anticompetitive Mergers and Acquisitions:** Hart-Scott-Rodino Premerger Notification provides the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Prior to enactment of the HSR Act, codified as Section 7A of the Clayton Act, parties often consummated their acquisitions and combined their operations before the antitrust agencies even learned of the transactions, making it difficult, if not impossible, to “unscramble the eggs” and restore to consumers the benefits of competition.
- **Notification Requirements:** The HSR Act requires persons meeting certain size requirements who are planning significant acquisitions to file notification with the Commission and the Department of Justice and to wait for a prescribed period of time before consummation. Thus, if the mergers would harm competition, the antitrust enforcement agencies have a chance to take actions before they occur. A large majority of the Commission’s merger enforcement actions are initiated through this process.

The Premerger Notification Program meets the objectives of the Maintaining Competition Mission by working to:

- **Educate Parties about HSR Requirements:** The Premerger Notification Program works to ensure that parties to transactions understand the information that must be supplied under the HSR Act. To improve the level of voluntary compliance, the program provides assistance to individuals and organizations subject to the HSR Act.
- **Provide Rapid Initial HSR Review:** Mergers reported under the HSR Act vary tremendously in their complexity and potential anticompetitive effect. In the majority of cases, the agency can make a reasonable judgment about whether a merger has the potential to be anticompetitive or procompetitive within a few days of filing, simply by reviewing materials filed with the notification. To identify potentially anticompetitive transactions, the Premerger Notification Office prepares a summary description and a preliminary antitrust analysis of every transaction reported. Those summaries are then reviewed by the Bureau of Competition’s litigation divisions, the Bureau of Economics, and the Merger Screening Committee, a committee with participants from both Bureaus that convenes regularly to consider which matters call for further action.
- **Coordinate with the Antitrust Division of the Department of Justice:** The FTC administers the HSR Program both for itself and for the Antitrust Division of the Department of Justice, which shares authority to challenge anticompetitive mergers. The summaries of transactions prepared by the Premerger Notification Office are provided to the Antitrust Division. The Office also works with the Antitrust Division to ensure that the Premerger Notification Program is applied consistently and uniformly by the two agencies. Through an informal “clearance” process, the two agencies avoid duplicative effort and ensure that only one agency investigates and, if necessary, challenges any given transaction. Assignment to one agency or the other takes place after preliminary review of a transaction, which identifies the likely markets, if any, in which anticompetitive effects may occur. The assignment is based principally on expertise with particular markets.
- **Minimize Burden on Business:** The Program strives to minimize the burden on filing parties, to the extent consistent with enforcement responsibilities of the Commission

and the Antitrust Division, recommending improvements in the HSR rules to be carried out through rule changes and formal interpretations.

Merger and Joint Venture Enforcement Program

As noted above, anticompetitive mergers can harm consumers significantly by raising prices and reducing product quality and output, consumer choice, and innovation. The responsibility of the Merger and Joint Venture Enforcement Program is to prevent these effects in any market in which the Commission has reason to believe a merger is likely to substantially lessen competition, including high-priority areas for consumers: health care, pharmaceuticals, energy, defense, information and technology, and consumer goods and services.

In some instances, it is possible to arrive at narrowly tailored relief, such as partial divestiture, that prevents injury to competition but allows the overall transaction to proceed. In other instances, this cannot be accomplished without preventing the merger entirely or, where this is not possible, undoing it.

Determining whether a merger is anticompetitive, and identifying and obtaining appropriate relief requires thorough investigation to answer fundamental questions about each merger reviewed as to each product market it may affect: Is it likely to result in the lessening of actual or potential competition, increase the market power of the joining firms, and lead to market dominance or a significant increase in the likelihood of collusion? Is it likely to increase barriers to entry or expansion, or foster interdependent conduct among firms? Although this Program focuses primarily on anticompetitive mergers, it also examines interlocking directorates among competing firms, which may have similar effects.

The Merger Enforcement Program uses a three-part process to carry out its mission.

- **Detect Potentially Anticompetitive Mergers:** Staff detects potentially harmful mergers, usually before they occur, by monitoring merger activity and screening premerger notification reports submitted for significant proposed transactions, as required by the HSR Act. The staff also examines mergers not subject to HSR requirements, in some cases after consummation of the merger. Staff investigates those mergers that the screening process has targeted for further inquiry, gathering extensive market information about whether a transaction is likely substantially to lessen competition.
- **Prevent Anticompetitive Mergers:** To protect consumers against mergers that may substantially lessen competition, the preferred strategy -- that is, the most effective and cost-efficient strategy -- is to prevent such mergers before they occur. The Commission implements this strategy primarily through its authority to seek injunctive relief under Section 13(b) of the Federal Trade Commission Act, although it is often able to resolve the competitive problem through consent proceedings without having to seek such an injunction. Where injunctive relief is inappropriate or unavailable, the Commission may rely on its administrative remedial powers to seek to restore competition lost as a result of a merger that could not be prevented. Whether achieved by consent or in an administrative proceeding, the principal remedy is divestiture of assets sufficient to preserve or restore competition, although the Commission has also employed conduct remedies where appropriate.

- **Educate Public about Anticompetitive Transactions:** The Commission's merger and joint venture enforcement program is made more effective by public awareness of the factors it considers as it determines whether to take law enforcement action involving mergers. Through public releases of Commission decisions in various media such as press releases, web page publication, and speeches, the public facts underlying Commission actions provide bases for companies to evaluate the likelihood that other transactions should be avoided because they too would likely face challenge. The Commission's efforts to promote transparency in its decisions include releasing public statements in appropriate instances that explain why it decided not to challenge a merger.

Merger and Joint Venture Compliance Program

Commission orders issued under the Merger and Joint Venture Enforcement Program, whether the products of negotiation or litigation, can achieve the intended results of maintaining or restoring competition only if they are well-designed, made effective in a timely fashion, and are faithfully complied with once they become effective. The Merger and Joint Venture Compliance Program deals with all three of these interrelated issues, sharing the first two concerns with the Merger Enforcement Program and bearing primary responsibility for the third.

- **Consent Agreements and Orders:** The order in a particular merger case, while primarily the responsibility of merger enforcement staff, is devised in conjunction with the distilled experience of compliance staff. When divestiture of assets that are the subject of a consent decree is delayed, the competitive viability of the assets often declines. To avoid delay, the Commission seeks either "up-front" purchase and sales agreements or divestiture orders that limit the time in which divestiture relief is accomplished to the minimum necessary.
- **Execution of Agreements and Orders:** Assuring that such order provisions are as effective as possible, and seeing to their faithful and timely execution, are the principal functions of the Merger Compliance Program. Compliance staff work with merger enforcement staff, merging parties, and buyers to assure that the provisions of the order are properly drafted and that the divestiture package is adequate to achieve the viability and competitiveness necessary to accomplish the purpose of the order.
- **Monitor Divestitures:** Compliance staff closely monitors progress toward divestiture and, where necessary, recommends that fallback order provisions be invoked, such as trustee-managed divestiture, the divestiture of larger asset packages, or, ultimately, civil penalty actions. Civil penalty actions entail investigation and, where necessary, federal court litigation.
- **Review Petitions and Applications:** The Merger Compliance Program includes monitoring compliance with conduct order provisions such as bans on the dissemination within a respondent firm of competitively sensitive information or requirements to seek prior approval or give prior notice of plans to carry out specified future mergers or acquisitions. In addition, the Merger Compliance Program also includes reviewing petitions from parties to orders seeking modification or terminations of their orders, and making appropriate recommendations for Commission action.

Nonmerger Enforcement Program

Leading firms in significant industries sometimes resist the competitive forces of evolving markets, high-technology innovation, and deregulation; that resistance may take the form of business practices that make it more difficult for other firms to enter the market or enable existing competitors to collude. For competition to thrive in markets in transition, such as health care, competition authorities must be alert to practices designed to entrench market power and deny consumers the benefit of new forms of competition, such as conspiracies among health care providers to resist new forms of lower-cost health care provision. For competition to thrive in innovative, high-technology arenas, competition authorities must evaluate the significance of business conduct in the context of these novel, high-technology settings. The analysis must distinguish between practices that restrict competition and those that simply protect against misappropriation of intellectual property or other efforts of firms to "free ride" on the investments of others, or otherwise promote competition. For competition to thrive in newly deregulated areas, such as energy, competition authorities must monitor the conduct of firms that never before have had to compete.

The Commission's nonmerger programs encompass all of its enforcement jurisdiction outside of the merger programs. A wide variety of business practices may harm consumers, allowing firms to raise prices beyond competitive levels, or to reduce output, quality, services, innovation, or choice for consumers. The nonmerger actions of the Commission may be divided into three broad categories of antitrust violations: horizontal restraints, distributional restraints, and single firm violations. Identifying and proving these types of violations requires the application of sophisticated economic analysis and thorough factual investigation to distinguish between conduct that threatens the operation of free markets and conduct that promotes and advances their operation.

- **Horizontal Restraints:** The horizontal restraints segment of the Nonmerger Enforcement Program looks at anticompetitive agreements between and among competitors. Some horizontal restraints, such as price-fixing, harm consumers by raising prices and reducing the quantity and quality of goods and services. Such restraints may be the products of collusion or of conduct that facilitates collusion. The mission of this program is to detect, investigate, prevent and remedy anticompetitive collusion or the facilitation of collusion. While some agreements among competitors, such as standard-setting and promulgation of legitimate ethical codes, can serve functions that are procompetitive and even essential, such agreements can also be abused to exclude entry by new competitors or expansion by existing competitors.
- **Distributional Restraints:** Restraints on the distribution of goods from manufacturers to consumers, the focus of the distributional restraints segment of this Program, are far less likely than horizontal restraints to harm consumers, but they can facilitate horizontal collusion, limit sources of supply, or restrict channels of distribution in ways that give a party unilateral power to increase prices or reduce price-adjusted quality. Potentially unlawful conduct includes agreements to restrict resale prices or other terms of sale. This segment also deals with discrimination in price or other terms that may, under certain conditions, injure consumers.
- **Single Firm Violations:** A single firm with market power can use various anticompetitive practices to reduce output and increase price above the competitive level, thereby injuring consumers and misallocating resources. While neither the

existence of such market power nor the attempt to achieve it is unlawful in itself, obtaining, increasing, or maintaining market power by unnecessarily exclusionary means is unlawful. The goal of our enforcement activity against single firm violations is to prevent or remedy instances in which market power is created or maintained, or either is attempted, through conduct that would injure long-run consumer welfare. A principal challenge with this enforcement activity is to distinguish improper conduct from that which merely constitutes vigorous competition.

- **Strategy:** The Commission employs strategies of investigation, litigation, voluntary compliance, and negotiation in the Nonmerger Enforcement Program. In addition, to advance the use of free market mechanisms in place of regulatory or private restraints wherever possible, the Commission, where appropriate, provides reports and comments to federal, state, and local government agencies; *amicus curiae* briefs; advisory opinions; and legal and economic analyses.

Nonmerger Compliance Program

As with merger enforcement, the orders obtained through the Commission's nonmerger enforcement efforts must be both well-designed and faithfully observed in order to produce the desired restoration or preservation of competition. The appropriate design of orders calls for close consultation between enforcement and compliance staff. Divestiture relief will seldom be involved for anticompetitive conduct in our nonmerger matters. Instead, the most significant order provisions are generally prohibitory. Thus, while the timeliness of relief is still a significant issue, ensuring it is more often a matter of the speed with which the order was obtained after violations were detected than of post-order processes.

- **Final Consent Orders:** The provisions of nonmerger orders often present their own difficult enforcement issues, especially that of distinguishing compliance from noncompliance, as where respondents are by order forbidden to take actions by agreement that they are free to take individually.
- **Monitor for Compliance:** Strategies for monitoring compliance include review of periodic compliance reports required by the orders themselves, follow-up interviews with the reporting parties, scrutiny of relevant media, and contacts with the original complainants and others in the industry in a position to observe any violations and investigation of suspected violations.
- **Relief:** Nonmerger compliance may entail federal court litigation seeking civil penalties and other relief.
- **Review Petitions to Modify Orders:** The Nonmerger Compliance Program also includes reviewing petitions from parties under order seeking modification or termination of their orders and making appropriate recommendations for Commission action on these petitions.

Antitrust Policy Analysis Program

The Antitrust Policy Analysis Program provides the Commission and other policy makers with information to assess the effects of competition policy. Economic research in this program is designed to improve our understanding of those market situations where antitrust activity

would result in a more competitive market. The program also aims to ensure that consumer interests are represented before various governmental and self-regulatory bodies addressing market and competition issues. Among the types of activities supported by the program are:

- **Economic Studies of Competition in Markets:** A key goal of this program is to support studies that help us better understand how competition actually works in different markets. In recent years, projects have included a descriptive study of the pharmaceutical industry to help us understand the rapid changes taking place in this industry and what these changes might mean for antitrust policy; the effects of branded generic drugs on the pricing and sales of branded drugs; studies of competition in health care markets, including a recent study of PBMs; a study of long-term structural change in the petroleum industry; and studies of specific past mergers and business practices affecting gasoline. Workshops with experts to review developments in competition policy are also funded by the program.
- **Economic Studies of Antitrust Policy Issues:** The program also supports economic studies of antitrust policy issues designed to inform the Commission and others. For instance, current projects include an assessment of the aftermath of hospital mergers that were not challenged, and an examination of the aftermath of consumer products mergers.
- **Economic Support of Competition Advocacy:** This program also includes support for Bureau of Economics staff to provide input for advocacy comments before other governmental or self-regulatory bodies on issues related to the competition mission. The program has recently supported comments to the Antitrust Modernization Commission on numerous antitrust-related issues including merger efficiencies; comments to several states on the likely adverse effects of minimum service requirements for real estate brokers; comments to the Federal Energy Regulatory Commission on electricity, including long-term transmission rights and investment in new capacity; and comments to the North Dakota legislature on regulations that would restrict the contracts that pharmacy benefit management firms can write with their clients.

Other Direct Mission Program

The Maintaining Competition Mission includes several other functions that directly support law enforcement function, including:

- **Program Planning, Evaluation and Review:** The Program ensures overall consistency of our enforcement program with case law, Commission precedents and policy, antitrust scholarship, and efficient use of resources.
- **Competition Advocacy:** Because the Commission and its staff have a great deal of expertise about competition and about the competitive effect of proposed laws, rules or regulation on other governmental bodies, they are often invited to comment on such proposals. The Program is responsible for such sharing of expertise with federal, state, or local governments.
- **Budgeting:** The program coordinates with the Commission's Budget and Finance Division to propose budgets for future years and works with Commission and Bureau management to monitor resource expenditures.

- **Personnel Management and Evaluation:** The Program has responsibility for coordinating all personnel reviews and personnel actions.
- **Recruiting:** The Bureau of Competition, in cooperation with the Division of Personnel and other offices in the Commission, interviews at over a dozen law schools each year to recruit entry-level attorneys. The Program also recruits lateral attorneys and other staff members, as needs arise.
- **Employee Development and Training:** Under this Program, the Mission ensures that attorneys and support personnel receive legal and other necessary training. Hallmarks of the training program are the semi-annual three-day in-house training sessions for summer interns and first-year attorneys and the ongoing programs on substantive and procedural topics aimed at experienced attorneys as well.
- **Correspondence and Inquiries:** The Program ensures that the Commission responds to thousands of letters, e-mails, and phone inquiries from members of the public seeking or offering information concerning possible unfair methods of competition in the marketplace, and that Commission staff make appropriate use of any case leads provided by such correspondence.
- **Information Systems Management:** The Program manages the records necessary to track all matters opened under the Maintaining Competition Mission and also coordinates all activity with the Commission's Office of Information and Technology Management, including making full use of the Internet to keep the public informed of mission activities and of the Intranet as an efficient means of internal communication.
- **Records Management:** The Program ensures that Commission records, as well as documents submitted by parties under investigation, are managed properly.
- **Space and Property Management:** The Program is responsible for overseeing efficient use of space and equipment.
- **Procurement and Contracting:** The Program oversees all aspects of procurement, particularly obtaining the services of outside economists and other expert witnesses to support investigations and litigation.
- **Clearance Procedures with the Department of Justice:** Under this Program, staff of the Commission and the Antitrust Division of the Department of Justice apply established principles to determine which agency will investigate merger and nonmerger matters that appear to violate the antitrust laws.
- **Liaison with State Officials:** The Program coordinates antitrust activities and enforcement with state attorneys' general including training, joint investigations, and consultation.
- **International Liaison:** The globalization of business and the proliferation of foreign antitrust laws make it imperative that the Commission maintain an effective international antitrust program. The primary goals of the Commission's international antitrust program are to promote cooperation with foreign competition agencies and

convergence of international antitrust policy toward best practices. The program promotes cooperation with foreign competition agencies in order to maximize the effectiveness of Commission enforcement in the increasing number of cases with an international dimension. To this end, the Commission negotiates cooperation agreements with foreign agencies and cooperates in enforcement matters under parallel review by the Commission and foreign agencies. Our cooperation promotes sound antitrust analysis, including through mutual provision of investigative assistance and avoiding inconsistent resolution of cases subject to multijurisdictional review. The Commission is also a leader in promoting convergence, including through bilateral dialogue with major counterparts such as the European Community (EC), Canadian, and Japanese competition authorities, with whom we have regular consultations, and in multilateral fora such as the Organization for Economic and Cooperative Development (OECD) and the International Competition Network (ICN). In the ICN, the FTC chairs committees that have, for example, promulgated widely-accepted best practices for multijurisdictional merger review and for the provision of technical assistance. In addition, Commission staff have provided technical assistance, primarily funded by the US Agency for International Development, to dozens of agencies around the world.

Mission Support

Mission Support

Budget by Program

(\$ in thousands)

	Fiscal Year 2006		Fiscal Year 2007	
	FTE	Dollars	FTE	Dollars
Commissioners	44	\$5,900	44	\$6,100
Office of the General Counsel	56	7,700	56	8,000
Office of the Secretary	10	1,000	10	1,100
Office of Administrative Law Judges	6	800	6	900
Office of the Executive Director	135	70,600	135	74,800
Office of Legislative and Public Affairs	14	1,700	14	1,800
Office of Inspector General	5	900	5	1,000
Total Mission Support	<u>270</u>	<u>\$88,600</u>	<u>270</u>	<u>\$93,700</u>

Allocation of Mission Support

Consumer Protection Mission	143	\$47,700	143	\$49,800
Maintaining Competition Mission	127	40,900	127	43,900
Total Mission Support	<u>270</u>	<u>\$88,600</u>	<u>270</u>	<u>\$93,700</u>

Mission Support consists of management and support programs within the Federal Trade Commission (FTC) and addresses the evolving needs of the direct missions' challenges. Mission Support programs develop and implement new, more efficient products and services to meet the FTC's challenges.

Commissioners

The Commissioners are responsible for ensuring that the FTC effectively and efficiently executes its Congressionally mandated responsibilities. They formulate Commission policy, which guides and directs the staff's work. They also allocate the resources required to implement courses of action and monitor the Commission's progress in accomplishing stated goals.

The Policy Planning Task Force is responsible for developing recommendations on a wide array of issues. Policy Planning Task Force staff study, obtain public input about, report on, and analyze changes in the economy, the competitive process, consumer and competition issues, and other areas of the law related to the Commission's enforcement responsibilities. The Policy Planning Task Force also coordinates the Commission's advocacy role with other

governmental entities and, upon request, provides assistance in the development of cases that involve novel or complex legal issues. Policy Planning Task Force staff obtain public input from businesses, consumer groups, academics, and other outside sources through a variety of means, such as investigative hearings, fact-gathering workshops, and roundtable policy discussions. Policy Planning Task Force staff research and draft policy recommendations, such as possible guidelines on enforcement policy; coordinate and oversee advocacy comments; and identify, report on, and analyze emerging issues for competition and consumer protection enforcement. Substantive areas include clarifying the boundaries of antitrust exemptions, competition policy in deregulated markets in transition, and competition in electronic commerce, among others. The Policy Planning Task Force researches and explores the most effective and appropriate means by which the Commission may approach competition and consumer protection policy issues, while, at the same time, providing cost-effective services to those subject to the Commission's enforcement orders and policies.

Office of the General Counsel

The General Counsel is the Commission's chief legal officer and adviser. The office's major functions are representing the Commission in court and providing legal counsel to the Commission, the operating bureaus, and other offices.

In its litigating capacity, the Office of General Counsel defends actions seeking judicial review of Commission orders and trade regulation rules, handles appeals of Commission actions seeking preliminary and permanent injunctive relief, and assists the bureaus in actions for injunctive relief in district court. The office enforces civil investigative demands and other compulsory processes, and responds to discovery requests directed to the agency or its staff. It cooperates with the Department of Justice in defending cases brought to enjoin agency action, or to obtain monetary damages against the Commission or its personnel. The office also furnishes advice and assistance concerning other litigation activities, and prepares amicus curiae briefs authorized by the Commission.

In its counseling capacity, the Office of General Counsel provides confidential legal guidance to the Commission on a wide range of procedural and substantive issues in adjudicative matters. It also advises the Commission and staff on legal and policy issues, such as agency jurisdiction, statutory authority, administrative procedure, and other matters relating to the agency's enforcement missions. The office counsels Commissioners and staff to ensure compliance with the Ethics in Government Act and to avoid conflicts of interest, reviews and certifies financial disclosure reports, decides whether former employees may appear in Commission proceedings, provides reports to the Office of Government Ethics, and conducts ethics training. OGC also coordinates the agency's International Technical Assistance program for countries developing competition and consumer protection regimes.

The office also assists the Commission in developing policy recommendations on a wide array of issues, including competition policy in connection with healthcare, innovation and intellectual property, deregulation and markets in transition, and Internet issues. The Office of General Counsel staff study, obtain public input about, report on, and analyze consumer and competition issues and other areas of the law related to the Commission's enforcement responsibilities.

The office also advises agency staff on personnel, labor-management relations, equal employment opportunity, procurement law, and appropriations law matters. It represents the Commission in legal proceedings before such agencies as the Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and General Services Board of Contract Appeals.

The office prepares responses to formal congressional access requests for documents or information about Commission actions, assists with briefings of congressional committees and subcommittees, assists in preparing testimony for congressional hearings, analyzes proposed legislation affecting the agency, and drafts or reviews Commission comments to OMB or the Congress on such legislation. The office also handles a number of matters related to confidentiality and access to information, including administration of the Freedom of Information Act, Privacy Act, and the Government in the Sunshine Act, requests by state and federal law enforcement agencies for access to non-public documents, and requests for confidential, rather than public record, treatment of materials submitted to the Commission.

Office of the Secretary

The major functions of the Office of the Secretary include implementing and advising the Commission and its staff on the Commission's voting and other decision making procedures; assigning staff recommendations and requests for action to the Commission; processing all Commission circulations and votes concerning particular matters, and notifying the Commission and its staff of voting and other decision making deadlines; and creating official records of all Commission deliberations and actions taken, whether at Commission meetings or through the written notational voting process. The Office reviews and signs or otherwise validates all official documents approved or authorized by the Commission and its delegates, including consent agreements, reports, Federal Register notices, and other administrative documents. The Office forwards validated electronic copies for posting on the agency's web site. In addition, the Office maintains the agency Operating Manual, signs Federal Register notices for transmittal to the Office of the Federal Register, and coordinates responses to all Congressional and White House correspondence. The Office manages certain computer systems relevant to these major functions, and creates and preserves electronic copies of all relevant actions and documents.

Office of Administrative Law Judges

The Office of Administrative Law Judges performs the initial adjudicative fact-finding in Commission administrative complaint proceedings, guided by statutes, precedent, and rules of practice. The administrative law judge assigned to handle each complaint issued by the Commission holds pre-hearing conferences, resolves discovery, evidentiary and procedural disputes, decides motions for summary decision, and conducts the full adversarial evidentiary hearings. The judge's initial decision sets out relevant and material findings of fact with record citation, explains the correct legal standard, and applies the law to the facts.

The Office of Administrative Law Judges also conducts rulemaking proceedings for the Commission. After a hearing on the record, the judge conducting the proceedings makes a recommended decision to the Commission based on findings of fact and conclusions of law.

Office of the Executive Director

The Office of the Executive Director serves as the managerial and administrative arm of the Federal Trade Commission with responsibility for the overall operation of the agency. The Office of the Executive Director manages agency-wide projects on a broad range of matters, including agency reauthorization and annual appropriations and budgets. The Office of the Executive Director works closely with the bureaus on strategic planning and assessing the management and resource implications of any proposed action. The Equal Employment Opportunity Office is located in the Office of the Executive Director, as are the following:

Financial Management Office

The Financial Management Office (FMO) is centrally responsible for agency-wide budget, acquisition, and financial accounting services. It accomplishes these critical responsibilities through three branches – Budget, Acquisitions and Finance. Office staff liaison with other Federal agencies having government-wide financial management responsibilities and complies with various financial management regulations and statutes. The latter include, but are not limited to, the Federal Acquisitions Regulation, Federal Travel Regulation, Government Performance and Results Act, the Chief Financial Officer Act, and the Federal Managers' Financial Integrity Act. As part of its ongoing activities, the Financial Management Office:

- Maintains a core staff of highly-trained financial management professionals to aid the FTC in carrying out its mandated mission responsibilities, and provides agency-wide financial management direction, services, and information.
- Capitalizes on the use of existing and emerging technologies to enhance financial operations agency-wide.
- Manages the FTC's contract with the Department of Interior's National Business Center for accounting system services and payment processing support.
- Assists senior management and staff on budget development, justification, execution, and review. Includes working with FTC, OMB, and Congressional staff to obtain appropriations and subsequent apportionment authority, distribute enacted and Commission-approved resources to agency organizations and projects, track the use of agency resources, and prepare needed reprogrammings of agency funds.
- Manages the agency's central financial accounts and ensures they reconcile with related Treasury Department, OMB, and National Business Center balances. This function includes the preparation of auditable financial statements.
- Administers agency-wide acquisition activities that include contract preparation, award, and administration.
- Certifies funds availability for proposed obligations and ensures that obligations conform with appropriations law and related government-wide and FTC regulations.
- Manages and administers credit card programs for purchasing and travel.

- Manages agency-wide the audit follow-up program.
- Directs Government Performance and Results Act activities.

Human Resources Management Office

The Human Resources Management Office (HRMO) is responsible for enabling the Commission to accomplish its mission through workforce planning, recruitment, employee development, retention, compensation, and performance management programs. Activities include the honors paralegal recruitment program; attorney and non-attorney hiring; SES hiring; advice, and guidance to managers on conduct, performance, and discipline problems; benefits; retirement counseling; administering the awards program; training; position classification; labor relations; administration of performance management; payroll liaison; and electronic time and attendance coordination. More specifically, in its activities the Human Resources Management Office:

- Assists and advises the Bureaus, and Offices in filling high-priority positions.
- Assists and advises the Bureaus, and Offices in resolving sensitive human resource issues.
- Works with the Headquarter's Union, Bureaus, and Offices to renegotiate the Union contract.
- Leads Training Council activities to assess continually the core curriculum for critical FTC occupations.

HRMO is responsible for the Human Capital Initiatives of the President's Management Agenda, including:

- Strategic Alignment - align human capital policies to support the accomplishment of FTC's mission, vision, goals, and strategies.
- Strategic Competencies (Talent) - recruit, hire, develop, and retain employees with the strategic competencies for mission critical occupations.
- Leadership - ensure that the leadership at the FTC inspires, motivates, and guides others towards goals; coaches, mentors, and challenges staff; adapts leadership style to various situations; models high standards of honesty, integrity, trust, openness, and respect for individuals by applying these values.
- Performance Culture (Strategic Awareness) - create a culture that motivates employees for high performance, based on their contribution to the work of the FTC and common values, while ensuring fairness in the workplace.
- Learning (Knowledge Management) - Promote a knowledge-sharing culture and a climate of openness; promote continuous learning and improvement.

Administrative Services Office

The Administrative Services Office (ASO) is an integral component of the Commission's support service network. That network ensures that other agency staff can focus on law enforcement activities. ASO's primary responsibilities include:

- Negotiates, leases, and manages headquarters and regional office space to include managing infrastructure renovations and repairs.
- Provides building and grounds management, identifies problems and deficiencies to our physical plant, makes adjustments and repairs in a timely manner, and oversees elevator maintenance and custodial contracts for the headquarters building.
- Manages and administers the Reimbursable Work Authorization (RWA) program. FTC is required to reimburse the General Services Administration for building-related services, such as overtime utilities and alterations in buildings, where GSA has not given the FTC authority to provide these services.
- Manages the agency's physical security, personnel security, emergency preparedness, and health and safety programs.
- Plans, coordinates, and supports all types of events sponsored by the FTC, including major conferences and workshops, adjudicative hearings and trials, press conferences, employee training sessions, and others.
- Maintains a Customer Service Center, a one-stop shop for addressing and fulfilling a wide range of administrative requests.
- Provides administrative assistance and logistical support to eight regional offices.
- Manages agency-wide support functions including mail, printing, supplies, and furniture management.
- Updates and maintains various publications, such as the FTC's Administrative Manual and telephone directory, as well as external directories containing information about the FTC's mission.
- Manages the agency's reproduction program, which includes an in-house copy center and logistical support to FTC staff on FTC work that is printed at the Government Printing Office (GPO).
- Coordinates the Commission's transit subsidy program.
- Provides moving, transportation, and garage services for headquarters buildings.
- Coordinates the agency program that supports the preparation and arrival of new employees, physical office moves of current employees, and the processing of employees who leave the agency.

Information and Technology Management Office

The Information and Technology Management Office (ITMO) is responsible for the Commission's technological infrastructure, direct mission support applications and services, and related office systems. The overall mission of the ITMO program is to support and improve the productivity and effectiveness of the Commission through the effective use of those information resources.

ITMO's efforts will focus on providing the support needed by the Commission's bureaus and offices and the administrative processes to accomplish the agency's missions. ITMO's responsibilities are related to two basic types of services: (1) direct law enforcement, mission-related systems and services; and (2) vital infrastructure that provides the basis for specific FTC activities, each of which are further subdivided.

- **Direct Law Enforcement Systems and Services:** ITMO provides several important information systems and services such as Premerger Notification System; Department of Justice Clearance System; and Consumer Information/Identity Theft/Consumer Sentinel Systems that have become critical to the FTC's law enforcement activities.
- **Support for Specific Investigations and Litigations:** ITMO provides support and assistance to the Commission's law enforcement staff through the seizure and acquisition of information from targets of investigations, initial analysis of that information, preparation of trial materials, etc.
- **Support for Overall Law Enforcement Efforts:** ITMO's more general direct support to the Commission's missions is provided through library research and reference collection services; services provided by our HelpDesk, including PC installation and repair; training and support in the use of information resources; and various information systems.
- **Vital Infrastructure Systems and Services:** The information resources used directly by Commission staff are only a portion of the complete package of the technological infrastructure that ITMO must develop and maintain. Commission staff rely heavily upon many of the systems for which ITMO is responsible, including the Local Area Network (LAN), Wide Area Network (WAN), telephone and phonemail systems, e-mail system, central computing facility, facsimile services, desktop PC's and software, local printers, administrative applications, data warehouse, and others. Those systems and services have greatly increased the productivity of the entire agency. However, because the agency relies on those systems, any interruption of service or weaknesses in their operation is dramatically felt by individual staff and the agency as a whole. The vital infrastructure area has two components: (1) the life cycle management products and services; and (2) technology enhancement products and services.
- **Life Cycle Management Products and Services:** Because of the complexity of systems and the fast-paced changes in computer technology, ITMO must periodically assess the technological infrastructure to ensure that it remains sound and that the incremental enhancements made as part of the maintenance program are working together to produce optimal results.

- Enhancements to Technology Products and Services: FTC needs related to agency-wide and individual mission information technology evolve, and ITMO must adapt or enhance individual products and services to ensure that they continue to meet those changing requirements.
- ITMO ensures that agency applications are developed to comply with the Government Paperwork Elimination Act (GPEA).

Records and Filings Office

The Records and Filing Office (RFO) serves all official documents, receives and processes most filings before the Commission and the Administrative Law Judges, and maintains the official public record in all FTC matters. In its work, the RFO:

- Is responsible for intake and processing of public comments in all FTC rulemaking proceedings and other matters (such as workshops and studies) which solicit public comments.
- Supports the Commission's law enforcement efforts by designing and implementing agency-wide electronic systems for storing and accessing agency documents (LANDOC) and for tracking and managing agency matters (MMS2).
- Forwards to the Federal Register notices for agency actions and publishes volumes of FTC Decisions.
- Maintains most of the Formal Actions section of the agency's website.
- Develops and implements records management/archival policies throughout the agency (including policies on electronic records).
- Stores and retrieves FTC official records both on and off-site, and manages the agency-wide stenographic court reporting contract.

Office of Legislative and Public Affairs

The Office of Legislative and Public Affairs is responsible for proactively informing the news media and Congress, as well as the public at large, about the activities of the Commission. Additionally, the Office of Legislative and Public Affairs responds to Congressional and media inquiries about Commission actions and policy.

In its mission of congressional service, the Office of Legislative and Public Affairs:

- Develops, coordinates, and executes a consolidated program of legislative advocacy for the Federal Trade Commission.
- Plans and implements liaison activities with Congress.
- Reviews and/or drafts legislation on issues within the Commission's jurisdiction.

- Tracks legislation and keeps agency officials advised on matters affecting the Commission.
- Prepares agency witnesses for congressional testimony, including determining scope of hearings, scope of requested testimony, areas of specific member interest, and nature of questions likely to be asked.
- Defines, develops, and implements legislative strategies that effectively present agency priorities.
- Maintains contact with congressional and committee staff, conveying information through correspondence and telephone communication.
- Briefs congressional committee staff on substantive issues of legislation concerning the agency and the implementation of such legislation.

In serving as liaison between the Commission and the media, the Office of Legislative and Public Affairs:

- Produces news releases announcing official actions of the Commission, including decisions by Administrative Law Judges and the Commission.
- Provides assistance to the media involved in covering Commission activities.
- Ensures that Commission releases, supporting documents, and consumer education materials are disseminated, as well as available to the media and the public on the Internet.
- Supports and promotes major FTC outreach programs and initiatives.
- Produces a daily "News Summary" of clips from newspapers and magazines on Commission activities.
- Provides Regional FTC offices with media training and outreach support as needed.
- Produces "Weekly Calendar and Sunshine Notices" report to inform the public and the media of scheduled "open" Commission activities.
- Works with regional media for coverage of Commission activities.
- Facilitates Regional Office media outreach.
- Arranges media appearances for Chairman, Commissioners, and other senior officials.
- Arranges photographic services for the Commission.
- Garners transcripts and videotapes of broadcast coverage of Commission activities.

Office of Inspector General

The Office of Inspector General (OIG) was created in fiscal year 1989 in accordance with the Inspector General's Act of 1978, as amended, for the purpose of preventing and detecting fraud, waste, and abuse in agency programs and operations. The Office of Inspector General meets its mission responsibilities by conducting independent audits and investigations. The Inspector General is charged with keeping both the agency head and Congress fully and currently informed about problems and deficiencies relating to the administration of Commission programs.

The Office of Inspector General performs congressionally mandated financial statement and information security audits along with selected program/compliance related reviews. These reviews allow the OIG to continue its focus on information management, GPRA implementation, and other program activities identified as important by management in the agency's strategic and performance plans. In addition, the OIG investigates allegations of employee wrongdoing whenever received. Finally, the OIG continues to participate in community-wide President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency activities, report semiannually to Congress on OIG activities, and, when necessary, provides management with investigative alerts.

Proposed Appropriations Language

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed \$2,000 for official reception and representation expenses, [~~\$211,000,000~~] *\$223,000,000* to remain available until expended: *Provided*, That not to exceed \$300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further*, That, notwithstanding any other provision of law, not to exceed [~~\$116,000,000~~] *\$120,000,000* of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That, notwithstanding any other provision of law, [~~\$23,000,000~~] *\$18,000,000* in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year [~~2006~~] *2007*, so as to result in a final fiscal year [~~2006~~] *2007* appropriation from the general fund estimated at not more than [~~\$72,000,000~~] *\$85,000,000*: *Provided further*, That none of the funds made available to the Federal Trade Commission may be used to enforce [subsection (e)] *subsections (a), (e), or (f)(2)(B)* of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) or section 151(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831t note).

Program and Financing

(\$ in millions)

Identification Code: 29-0100-0-1-376	FY 2005 actual	FY 2006 est	FY 2007 est
Obligations by program activity:			
00.01 Consumer Protection	47	40	48
00.02 Maintaining Competition	35	31	37
01.92 Subtotal, Direct Program	82	71	85
09.01 Consumer Protection	67	77	77
09.02 Maintaining Competition	51	62	61
09.03 Reimbursable Program	1	1	1
09.99 Total Reimbursable Program	119	140	139
10.00 Total New Obligations ¹	201	211	224
Budgetary resources available for obligation:			
21.40 Unobligated balance carried forward, start of year	8	14	2
22.00 New budget authority (gross)	206	199	224
22.10 Resources available from recoveries of prior year obligations	1
23.90 Total budgetary resources available for obligation	215	213	226
23.95 Total new obligations ¹	-201	-211	-224
24.40 Unobligated balance carried forward, end of year	14	2	2
New budget authority (gross), detail:			
Discretionary:			
40.00 Appropriation	88	72	85
40.35 Appropriation permanently reduced	-1	-1	...
40.36 Unobligated balance permanently reduced	...	-12	...
43.00 Appropriation (total discretionary)	87	59	85
Spending authority from offsetting collections (Discretionary)			
68.00 Offsetting collections (HSR Fees)	100	116	120
68.00 Offsetting collections (Do Not Call Fees)	18	23	18
68.00 Offsetting collections (Fed. Reimb. Programs)	1	1	1
68.90 Spending authority from offsetting collections (total discretionary)	119	140	139
70.00 Total new budget authority (gross)	206	199	224
Change in obligated balances:			
72.40 Obligated balance, start of year	36	47	38
73.10 Total new obligations ¹	201	211	224
73.20 Total outlays (gross)	-189	-220	-228
73.45 Recoveries of prior year obligations	-1
74.40 Obligated balance, end of year	47	38	34
Outlays (gross), detail:			
86.90 Outlays from new discretionary authority	162	178	203
86.93 Outlays from discretionary balances	27	42	25
87.00 Total outlays (gross)	189	220	228
Offsets:			
Against gross budget authority and outlays:			
Offsetting collections (cash) from:			
88.00 Federal sources	1	1	1
88.40 Non-Federal sources - HSR Fees	100	116	120
88.40 Non-Federal sources - Do Not Call Fees	18	23	18
88.90 Total, offsetting collections (cash)	119	140	139
Net budget authority and outlays:			
89.00 Budget authority	87	59	85
90.00 Outlays	71	80	89
9502 Unpaid obligation, end of year	47		

¹Includes \$1 million in each fiscal year for obligation of funds reimbursed by other federal agencies.

Object Classification

(\$ in millions)

Identification Code: 29-0100-0-1-376	FY 2005 actual	FY 2006 est	FY 2007 est
Direct Obligations:			
Personnel Compensation:			
11.1 Full-time permanent	38	34	40
11.3 Other than full-time permanent	3	3	3
11.5 Other personnel compensation	1	...	1
11.9 Total Personnel compensation	42	37	44
12.1 Civilian personnel benefits	10	9	11
21.0 Travel and transportation of persons	1	1	1
23.1 Rental payments to GSA	7	6	7
23.3 Communications, utilities, and miscellaneous charges	1	1	2
24.0 Printing and Reproduction	1	1	1
25.1 Advisory and assistance services	11	9	11
25.2 Other services	1	1	1
25.3 Other purchases of goods and services from Government accounts	2	2	2
25.4 Operation and maint. of facilities	...	1	1
31.0 Equipment	4	3	4
32.0 Land and structures	2
99.0 Subtotal, obligations, Direct obligations	82	71	85
Reimbursable Obligations:			
Personnel Compensation:			
11.1 Full-time permanent	52	67	65
11.3 Other than full-time permanent	5	5	5
11.5 Other personnel compensation	1	2	1
11.9 Total personnel compensation	58	74	71
12.1 Civilian personnel benefits	14	18	17
21.0 Travel and transportation of persons	1	1	1
23.1 Rental payments to GSA	10	12	11
23.3 Comm., utilities and misc. charges	2	2	2
24.0 Printing and reproduction	1	1	1
25.1 Advisory and assistance services	17	17	20
25.2 Other services	2	2	2
25.3 Other purchases of goods and services from Government accounts	3	3	4
25.4 Operation and maint. of facilities	1	1	1
25.7 Operation and maint. of equipment	1	1	1
26.0 Supplies and materials	1	1	1
31.0 Equipment	6	7	7
32.0 Land and structures	2
99.0 Subtotal, Reimbursable obligations ¹	119	140	139
99.9 Total new obligations	201	211	224

¹ Includes \$1 million in each fiscal year for obligation of funds reimbursed by other federal agencies.

Personnel Summary

Identification Code: 29-0100-0-1-376	FY 2005 actual	FY 2006 estimate	FY 2007 estimate
Direct 1001 Full-time equivalent employment	417	364	409
Reimbursable 2001 Full-time equivalent employment	602 ¹	716 ²	671 ²

¹Includes 3 FTE reimbursed by other federal agencies.

²Includes 6 FTE reimbursed by other federal agencies.