



**P**ERFORMANCE AND  
**A**CCOUNTABILITY  
**R**EPORT

**FISCAL YEAR 2005**

**FEDERAL TRADE COMMISSION**

**www.ftc.gov**

**1-877-FTC-HELP**

**FOR THE CONSUMER**

## About the Report

This Fiscal Year (FY) 2005 Performance and Accountability Report is the Federal Trade Commission's (FTC) third consolidated report prepared pursuant to the requirements of the Accountability of Tax Dollars Act of FY 2002 (Public Law 107-289) and subject to regulations issued by the Office of Management and Budget (OMB). Unless otherwise noted, the examples and statistics used in the report represent FY 2005 activities, spanning the period of October 1, 2004, to September 30, 2005. The report is presented in three parts and an appendix:

- **Part I: Management's Discussion and Analysis (MD&A)**  
This section provides an overview of the information contained in the Performance and Financial sections. The MD&A also contains a discussion about the FTC's history, activities, consumer resources, organization, challenges, and significant events. It also presents the FTC's mission, vision, and strategic goals and objectives.
- **Part II: Program Performance**  
This section contains the annual performance information required by the OMB's Circular A-11 and the Government Performance Results Act (GPRA). Included in this section is a detailed discussion and analysis of the FTC's performance related to its two GPRA strategic goals and related objectives.
- **Part III: Audited Financial Statements**  
This section contains the details of the FTC's finances, including an introductory letter from the Acting Chief Financial Officer, the Inspector General's Opinion Letter, the audited financial statements, and supplementary audit and financial information.

The FTC has worked to present information in a clear and understandable manner and will continue to refine its process and format in future years to make this report a valuable tool for FTC managers, stakeholders, and members of the public interested in the accountability, performance, and activities of the agency. Comments from readers are encouraged and can be sent to the report coordinator via the following e-mail, fax, or mailing address. **The report is available to the public via:**

- accessing the Internet at <http://www.ftc.gov/par>;
- e-mailing [gpra@ftc.gov](mailto:gpra@ftc.gov);
- calling Darlene Cossette at 202-326-3255;
- faxing 202-326-2329; and
- mailing the Federal Trade Commission, 600 Pennsylvania Avenue, NW, H-774, Attention PAR, Washington, DC 20580.

## A Message From The Chairman



I am pleased to present the Federal Trade Commission's *Performance and Accountability Report* for Fiscal Year 2005. I recently completed my first year as Chairman of the FTC, and have been impressed with the evident dedication of the staff to the mission of the agency, as well as with their significant accomplishments, which have benefitted consumers across the nation. This report provides an overview of the FTC's mission, accomplishments, performance, and financial management.

As we say at the agency, the **FTC works For The Consumer**, an apt capsule summary of the agency's consumer protection and competition missions, both of which have the shared goal of improving consumer welfare. To achieve this goal we apply three objectives – **identify** illegal practices, **stop** illegal practices through law enforcement, and **prevent** consumer injury through education of consumers and businesses.

A current example of our important work is our immediate response to protect consumers made vulnerable by Hurricane Katrina's impact. To **identify** fraud and scams, the FTC joined a federal task force and became the central clearinghouse for consumer complaint data for all levels of law enforcement. Consumers can file complaints by phone, by mail, or on the FTC Web site. In addition, through our gasoline monitoring project, the FTC receives data on retail and wholesale gasoline prices across the country. We will use this information to identify possible anticompetitive conduct during the short-term gasoline product shortage that may result in higher prices. The FTC will investigate and **stop** illegal practices through law enforcement actions. The FTC is offering consumer education in print and on its Web site to **prevent** victims from being injured by the frauds and scams that have proliferated following the disaster. Beyond the immediate need to prevent fraud and deception, the FTC also is offering materials to assist consumers to rebuild their financial lives. Our Hurricane Recovery Web site can be accessed through [ftc.gov](http://ftc.gov). This effort demonstrates the FTC's ongoing commitment to stop fraudulent fundraising through law enforcement and consumer education.

The National Do Not Call Registry, which commemorated its two-year anniversary in June 2005, is an ongoing example of the FTC's commitment to consumers. The Registry now includes over 100 million telephone numbers. Consumers are receiving far fewer telemarketing calls, and the Registry has been hailed by Congress, the media, and consumers as a beneficial and cost-effective government program. This report also highlights our accomplishments in such areas as promoting competition

and innovation, in energy, health care, and technology industries, among others, and in protecting and educating consumers in such areas as data security, identity theft, spam, and childhood obesity. In the coming year, the FTC will continue to address these and other challenges of high priority to consumers. More information on the FTC's activities and its wealth of consumer and business education materials can be found at its Web site at [ftc.gov](http://ftc.gov). In addition, as part of our Hispanic law enforcement and outreach initiative, we have a Spanish version of our Web page and have translated over 100 of our education publications. These materials can be found at [ftc.gov/ojo](http://ftc.gov/ojo).

Another important goal of the FTC is to implement good financial management practices to ensure that our resources are well-managed and wisely used. The FY 2005 independent financial audit resulted in the FTC's ninth consecutive unqualified opinion, the highest audit opinion available. The audit of the FTC's financial statements, which includes tests of internal control and compliance with laws and regulations, is conducted in accordance with Government Auditing Standards and the Office of Management and Budget (OMB) Bulletin No. 01-02. In addition, progress has been made to advance our goal to migrate to a new core financial management system that will facilitate the integration of financial and performance systems.

The Reports Consolidation Act of 2000 requires an assessment of the completeness and reliability of the program and financial data contained in this report. Based on criteria issued by OMB, I conclude that the data are complete and reliable. In addition, the FTC evaluated its management controls and financial management systems, as required by the Federal Managers' Financial Integrity Act. On the basis of the comprehensive management control program, I can certify, with reasonable assurance, that the agency is in compliance with the provisions of the Act.

The FTC continuously strives to improve its practices in the five management initiative areas of the President's Management Agenda. In FY 2005, we continued to focus on information technology (IT) security. The inspector general has acknowledged our substantial progress in this area, although there are still challenges to meet. The FTC is working to further strengthen its IT security and remain vigilant to current and future threats. The agency also began to examine its performance goals and measures in preparation of updating its GPRA Strategic Plan in FY 2006.

I look forward to working with agency staff in the coming year to continue providing high-quality service to American consumers.

  
Deborah Platt Majoras

November 15, 2005

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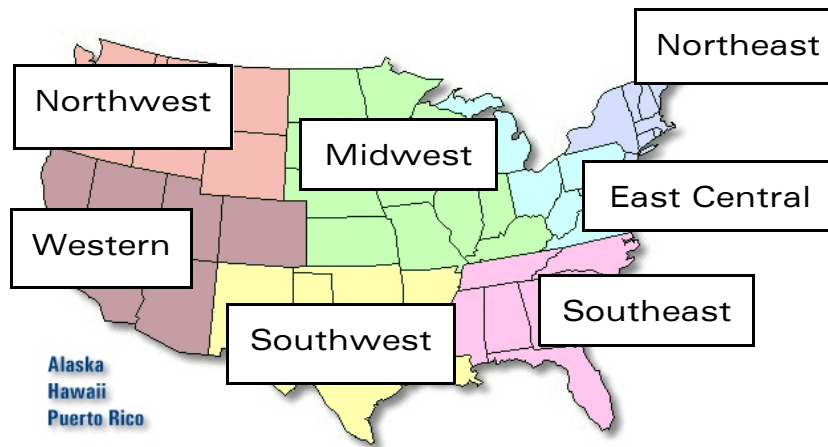
# Part I: Management’s Discussion and Analysis

## About the FTC

The impact of the FTC on the nation’s marketplace belies its small size. The FTC’s activities affect the lives of consumers every day through, for example, receiving fewer telemarketing calls, paying lower prescription drug prices due to the availability of generic drugs, using care labels in clothing, having energy labels on appliances, seeing health warnings on cigarette packages, or enjoying competitive prices for goods as a result of a blocked merger. Congress has charged the FTC with the broadest legislative mandate



of any federal consumer protection agency. It is an independent federal agency with a total staff of only 1,100 working in its Washington, D.C. headquarters (pictured at right) and in seven regions that span the nation, as shown below. (See [ftc.gov](http://ftc.gov); *About the FTC*; *Regional Offices* for more detail).



President Woodrow Wilson signed the FTC Act into law over 90 years ago on September 26, 1914. The Act prohibits “unfair methods of competition,” and was amended in 1938 to prohibit “unfair or deceptive acts or practices.” In addition, the FTC enforces a variety of consumer protection laws, such as the Fair Credit Reporting Act, Equal Credit Opportunity Act, and Telemarketing Sales Rule, and antitrust laws, such as the Sherman Act and Clayton Act. In recognition of the FTC’s **90<sup>th</sup> anniversary**, the agency added a page to its Web site on FTC’s history ([ftc.gov](http://ftc.gov) **HISTORY OF THE FTC**). Readers can find articles on the origin of the agency, oral histories, and annual reports, as well as information on the 100<sup>th</sup> anniversary of the FTC’s predecessor, the Bureau of Corporations.

## FTC Consumer Resources

Consumers are encouraged to call the FTC's Consumer Response Center on its toll-free numbers – **1-877-FTC-HELP** or **1-877-ID-Theft** – with complaints, inquiries, or requests for education materials. The FTC maintains a database of consumer calls and shares fraud and identity theft complaints with approximately 1,400 law enforcement partners. Although the FTC is not empowered to act on behalf of individual consumers, the consumer complaint data enables the FTC and its law enforcement partners to coordinate their enforcement efforts, and to spot current trends and target the most serious consumer problems.



The FTC's Web site, [ftc.gov](http://ftc.gov), contains information about the agency and its activities. Consumer and business education materials are available on a broad array of consumer issues, such as fraud, spam, identity theft, privacy, telemarketing, credit reports, diet, fitness, and health care. Links to *Hurricane Relief* and *Hot Topics* are on the main Web page. Consumers also can file complaints online at [ftc.gov](http://ftc.gov), *File a Complaint*.

***Proteccion para el Consumidor***, the FTC's Spanish Web page, also has consumer protection information and links to over 100 translated consumer publications ([ftc.gov/ojo](http://ftc.gov/ojo)).

At the FTC's Consumer Sentinel Web site, [consumer.gov/sentinel](http://consumer.gov/sentinel), consumers can view summary data collected by the FTC, such as the scams that garner the most frequent consumer complaints, the scams that cost consumers the most, the number of identity theft complaints by state, the types of identity theft most frequently reported, and tips on spotting and avoiding fraud and deception online and off. The FTC Web site also has a direct link to the government-wide public consumer help site, [firstgov.gov](http://firstgov.gov), and to a site maintained by the FTC, [consumer.gov](http://consumer.gov), a one-stop link to a broad range of federal consumer information resources.

### Top Ten Categories of Consumer Fraud Complaints for CY 2004 (percents rounded)

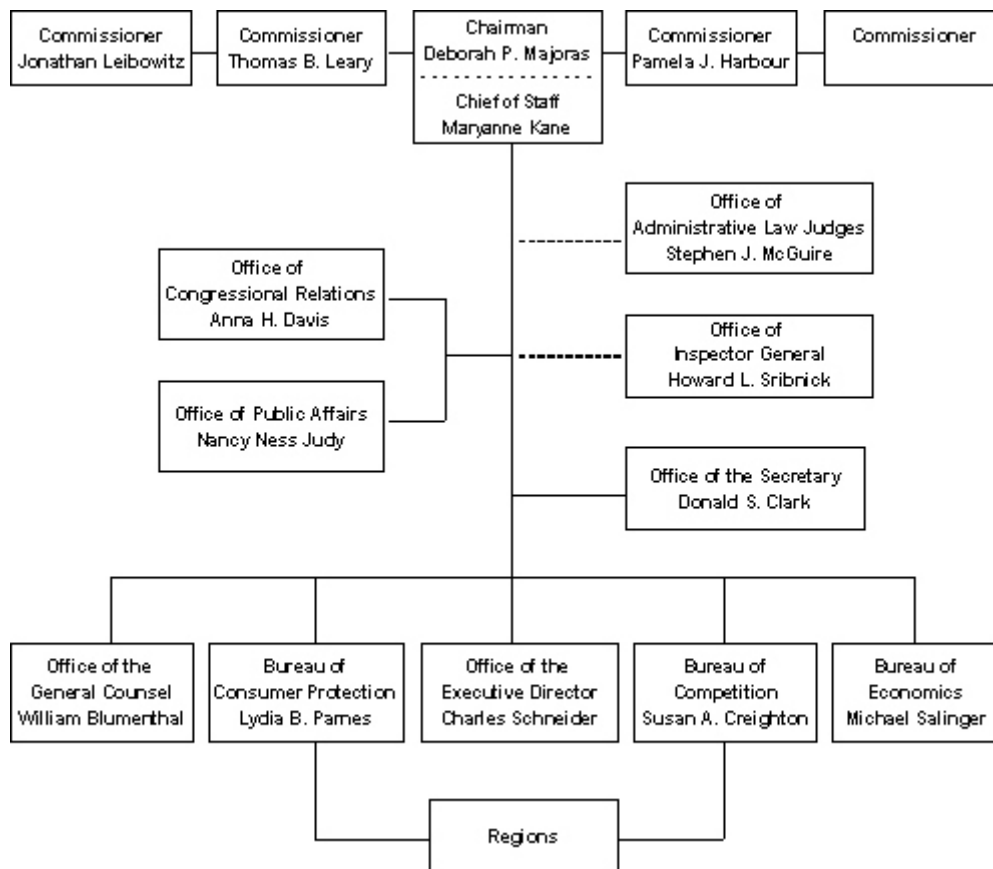
|  |             |  |             |
|--|-------------|--|-------------|
| <b>Identity Theft</b>                    | <b>39%</b>  | <b>Prizes/Sweepstakes and Lotteries</b>          | <b>5 %</b>  |
| <b>Internet Auctions</b>                 | <b>16 %</b> | <b>Advance-Fee Loans &amp; Credit Protection</b> | <b>3 %</b>  |
| <b>Shop-at-Home/Catalog Sales</b>        | <b>8 %</b>  | <b>Business Opportunities &amp; Work-at-Home</b> | <b>2 %</b>  |
| <b>Internet Services &amp; Computers</b> | <b>6 %</b>  | <b>Telephone Services -</b>                      | <b>2 %</b>  |
| <b>Foreign Money Offers</b>              | <b>6 %</b>  | <b>Other (miscellaneous) -</b>                   | <b>12 %</b> |

## Organization

The FTC is headed by a Commission comprised of five members who are nominated by the President and confirmed by the Senate, and who serve staggered seven-year terms. The President chooses one Commissioner to act as Chairman. No more than three Commissioners can be of the same political party. At the end of FY 2005, the Chairman was Deborah Platt Majoras, and the Commissioners were Thomas B. Leary, Pamela Jones Harbour, and Jonathan Leibowitz, with one position vacant.

The FTC has two major law enforcement bureaus, Consumer Protection and Competition, that represent its two missions and strategic goals. These bureaus are supported by an economics bureau, regional offices, and administrative offices. The agency enforces laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers. It also promotes informed consumer choice and public understanding of the competitive process. The work of the FTC is critical in protecting and strengthening free and open markets in the United States and, increasingly, the world.

### FEDERAL TRADE COMMISSION ORGANIZATION CHART





## Mission

The FTC's vital mission is to stand up for America's free market process and for its consumers, who benefit from competitive markets in which truthful information flows. Accordingly, the agency strives to develop and implement policies that recognize the remarkable consumer benefits inherent in our largely decentralized economic organization. Emphasizing the mutuality inherent in the relationship between consumers and business, the FTC's central aim is to make discriminating judgments that permit the agency to channel its resources toward preventing and halting private and public measures that injure consumers.

At the start of the 21st century, global markets, high-technology innovation, and markets in transition to new ways of competing dominate the economic landscape. The FTC continues to adapt its mission strategies and workforce in response to these marketplace forces. Consumer protection and antitrust law enforcement have played an important role in maintaining the competitiveness of U.S. markets. The FTC ensures that free markets work – that competition among producers and accurate information in the hands of consumers create the incentives to generate the best products at the lowest prices, spur efficiency and innovation, strengthen the economy, and produce benefits for consumers.

For competition to thrive, consumers must receive accurate information about products and services. Through its consumer protection mandate, the FTC protects consumers from fraud, deception, and unfair practices in the marketplace. It works to foster the exchange of accurate, non-deceptive information, allowing consumers to make informed choices in their purchasing decisions and to participate with confidence in the traditional and electronic marketplaces. The FTC addresses current issues of importance to consumers, including identity theft, data security, consumer privacy, telemarketing fraud, Internet fraud, health care, and consumer credit.

At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from unreasonable restrictions on competition. Through its maintaining competition mandate, the agency enforces the laws that prohibit anticompetitive mergers and business practices. It promotes free and open competitive markets, which bring consumers lower prices, innovation, and choice among products and services. A significant portion of the FTC's resources are devoted to market segments that matter most to consumers, including energy, health care, prescription drugs, grocery retailing, and high tech. The FTC works to remove restrictions on competition so that markets can function at their best.

The FTC's legislative mandate to serve as a locus of professional expertise on competition and consumer protection issues makes the FTC highly distinctive among antitrust and consumer protection agencies worldwide. To position itself to make intelligent contributions to consumer protection and competition policy through litigation or non-litigation instruments, the FTC must make substantial investments in "policy research and development." Its capacity to enforce the antitrust and consumer protection laws, and its credibility as a voice for sound public policy, requires a continuing commitment to conduct research that increases its understanding of how markets and firms operate, the conditions under which business conduct is likely to harm consumers, and the effects of its previous enforcement efforts.

## Strategic Goals and Objectives

### FTC's Mission

To prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these missions without unduly burdening legitimate business activity

### FTC's Vision

A U.S. economy characterized by vigorous competition among producers and consumer access to accurate information, yielding high-quality products at low prices and encouraging efficiency, innovation, and consumer choice.

The FTC provides annual performance plans to Congress that set forth its goals and objectives, and its performance measures and targets as required by the Government Performance Results Act. The FTC has two strategic goals that link directly to its two missions, Consumer Protection and Maintaining Competition. Each goal has three objectives – **identify**, **stop**, and **prevent** illegal practices – and each objective has performance measures. The FTC uses strategic planning to set the strategies, implementation plans, performance measures, and targets for its goals. The FTC's Performance Plans and FYs 2003-2008 Strategic Plan are available on its Web site at [ftc.gov/opp/gpra/index.htm](http://ftc.gov/opp/gpra/index.htm). In FY 2006, the FTC will revise its Strategic Plan to cover FYs 2006 - 2011.

## **Strategic Goal 1 Protect Consumers**

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.

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

**Objective 1.3 Prevent** consumer injury through education.

## **Strategic Goal 2 Maintain Competition**

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.

**Objective 2.2 Stop** anticompetitive mergers and practices through law enforcement.

**Objective 2.3 Prevent** consumer injury through education.

## **Program Performance Overview**

The systems and methodologies for collecting performance data are reviewed by the FTC's Office of the Inspector General. Senior economists from the FTC's Bureau of Economics review statistical data, as appropriate. Performance measure results are reviewed by senior management and the Commission periodically throughout the fiscal year. It was noted that targets were exceeded in several performance areas in FY 2005 and recent fiscal years. The agency determined that performance measures and results targets will be reevaluated in FY 2006 when it updates its strategic plan for FYs 2006 - 2011. Also in FY 2006, the FTC is scheduled for its first Program Assessment Ratings Tool (PART) Evaluation. A summary of findings and recommendations of the program evaluation will be included in the agency's FY 2006 PAR.

### **Goal 1: Protect Consumers**

The goal of the Consumer Protection Mission is to prevent fraud, deception, and unfair business practices in the marketplace. It works to accomplish this goal through three objectives, which are to: (1) **identify** fraud, deception, and unfair practices that cause the greatest consumer injury; (2) **stop** fraud, deception, and unfair practices through law enforcement; and (3) **prevent** consumer injury through education.

#### **Objective 1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury**

To identify the most prevalent and serious forms of fraud and deception, the FTC relies on its Consumer Information System (CIS) database, the largest database of consumer complaints in the world. The FTC collects complaints via its toll-free help lines, postal mail, and online. It also receives complaint data from a broad array of public and private partner organizations in the United States and Canada.

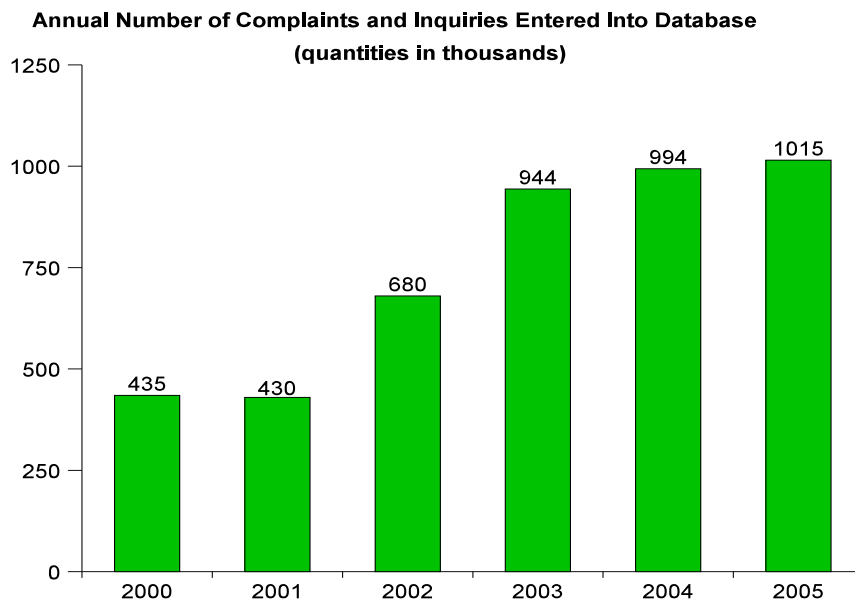
Analysis of the complaints in its CIS database enables the FTC to detect and respond rapidly to fraud, deception, and other illegal practices. This results in effective targeting of the agency's law enforcement and education resources. The continuous input of new complaints into the database helps the FTC and its law enforcement partners determine where and how the latest incidents of fraud may be occurring.

The FTC also shares complaints about fraud and deception with its law enforcement partners through *Consumer Sentinel*, a secure Web site that provides access to nearly 2.7 million fraud and identity

theft complaints. *Consumer Sentinel* is a unique and effective enforcement tool that permits approximately 1,400 law enforcers in the United States, Canada, and Australia to determine whether a particular fraudulent scheme is local, national, or cross-border in nature, and also to help spot larger trends for law enforcement action.

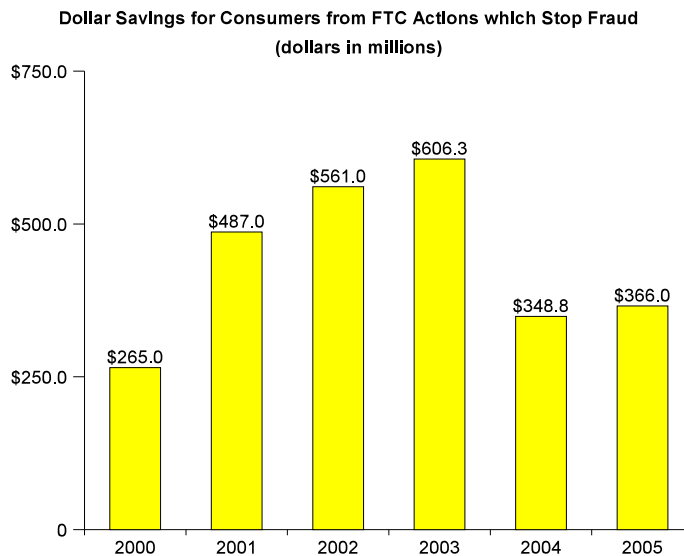
The FTC determines its success under this objective using two performance measures. First, the agency measures the total number of consumer complaints and inquiries that are added annually to the CIS database (see graph below for actual results for the last five years). Second, it measures how many of these consumer complaints and inquiries relate to identity theft. The target for FY 2005 was to add at least 700,000 entries into the database, including 300,000 relating to identity theft. The FTC exceeded its target, adding 1,015,000 entries, including 348,000 relating to identity theft.

The number of total annual entries has increased substantially in recent years. In response to the success of the CIS database, the agency has raised its targets in its strategic and performance plans, as appropriate. The graph below shows the upward trend of the annual actual results of this measure. The FTC began tracking identity theft entries in FY 2003, setting a target of 155,000 entries based on historical data.



## Objective 2: Stop fraud, deception, and unfair practices through law enforcement

The FTC uses its law enforcement authority to stop fraud, deception, and unfair practices. Consumers save money each time a fraudulent operator is stopped by successful litigation or settlement with the agency. Savings to consumers are increased when the agency leads joint law enforcement initiatives with federal, state, and international partners. The FTC determines its success under this objective using three performance measures. First, the agency measures the effectiveness of its law enforcement efforts to stop fraud by estimating the amount of money it has saved consumers based on the annual fraudulent sales of defendants. In FY 2005, the FTC saved consumers \$366 million, which represents 92 percent of its \$400 million target. However, the agency also set a target in its FY 2003-2008 Strategic Plan of saving consumers a total of \$2 billion (\$400 million a year) by FY 2008. Despite being slightly below its current year target, the total actual savings from FY 2003-2005 is approximately \$1,400 million exceeding its expected 3-year average of \$1,200 million. The amount of savings vary year-to-year based on the number of cases and amounts of fraudulent sales of defendants. The following graph demonstrates the amounts the FTC has saved consumers in recent years.



Second, as an indicator of the usefulness of the FTC's *Consumer Sentinel* complaints, the agency measures the number of data searches by its staff and other law enforcement personnel. This measure was added in FY 2003, with a target of 20,000 searches and an actual result of 27,685. In FY 2005, the actual number of *Consumer Sentinel* searches was approximately 79,000, far exceeding the annual target of 26,000. However, *Consumer Sentinel* made several major changes and improvements in the past two years, and staff estimate that about half of the FTC and external law

enforcement personnel usage may be related to the testing of these changes.

Finally, the agency measures the number of data searches by law enforcement personnel of the FTC's identity theft complaints. This measure also was added in FY 2003, with a target of 1,400 and actual results of 2,167. In FY 2004, the target was 1,700 and actual results were 2,120. In FY 2005, the target was 1,850 and the actual results were 1,680 or 91 percent of the target. Although the results fell moderately below the targeted amount in FY 2005, the average annual results is higher than expected. To boost usage of the Identity Theft Clearinghouse, the FTC will encourage its law enforcement partners through speeches, conferences, education, and training to use the Clearinghouse as a resource in their efforts to protect consumers and aid victims of identity theft.

### **Objective 3: Prevent consumer injury through education**

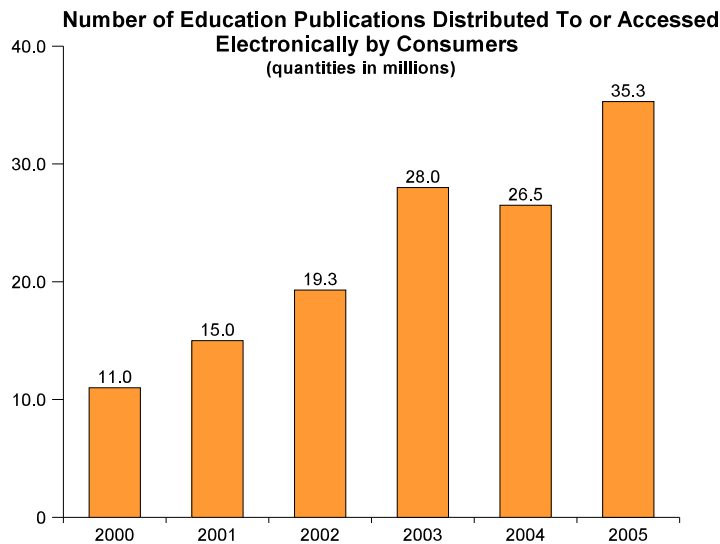
Consumer and business education represents the first line of defense against fraud, deception, and unfair practices. Most FTC law enforcement initiatives include a consumer and/or business education component aimed at preventing consumer injury and unlawful business practices. Public education programs 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 makes maximum use of the national media and outreach to lead more consumers to the FTC's Web site ([ftc.gov](http://ftc.gov)) and the one-stop government Web site for consumer information ([consumer.gov](http://consumer.gov)). Messages also reach the public through the FTC's Consumer Response Center and hundreds of partners that distribute FTC print materials, link to its Web site, or post the FTC's messages on their Web sites.

The FTC determines its success under this objective using three performance measures. First, the agency measures the total number of education publications distributed to or accessed electronically by consumers. Second, it measures the number of publications related to identity theft distributed to or accessed electronically by consumers. Finally, it measures the number of Spanish-language education publications distributed to or accessed electronically by consumers. The latter two measures were added in FY 2003 to track the FTC's efforts to respond to high-priority consumer issues.

The target in FY 2005 was to reach a total audience of at least 20 million with FTC education publications. The FTC exceeded this target by distributing 35.3 million publications. More publications continue to be distributed online than in print (approximately 75 percent online). The 35.3 million includes 6 million publications related to identity theft, double the target of 3.0 million, and 1,157,000 Spanish-language publications, far exceeding the target of 500,000. In FY 2003, the



FTC distributed 3 million publications related to identity theft and 458,000 Spanish-language publications. In FY 2004, the FTC distributed 26.5 million publications, including 3.7 million publications related to identity theft and 737,000 Spanish-language publications, The FTC exceeded these targets in FY 2005 due to the continuing increase in Web hits, interest in identity theft education, and communication of the availability of Spanish-language consumer materials. The following graph shows the trend in distribution of all Consumer Protection Mission education publications in recent years.



## **Goal 2: Maintain Competition**

The goal of the Maintaining Competition Mission is to prevent anticompetitive mergers and other anticompetitive business practices in the marketplace. It works to accomplish this goal through three objectives, which are to: (1) **identify** anticompetitive mergers and practices that cause the greatest consumer injury; (2) **stop** anticompetitive mergers and practices through law enforcement; and (3) **prevent** consumer injury through education.

### **Objective 1: Identify anticompetitive mergers and practices that cause the greatest consumer injury**

The FTC's Bureau of Competition and the Antitrust Division of the U.S. Department of Justice (DOJ) share responsibility for enforcing laws that promote competition in the marketplace.

Competition benefits consumers by keeping prices low and the quality of goods and services high. Most mergers actually benefit competition and consumers by allowing firms to operate more efficiently. But some are likely to lessen competition. That, in turn, can lead to higher prices, reduced availability of goods or services, lower quality of products, and less innovation. Identifying and challenging anticompetitive mergers is a difficult task that can take thousands of hours of investigative work and, often, litigation.

The Hart-Scott-Rodino (HSR) Act requires that companies planning a merger, in which the size of the transaction and the parties exceeds thresholds prescribed by the Act, notify the FTC and DOJ before proceeding with the transaction. The FTC uses these “premerger notification reports” as its primary means for identifying potentially anticompetitive mergers, screening each proposed transaction to determine which require further investigation. Over the past two years, a less active economy and revised HSR thresholds have kept the number of reported transactions at moderate levels. The modified reporting thresholds did not alter the standard of legality for mergers however, so the FTC has increased efforts to identify mergers not reported under HSR that might harm competition. These efforts include monitoring trade press and Internet resources, as well as following up on information from congressional offices, other Executive Branch agencies, state and local governments, consumers, businesses, and the antitrust bar about possibly anticompetitive mergers. The FTC uses similar means to identify business practices that may harm consumers.

The FTC determined its success under this objective in FY 2005 using two performance measures. First, the agency measured the percentage of significant HSR merger investigations concluded during the year that resulted in enforcement action. Significant HSR merger investigations are those in which the Commission issued a formal request for additional information – called a “second request”– from the parties under the HSR Act, typically representing no more than 2 to 3 percent of the premerger notification filings received. Second, it measured the percentage of significant nonmerger investigations concluded during the year that resulted in enforcement action. Significant nonmerger investigations are those in which the Commission approved the use of its authority to compel the submission of information.

The FTC’s target for both measures was that the number of significant investigations concluded during the year that result in enforcement action will generally fall in the range from 60 to 80 percent. Results within this range show that the agency was successful in targeting potentially anticompetitive conduct because if the conduct was found not to be anticompetitive, no enforcement action would have been taken.

In the merger area, the FTC took enforcement action in 13 of 25, or 52 percent, of the second request

investigations concluded during the fiscal year. In the nonmerger area, two of four investigations or 50 percent of significant investigations concluded during the year resulted in enforcement action. These results are not within the target range of 60-80 percent, although the small numbers of investigations concluded in FY 2005 make it difficult to draw any definitive conclusions. There are many ongoing investigations that could not be included in this year's results. Proceedings may span several fiscal years, making it hard to capture the FTC's performance in any particular fiscal year. In the future, these results will be presented in aggregate numbers spanning a five-year period to help remedy this situation.

In the merger area, increases in economic activity generally and in the number of merger filings submitted during FY 2004 and 2005 foreshadow the beginning of a trend toward a higher volume of FTC merger activity and enforcement work, including a higher number of second requests. In the nonmerger area, health care, energy, and intellectual property issues have increasingly become a high priority to consumers and, therefore, to the FTC. These issues of growing importance will place increasing demands for action on the FTC. In both the merger and nonmerger areas, the initiation of new investigations and litigations, the completion of those cases in process, and the reporting of performance measure results in aggregate numbers will more accurately reflect FTC's success under this objective.

## **Objective 2: Stop anticompetitive mergers and practices through law enforcement**

The FTC uses its law enforcement authority to stop anticompetitive mergers and practices both directly and indirectly. Through federal court or administrative litigation or by negotiated settlement, the agency saves consumers millions of dollars annually by preventing harmful mergers from taking place, by arranging for the restructuring of transactions to eliminate anticompetitive effects, or by stopping unlawful business practices. In addition to these direct actions, an effective FTC enforcement presence indirectly serves its objective by demonstrating to the business and legal communities that the agency can and will take successful legal action to stop anticompetitive transactions and practices.

The FTC determined its success under this objective using three performance measures. First, the agency measured the percentage of positive outcomes obtained in antitrust enforcement actions. Second, the agency measured the volume-of-commerce in markets in which the FTC took enforcement action to protect competition from the effects of unlawful mergers. Finally, the agency measured the volume of commerce in markets in which the FTC took enforcement action to protect competition from the effects of unlawful conduct. The latter two measures indicate the scope of the FTC's antitrust enforcement activities, and were new in FY 2004.

A positive outcome for an enforcement action includes abandonment of an anticompetitive transaction following an FTC challenge, a consent agreement to resolve antitrust concerns, or a successful result in administrative or federal court litigation after all proceedings, including appeals, have concluded. A negative outcome occurs when parties refuse to settle antitrust concerns raised by the FTC and the agency is unsuccessful in obtaining relief through the courts or an administrative challenge. The FTC significantly exceeded its target of achieving positive outcomes in 80 percent of its enforcement actions by obtaining a positive result in approximately 95 percent of the administrative and federal court enforcement actions it concluded during the year. In recent years, the FTC has achieved similar results on this measure, 95 percent in 2000, 94 percent in 2001, and 100 percent in 2002, 2003, and 2004. These results benefit consumers both directly and indirectly – because the agency’s track record of success in obtaining the relief it deems necessary on consumers’ behalf helps persuade more parties to settle FTC charges rather than resist, which could lead to higher prices, reduced availability of goods or services, lower quality of products, and less innovation.

As discussed in the FTC’s 2003-2008 Strategic Plan, external factors, such as level of merger activity, may cause the results of the two volume of commerce measures to fluctuate significantly from year to year. Thus, the FTC’s targets for these two new measures now are both expressed as aggregate totals over the five-year period. In FY 2005, the FTC took merger enforcement actions that protected competition in markets with a total of \$61.8 billion in annual sales (or more than 150 percent of its annual target of \$40 billion). The FTC’s nonmerger enforcement actions in FY 2005 protected commerce in markets with a total of \$19.36 billion in annual sales (or more than 99 percent of its annual target of \$20 billion).

As stated, the FY 2005 results exceed or equal the annual averages needed to attain the five-year goals of \$200 billion (annual average \$40 billion) and \$100 billion (annual average \$20 billion). The results on the two volume-of-commerce measures illustrate why the agency expressed its targets in terms of five-year amounts. The FY 2005 increase in these measures over FY 2004 results indicates that future results should be higher and the five-year targets attainable. Several factors support this conclusion. First, merger activity is increasing but is still short of the level it is likely to reach as the economy continues its recent pattern of growth. Second, the continued trend of administrative litigation means that much of the FTC’s current merger and nonmerger enforcement efforts are being devoted to ongoing matters that are not yet included in any measure. Third, the size of individual FTC cases varies widely, and a small number of large matters can have a significant impact on these measures. Finally, the agency’s record over the past several years is consistent with FY 2004, and viewed comprehensively, the FTC’s productivity over the past year has been extremely high.

### **Objective 3: Prevent consumer injury through education**

The FTC increases awareness of antitrust law and policy and promotes compliance with the antitrust laws by educating the public about its activities and communicating its enforcement intentions. The agency's methods of informing the public include development and publication of antitrust guidelines and policy statements; press releases and public dissemination of documents describing its formal actions; and well-publicized testimony, speeches, and publications.

The agency determined its success by measuring the number of hits on antitrust pages on the FTC's Web site. In FY 2005, the FTC's Web site recorded 9.8 million total hits on antitrust-related page, within two percent of the target of 10 million.

## FY 2005 Performance Measure Targets and Results

### GOAL 1: Protect Consumers

#### OBJECTIVE 1.1

**Measure 1.1.1:** Annual number of consumer complaints and inquiries entered into database.

Target: 750,000  
Actual: 1,015,000 ✓

**Measure 1.1.2:** Annual number of consumer complaints and inquiries related to identity theft entered into database.

Target: 300,000  
Actual: 348,000 ✓

#### OBJECTIVE 1.2

**Measure 1.2.1:** Dollar savings for consumers from FTC actions which stop fraud.

Target: \$400 million  
Actual: \$366 million

**Measure 1.2.3:** Number of data searches conducted by FTC and law enforcement personnel of the FTC's Consumer Sentinel database.

Target: 26,000  
Actual: 79,000 ✓

**Measure 1.2.4:** Number of data searches conducted by law enforcement personnel of the FTC's identity theft database.

Target: 1,850  
Actual: 1,680

#### OBJECTIVE 1.3

**Measure 1.3.1:** Number of education publications distributed to or accessed electronically by consumers.

Target: 20.0 million  
Actual: 35.3 million ✓

**Measure 1.3.2:** Number of education publications related to identity theft distributed to or accessed electronically by consumers.

Target: 3 million  
Actual: 6 million ✓

**Measure 1.3.3:** Number of Spanish-language education publications distributed to or accessed electronically by consumers.

Target: 500,000  
Actual: 1,157,000 ✓

### GOAL 2: Maintain Competition

#### OBJECTIVE 2.1

**Measure 2.1.1:** Percent of HSR second requests resulting in enforcement action.

Target: 60% - 80%  
Actual: 52%

**Measure 2.1.3:** Number of nonmerger investigations resulting in enforcement action.

Target: 60% - 80%  
Actual: 50%

#### OBJECTIVE 2.2

**Measure 2.2.1:** Positive outcome of cases brought by FTC due to alleged violations.

Target: 80%  
Actual: 95% ✓

**Measure 2.2.3:** Volume-of-commerce in markets in which FTC took action to prevent anticompetitive mergers.

Target: \$40.0 billion  
Actual: \$61.8 billion ✓

**Measure 2.2.5:** Volume-of-commerce in markets in which FTC took action to prevent anticompetitive conduct.

Target: \$20.0 billion  
Actual: \$19.4 billion

#### OBJECTIVE 2.3

**Measure 2.3.2:** Quantify number of hits on antitrust information on FTC Web site.

Target: 10.0 million  
Actual: 9.8 million

✓ met or exceeded target

## **Ongoing and Future Challenges**

### **Consumer Protection Mission**

Recent news reports about data security breaches have heightened public awareness about the importance of safeguarding sensitive consumer information. Data security is one of several areas of concern to the FTC in its work to protect consumers' privacy and combat identity theft. Through law enforcement and consumer and business education, the FTC is addressing the misuse of consumers' sensitive information and helping consumers protect their privacy and identities.

Identity theft continues to be a top concern for the agency. The FTC administers an extensive program to assist the victims of identity theft and to collect data to assist criminal law enforcement agencies in prosecuting the perpetrators of identity theft. In FY 2006, the FTC will launch a new consumer education campaign on identity theft to make sure that consumers know their rights under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

In other important privacy-related work, the FTC will continue to implement and enforce the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) and the FACT Act. In the spam (unsolicited commercial e-mail) arena, the agency protects consumers from, and reduces the impact of, fraudulent and deceptive spam by bringing law enforcement actions to stop deceptive or unfair spam practices. The FTC will continue to conduct rulemakings, studies, and policy efforts under the CAN-SPAM and FACT Acts. The FTC also will continue its enforcement efforts to stop improper usage of pre-acquired account information and other misuse of personal information, and to ensure that consumers have access to their credit information to confirm its accuracy. In addition, the agency will target deceptive subprime lending and deceptive debt counseling schemes through law enforcement actions.

New and expanding technologies have created other challenges for the FTC. In addition to spam, the agency is working on matters involving spyware and unauthorized adware, peer-to-peer file sharing, and phishing to help protect consumers in the high-tech marketplace. Attacking telemarketing and business opportunity fraud continues to be a challenge and a priority, as does protecting consumers from more traditional scams that have found new life on the Internet, including pyramid schemes and health-related fraud. The Internet has become an especially fertile ground for scam artists who can reach vulnerable consumers easily and cheaply online and immediately access both a national and an international marketplace.

Given the rise in cross-border fraud consumer complaints that has occurred over the last several years, the FTC will continue to bring cases with international components. During FY 2005, the FTC released a report on proposed legislation, the U.S. SAFE WEB Act, that would improve the FTC's ability to combat cross-border consumer protection law violations, particularly violations involving spam and spyware.

The agency will continue to target its efforts based on the analysis of consumer complaint data that it gathers. FTC databases – *Consumer Sentinel*, Identity Theft Data Clearinghouse, Consumer Information System, and spam database – enable the agency and its law enforcement partners to detect trends and problems that involve fraud as they occur. The FTC's prospective challenges include maintaining a rich array of data, ensuring that its systems are fully used by the agency and its law enforcement partners, and ensuring that the information it collects is reliable. The FTC also continually strives to identify new methods of mining this data and sharing the results in innovative ways to assist its law enforcement partners. These efforts bear fruit in the cases brought by the FTC and other law enforcement agencies who have access to this data.

Through the use of its many tools for identifying consumer issues as they arise in the marketplace, the FTC is prepared to address and take action to protect consumers on a real time basis. For example, in the immediate wake of Hurricane Katrina, the FTC issued a consumer alert on wise charitable giving to make sure that the contributions of a generous nation went to hurricane relief, and not scam artists posing as charities. The FTC also set up special procedures to monitor and analyze every Katrina-related consumer complaint that came into its Consumer Response Center, and entered those complaints into *Consumer Sentinel*, the fraud complaint database used by approximately 1,400 law enforcement agencies. As hurricane victims began the slow task of rebuilding their lives, the FTC distributed, through a variety of media, important information about recreating financial records, using credit wisely, preventing identity theft, and other issues of immediate concern. Finally, the FTC joined with federal, state, and local law enforcement colleagues on the Department of Justice's Hurricane Katrina Fraud Task Force, to make sure that any who seek to exploit hurricane victims are stopped and punished.

In addition to identifying the most serious problems for law enforcement action, the FTC encourages the private sector to consider self-regulatory initiatives, such as consumer education, voluntary compliance, and technological solutions. One particular area of focus in the next several years will be fraud, deception, and unfair business practices affecting Hispanic consumers and other minorities.



## **Maintaining Competition Mission**

As with the Consumer Protection Mission, the FTC monitors the marketplace for issues that may harm competition and, as a consequence, consumers. In the wake of Hurricane Katrina, the FTC continued to monitor gasoline prices in wholesale and retail markets across the United States to examine whether any unusual price movements might result from anticompetitive conduct that violates the FTC Act. If the FTC staff detects unusual price movements in an area, it will research the possible causes, including, where appropriate, consultation with the state attorneys general, state energy agencies, and the Department of Energy's Energy Information Administration, and the FTC will bring enforcement actions as warranted. In addition, as required by Section 1809 of the recently enacted Energy Policy Act of 2005, the FTC is conducting an investigation "to determine if the price of gasoline is being artificially manipulated by reducing refinery capacity or by any other form of market manipulation or price gouging practices."

An important focus of the FTC's traditional antitrust agenda includes efforts to identify and investigate the misuse of government processes. These types of anticompetitive practices, such as the improper use of the Food and Drug Administration's regulatory process to delay entry of generic drugs to the marketplace, can exclude new competitors with little cost or risk to established firms, but with a very significant impact on consumers. The FTC also will continue to focus 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.

The FTC also will focus on efforts to provide more transparency in its decision-making processes. Public understanding of the types of transactions or conduct the FTC is likely to challenge and the reasons for agency action communicates to the business and legal communities that the FTC can and will move successfully to challenge the type of merger transaction or conduct at issue. This information may prevent harmful mergers or anticompetitive practices without the need for government intervention. The FTC will continue to expand public awareness and understanding of its actions by seeking to make its published documents about enforcement actions clear and understandable, explaining why it declined to take action in particular matters, and releasing general policy statements outlining the conditions under which it will apply its different powers.

The FTC also will continue to make full use of its uniquely broad array of policy instruments to provide intellectual leadership on competition issues. A key part of its responsibilities is to ensure that the agency remains at the leading edge of knowledge of both economic theory and real-world developments in the economy. The agency does so in a variety of ways, including sponsoring public workshops, conferences, and hearings, and conducting its own research.

Finally, because antitrust enforcement no longer stops at U.S. borders, the agency will continue its work in the international arena. Today, more than 70 governments enforce various sets of competition laws, and that number continues to grow. Because of the continued growth of commerce beyond national boundaries, these different antitrust enforcement authorities increasingly overlap and intersect. Inconsistencies and diverse requirements increase the costs faced by firms that seek to combine assets or businesses, establish distribution channels, or pursue other business arrangements. This includes both the cost to comply with different regulatory mechanisms and the risk of differing outcomes. Thus, the current growth and diversity in antitrust enforcement mechanisms can interfere with the common goal of promoting a competitive economy. The FTC continues to work with various international groups to increase the procedural and substantive convergence of merger oversight authorities throughout the world. The FTC also will broaden and deepen its cooperation with international agencies on individual cases and antitrust policy issues.

## Significant Program Events

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 business and consumers alike reaped the full benefits of market competition and product innovation.

- **Securing Data and Fighting Identity Theft.** 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. In addition to law enforcement, the FTC continues to provide consumer education and victim assistance. During the first three quarters of FY 2005, the FTC collected nearly 200,000 identity theft complaints in its consumer information system, bringing the total to more than 875,000. Since 2000, the FTC has distributed more than 3.3 million hard copies of its two main identity theft education publications, including its new and improved identity theft booklet, and recorded more than 2.5 million visits to the Web versions of these publications.



<http://www.consumer.gov/idtheft/>

- **Fighting Identity Theft Using the Fair and Accurate Credit Transactions (FACT) Act.** Misuse of personal information is a top consumer privacy concern. According to an FTC staff 2003 Identity Theft survey, 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. The FACT Act provides important tools in the fight against identity theft. The FTC continues to work on the numerous rules and reports mandated by the Act. 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. Beginning in December 2004, consumers in 13 western states were able to

request a free annual credit report. The nationwide phase-in was completed in September 2005. Also, 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.



<http://onguardonline.gov/index.html>

- **Evaluating the Impact of New Technology on Consumers.** While innovation provides American consumers powerful technological tools for shopping, communication, and entertainment, it can also raise new consumer concerns such as spyware and phishing. Spyware is becoming one of the most serious consumer problems on the Internet.



The FTC filed its first spyware case in October 2004, alleging that the defendants unfairly downloaded adware and other software programs to consumers' computers without authorization and then advertised "anti-spyware" products to these same consumers. In March 2005, the FTC filed another case alleging that defendants offered consumers free spyware scans that "detected" spyware on their computers even if there was none, to market anti-spyware software that does not work as represented.

In March, the FTC also released a staff workshop report on spyware. In June 2005, at the FTC's request, an operation that used bogus "scans" and illegal spam to market an anti-spyware program that did not work as claimed had its assets frozen and was barred from making deceptive claims by a stipulated preliminary injunction order issued by a U.S. District Court judge. In August 2005, the FTC obtained a settlement in its first case to address deceptive distribution of adware.

- **Enforcing the CAN-SPAM Act and the Adult Labeling Rule to Protect Consumers.** Experts have estimated that unsolicited commercial email (spam) 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

new tools to address this issue. In April 2005, the FTC and California Attorney General sought a halt to 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 FTC also continues 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.



[www.ftc.gov/bcp/online/edcams/spam/index.html](http://www.ftc.gov/bcp/online/edcams/spam/index.html)

- **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 U.S., while other important factors have included increasing demand, supply restrictions, and federal, state, and local regulations such as clean fuel requirements and taxes.



[www.ftc.gov/ftc/oilgas/index.html](http://www.ftc.gov/ftc/oilgas/index.html)

- **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 – 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. Increasing economic activity and a corresponding increase in merger notifications resulted in review of transactions valued at more than \$900 billion in the first three quarters of 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.** Now past its two-year anniversary, the National Do Not Call Registry has registered more than 100 million telephone numbers. 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. The Registry protects consumer privacy by prohibiting most telemarketing calls to consumers who register their telephone numbers on the list. Although compliance with this law has been very high, the FTC has received more than one million consumer complaints since October 2003, and enforcement remains a top priority.

[www.ftc.gov/bcp/online/edcams/donotcall/index.html](http://www.ftc.gov/bcp/online/edcams/donotcall/index.html)



- **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.** Through the third quarter of FY 2005, the FTC filed 52 actions in federal district court to protect consumers against unfair and deceptive trade practices, and obtained 74 judgments ordering more than \$380 million in consumer redress, and seven judgments ordering payment of more than \$3 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. In FY 2005, the CLU was active in developing a partnership with the U.S. Attorney's Office in the Southern District of Florida and organizing "Project Biz Opp Flop" with that office. Thus far, 19 people who worked for five business opportunity firms have been charged criminally with mail fraud, wire fraud, conspiracy, and/or criminal contempt; 11 of these defendants have already entered guilty pleas and four have been sentenced, with prison terms ranging from 57 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 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.

**!OJO!**

[www.ftc.gov/ojo](http://www.ftc.gov/ojo)



- **Enhancing International Cooperation.** With advances in technology, spammers, spyware operators, fraudulent telemarketers, and other scam artists can strike quickly on a global scale. 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 FTC has implemented a comprehensive program to combat cross-border consumer protection law violations. This includes a recently-released report on legislation 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 with its counterpart consumer protection agency in Mexico. The FTC also continues to work closely with Canadian agencies on cross-border telemarketing issues. Another FTC goal is to build a network of cooperation to combat illegal spam. 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.
- **Fostering Global Competition and Protection of Consumers.** The FTC also 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 two years ago by the FTC, the DOJ, and 13 other competition agencies that now numbers almost 90 member agencies. The FTC also promotes market-oriented policies. 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 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 and 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. The FTC has brought several cases against debt counseling, debt collection, and other financial



services companies that have engaged in deceptive or illegal practices. In one recent 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 estimated amount of consumer injury they caused. The amount represents 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 the first three quarters of 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 were also 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 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 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.

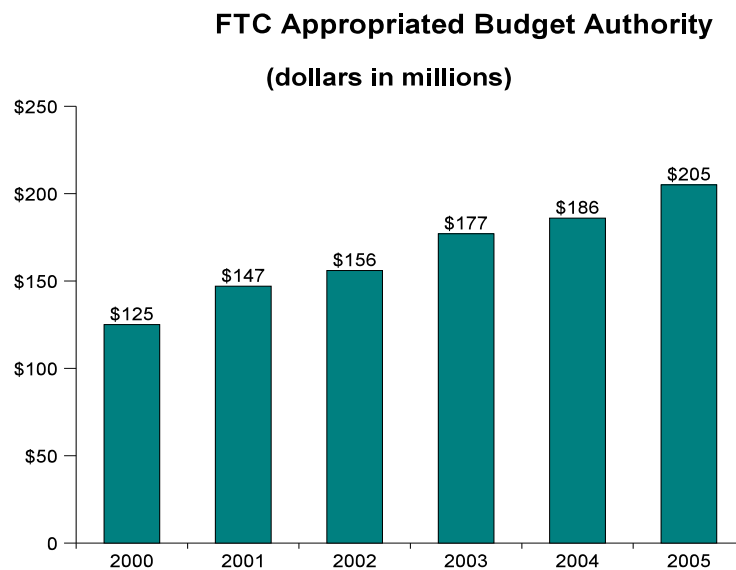
Other FTC advocacy efforts contributed to several positive consumer outcomes. An intense real estate market has prompted some legislatures – often with pressure from state real estate commissions – to create proposals that impose minimum service requirements on brokers. These proposals place competitive 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.

## Financial Performance Overview

As of September 30, 2005, the financial condition of the FTC was sound. The agency had sufficient funds to meet program needs and adequate financial controls in place to ensure obligations did not exceed available budget authority. The accompanying financial statements have been prepared in conformity with the hierarchy of accounting principles approved by the Federal Accounting Standards Advisory Board (FASAB) and the Office of Management and Budget (OMB) Circular A-136, Financial Reporting Requirements.

## Sources of Funds

The FTC has an annual appropriation for Salaries and Expenses, and its appropriated funds are available until expended. The FTC's appropriated budget authority in FY 2005 was \$205 million but imposed two rescissions that reduced agency funding by over \$1 million. This amount represents an overall appropriation increase of \$19 million over FY 2004. In addition, the FTC received \$2 million for Reimbursable Activity, and carried over \$8 million in no-year funds from last fiscal year. The FTC's total amount of 2005 budgetary resources was \$214 million.



The FTC's budgetary resources are offset by the collection of fees from two sources. The Hart-Scott-Rodino (HSR) Antitrust Improvements Act, P.L. 101-162, requires parties to mergers valued over a specified threshold amount to submit premerger review filing, and to pay an appropriate filing fee, to the FTC. The FTC and the Antitrust Division, Department of Justice, equally share each

dollar collected. Separately, the Do Not Call Implementation Act, P.L. 108-10, requires certain telemarketers to pay a fee to access telephone numbers in the National Do Not Call Registry from consumers who no longer wish to receive telemarketer calls. In FY 2005, the FTC's share of collected fees was \$100 million from HSR Premerger filings fees and \$18 million from Do Not Call Registry fees. The total FY 2005 amount of the FTC's share of offsetting fees was \$118 million.

## **Cost of Strategic Goals**

In FY 2005, the gross cost of the Consumer Protection Mission, which relates directly to the Protect Consumers strategic goal, was \$112 million, and the gross cost of the Maintaining Competition Mission, which relates directly to the Maintain Competition strategic goal, was \$84 million. The FTC's total net cost of operations, i.e., gross cost less offsets, was \$78 million. These amounts are shown in the Statement of Net Cost, which can be found in Part III, *Audited Financial Statements*, of this report.

The FTC is moving forward to meet the goal of its Five-Year Financial Systems Strategic Plan: *By 2008, the FTC will have a state-of-the-art integrated CORE financial management system that encompasses accounting, budget, acquisitions, and performance measurement requirements.* With this new system, the FTC plans to build in indicators that will permit the agency to also determine the cost of achieving its strategic objectives and performance measure results.

## **Audit Results**

The FTC received an unqualified audit opinion on FY 2005 financial operations. No material internal control weaknesses nor instances of substantial noncompliance with the Federal Financial Management Improvement Act were found. This was the ninth consecutive year the FTC received an unqualified opinion.

## **Financial Statements**

The FTC's financial statements summarize the financial activity and financial position of the agency in FY 2005. The financial statements, notes, and the balance of the required supplementary information appear in Part III, *Audited Financial Statements*.

## **Management Controls, Systems, and Compliance with Laws and Regulations**

### **Federal Managers' Financial Integrity Act (FMFIA)**

The FMFIA requires federal agencies to provide an annual statement of assurance regarding management controls and financial systems. The statement of assurance is provided in the Chairman's opening message at the beginning of the Performance and Accountability report. This statement was based on the review and consideration of a wide variety of evaluations, control assessments, internal analyses, reconciliations, reports, and other information, including OIG audits, and the inspectors general's opinion on the FTC financial statements and OIG reports on internal control and compliance with laws and regulations. In addition, FTC is not identified on the Government Accountability Office's (GAO) High Risk List related to controls governing various areas.

In response to the FMFIA, the agency developed a management control program which holds managers accountable for the performance, productivity, operations and integrity of their programs through the use of management controls. Additionally, senior managers at the agency are responsible for evaluating the adequacy of the management controls surrounding their activities and determining whether they conform to the principles and standards established by the Office of Management and Budget (OMB) and the GAO. The results of these evaluations and other senior management information are used to determine whether there are any management control problems to be reported.

### **Federal Information Security Management Act (FISMA)**

The FTC continues to stay vigilant in ensuring that there are no material weaknesses in administrative controls over information systems and is always seeking methods of improving its secure configuration. As part of the effort to meet or exceed the requirements of FISMA, three agency systems have undergone certification and accreditation; the FTC's certification and accreditation policy was revised to conform with the standard established by the National Institute of Standards and Technology (NIST); the agency reviewed and modified its Change Management process; and the Acceptance Test environment was separated from the Production and Development environments. The FTC also conducted an assessment of its security controls against the new NIST Special Publication 800-53, *Recommended Security Controls for Federal Information Systems*, and found that more than 80 percent of the recommended controls have been implemented.

## **Prompt Payment Act**

The Prompt Payment Act requires federal agencies to make timely payments to vendors, including any interest penalties for late invoice payments. In fiscal year 2005, the FTC paid interest penalties on 136 invoices, 3.4 percent, of the 3,968 vendor invoices processed, representing payments of approximately \$4,202. The FTC paid only \$0.01 in interest penalties for every 100 dollars disbursed in fiscal year 2005.

## **Federal Financial Management Improvement Act (FFMIA)**

The FFMIA of 1996 requires federal agencies to report on agency substantial compliance with federal financial management system requirements, federal accounting standards, and the U.S. Government Standard General Ledger. Under this law, the agency heads are required to assess and report on whether these systems comply with FFMIA on an annual basis.

In assessing compliance with FFMIA, FTC adheres to the FFMIA implementation guidance provided by OMB and considers the results of OIG and any GAO audit reports, annual financial statement audits, and any other information available.

Based on all information assessed, the Chairman of FTC has determined that FTC is compliant with FFMIA requirements.

## **Debt Collection Improvement Act**

The Debt Collection Improvement Act prescribes standards for the administrative collection, compromise, suspension, and termination of federal agency collection actions and referrals to the proper agency for litigation. Although the Act has no material effect on the FTC since it operates with minimal delinquent debt, all debt more than 180 days old has been transferred to the U.S. Department of the Treasury for cross-servicing. In addition, recurring payments were processed by electronic funds transfer (EFT) in accordance with the EFT provisions of the Debt Collection Improvement Act of 1996.

## **Improper Payments Information Act**

The Improper Payments Information Act (Public Law (P.L.) No.107-300) defined requirements to reduce improper/erroneous payments made by the federal government. OMB also has established specific reporting requirements for agencies with programs that possess a significant risk of

erroneous payments and for reporting on the results of recovery auditing activities. A significant erroneous payment as defined by OMB guidance is an annual erroneous payment in a program that exceeds both 2.5 percent of the program payments and \$10 million.

The agency reviews controls and systems under the FMFIA to ensure that the agency has controls that can be relied on. In this review, the agency has not identified any programs where significant erroneous payments have occurred within the agency. The agency will continue to review programs on an annual basis to determine if any significant erroneous payments exist.

## Part II: Program Performance

### **Goal 1: Protect Consumers Prevent Fraud, Deception, and Unfair Business Practices in the Marketplace**

Congress has charged the FTC with the broadest legislative mandate of any federal consumer protection agency. While most federal consumer protection agencies have jurisdiction over a specific market sector, the FTC possesses broad law enforcement authority that encompasses most segments of the economy, including business and consumer transactions on the Internet. As the nation's leading consumer protection agency, its goal is to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace. It applies three related objectives to achieve this broad-reaching goal:

- **Identify fraud, deception, and unfair practices that cause the greatest consumer injury.**
- **Stop fraud, deception, and unfair practices through law enforcement.**
- **Prevent consumer injury through education.**

First, the FTC identifies practices that cause consumer injury by analyzing the consumer complaint data collected in its Consumer Information System database, holding public discussions, and monitoring the marketplace, including the Internet. Next, the FTC uses this information to target law enforcement efforts. Its law enforcement program aims to stop and deter fraud and deception, protect consumers' privacy, and increase compliance with its consumer protection statutes to ensure that consumers have accurate information for purchasing decisions. Finally, the FTC targets its education efforts to give consumers the information they need to protect themselves from injury and to explain to businesses how to comply with applicable laws.

A priority of the FTC is to ensure that consumer information is safeguarded in the electronic marketplace so consumers will enjoy the same confidence in these commercial transactions that they enjoy in the traditional marketplace. Online commerce has the potential to deliver goods and services, often more conveniently, faster, and at lower prices than traditional brick-and-mortar operations. Online commerce promises significant benefits to consumers and the economy. The Internet also stimulates the development of innovative products and services that were barely



conceivable just a few years ago and enables consumers to tap into rich sources of information that they can use to make better informed purchasing decisions.

There is real risk, however, that these benefits may not be realized if consumers associate the Internet with fraudulent operators. The boom in e-commerce has opened up fertile ground for fraud. In the FTC's experience, fraudulent operators are always among the first to appreciate the potential of a new technology and then use that potential to exploit and deceive consumers. Of particular concern is that Internet health fraud continues to plague consumers looking for solutions to serious illnesses. Traditional scams, such as pyramid schemes, also have found new life on the Internet. The FTC is using all the tools at its disposal – such as its consumer complaint database – to help target areas of consumer problems and is fashioning law enforcement and educational efforts to respond quickly and vigorously to these concerns.

Privacy of personal information is important. Companies that make specific promises to consumers about privacy must honor those promises and should take appropriate measures to protect sensitive consumer information. Companies that honor their promises and take these measures add to consumer confidence in the marketplace. The FTC is concerned with the misuse of personal information and is fully committed to both enforcement and education in this area to encourage appropriate security.

The FTC also works on policy and enforcement efforts related to spam. The FTC has brought more than 75 cases to date challenging deceptive spam. In addition, the CAN-SPAM Act addresses a wide range of practices relating to spam. FTC staff continues to work on CAN-SPAM enforcement, rulemaking, and studies. In June 2005, the FTC issued a report to Congress, as required by the Act, on the use of subject line labeling for commercial e-mail as a means to reduce spam, and concluded that such labeling would not be an effective way to curb spam.

In the consumer credit arena, the FACT Act made sweeping changes and additions to the Fair Credit Reporting Act. Notably, the FACT Act makes existing preemption provisions permanent and adds several provisions to combat identity theft and enhance accuracy and consumer access to credit information. The FACT Act requires the FTC, among other things, to engage in a number of rulemakings. In November 2004, the FTC issued its final rule regarding the proper disposal of consumer report information and records under the FACT Act, the final summary of rights for identity theft, the final summary of general consumer rights, and revised furnisher and user notices. Beginning in December 2004, consumers in 13 western states were able to request a free annual credit report, and the nationwide phase-in to access the free annual reports was completed in September 2005. Also 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, which became effective on August 1, 2005.

For most consumers, access to credit is essential to full participation in the nation's economy. Some unscrupulous lenders, however, deceive consumers about loan terms, rates, or fees. 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. The FTC's enforcement actions target these deceptive lending schemes, especially in the subprime mortgage market, and those that involve deceptive credit counseling services.

### **Objective 1.1: Identify Fraud, Deception, and Unfair Practices That Cause the Greatest Consumer Injury**

The first step in preventing fraud, deception, and unfair business practices in the marketplace is to identify the practices that cause the greatest consumer injury.

#### **Strategies**

To identify consumer protection problems, the FTC collects and analyzes data from many sources. Its Consumer Response Center receives consumer complaints and inquiries via a toll-free number (1-877-FTC-HELP), mail, and the Internet. Partners such as the National Fraud Information Center of the National Consumers League, the Internet Fraud Complaint Center (a partnership between the FBI and the National White Collar Crime Center), Better Business Bureaus, and PhoneBusters (the Canadian fraud database), also share the consumer complaint data they collect with the FTC.

All of this information is entered into the FTC's Consumer Information System database and then analyzed by FTC staff to identify trends and target fraudulent, deceptive, and unfair business practices. The agency shares the fraud complaints that it collects with more than 1,360 other law enforcement agencies across the United States, Canada, and Australia via an encrypted Web site called *Consumer Sentinel*. 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 their enforcement efforts, and to spot trends and target the most serious consumer frauds. Summary and trend data are shared on the public *Consumer Sentinel* site ([consumer.gov/sentinel](http://consumer.gov/sentinel)). The constant input and analysis of fresh complaint data have allowed the FTC to move quickly to stop illegal practices before they cause more harm to consumers.

Consumers can call the FTC’s second toll-free number, 1-877-ID-THEFT, or view its Web site to obtain information about and report identity theft ([consumer.gov/idtheft/](http://consumer.gov/idtheft/)). When they call the FTC or visit its Web site, consumers also can receive guidance on the steps they can take to resolve credit and other problems that may have resulted from identity theft. In FY 2005, the agency received 263,000 identity theft complaints and inquiries. The FTC uses this data to spot patterns that can help criminal law enforcement agencies prosecute identity theft and help businesses avoid the financial consequences of this crime. Criminal cases are identified by the joint FTC and U.S. Secret Service Case Referral Program, and strong leads are referred to regional task forces, many led by the Secret Service Financial Crimes Division.

The FTC, along with the Secret Service and Department of Justice, initiated a training program in 2002 to provide local and state law enforcement officers with practical tools to enhance combined efforts to combat identity theft, including information about accessing *Consumer Sentinel* data. Through 2005, the FTC and its partners held 18 seminars and trained more than 2,550 law enforcement officers from more than 890 agencies.

Finally, the FTC hosts workshops and conferences at which interested parties discuss practices that cause consumer injury, articulating concerns and identifying relevant strategies to combat these

problems. These workshops enable the FTC to hear a variety of views on timely topics and help all parties understand the ramifications of these issues. During FY 2005, the FTC hosted workshops that covered peer-to-peer file sharing, e-mail authentication, childhood obesity, advertising guidelines, and Hispanic outreach and law enforcement.

### Performance Measures and Results

To assess its effectiveness in identifying fraudulent and deceptive practices, the FTC measured the number of consumer complaints and inquiries added to its Consumer Information System database. In FY 2005, the FTC added 1,015,000 entries into its database, far exceeding its projected number of 750,000. Included in these 1,015,000 entries were 348,000 consumer complaints and inquiries related to identity theft, exceeding the projected number of 300,000. These results reflect the increasing interest of organizations in contributing complaint data and consumers’ growing awareness of the FTC’s online complaint form and toll-free telephone numbers. They

#### Performance Measure 1.1.1

Annual number of consumer complaints and inquiries entered into database.

(numbers in thousands)

FY 2001 Actual: 430

FY 2002 Actual: 680

FY 2003 Actual: 944

FY 2004 Actual: 994

**FY 2005 Target: 750**

**FY 2005 Actual: 1,015**

#### Performance Measure 1.1.2

Annual number of consumer complaints and inquiries related to identity theft entered into database.

(numbers in thousands)

FY 2003 Actual: 321

FY 2004 Actual: 314

**FY 2005 Target: 300**

**FY 2005 Actual: 348**

give the FTC a broader view of what reporting consumers are experiencing. The database allows the FTC and its law enforcement partners to identify and develop cases against fraudulent and deceptive operators that cause the greatest consumer injury. By analyzing consumer complaints, the FTC can identify and ultimately refine its enforcement and education efforts to target the top consumer complaints, including identity theft, Internet auctions, shop-at-home/catalog sales, Internet services and computer complaints, foreign money offers, prizes/sweepstakes/lotteries, advance fee loans and credit protection, business opportunities/work-at-home plans, and telephone services. Another top area of consumer complaints are allegations that involve violations of the Fair Debt Collections Practices Act. The Commission also has established a separate complaint mechanism for consumers who have complaints about media violence, including complaints about the advertising, rating, and sale of movies, electronic games (including video games), and music that are marketed to children.

### **Performance Assessment and Future Trends**

Not only does the FTC's database help identify the most serious and commonly reported consumer protection problems, it quickly informs the agency of emerging scams so that the agency can move rapidly to stop consumer injury. In addition, by collecting data from consumers and other sources and sharing it with other law enforcers, the FTC is able to coordinate and augment the effectiveness of law enforcement agencies across the country and in Canada and Australia. To make the database even more valuable, the FTC continues to pursue new international partnerships to increase its collection of information from consumer agencies in other countries. For example, through the econsumer.gov Web site ([econsumer.gov](http://econsumer.gov)), the agency partners with other members of the International Consumer Protection Enforcement Network, an international group that identifies and shares information about worldwide consumer protection issues. On this Web site, consumers in the 17 participating countries can file complaints using an online form and obtain consumer education materials. Law enforcement members can access a nonpublic Web site to obtain specific information about the complaints that consumers have filed.

The FTC will continue to expand its complaint database and increase its use by recruiting and training additional law enforcement partners. It also will make better use of its rich store of data by identifying repeat offenders and sharing this information with other law enforcers. In addition, the FTC will increase its capacity to analyze data quickly in order to identify and respond to frauds, deception, and identity theft in their early stages and help prevent consumer injury. The data will be used to provide more information to the public – by giving consumers information to protect themselves from scams, deceptive practices, and identity theft, and providing trend and statistical information to those involved in public policy discussions about consumer protection issues in the

marketplace. The FTC also will continue to collect data on consumers' experiences and general inquiries and upgrade its system to track and analyze privacy-related complaints more effectively.

### **Objective 1.2: Stop Fraud, Deception, and Unfair Practices Through Law Enforcement**

Once fraud, deception, and unfair business practices are identified in the marketplace, the FTC focuses its law enforcement efforts on areas where it can have the greatest impact for consumers.

#### **Strategies**

The FTC plays a vital role in protecting consumers' privacy, emphasizing both enforcement and education. It focuses on telemarketing, spam, identity theft, spyware and unauthorized adware, and financial privacy, as well as enforcement of the CAN-SPAM Act, FACT Act, Gramm-Leach-Bliley Act and the Safeguards Rule, the Telemarketing Sales Rule, and Section 5 of the FTC Act.

The FTC's enforcement efforts include cases covering the full range of topics – from data security to fraudulent spam to deceptive lending practices and credit counseling services to misleading health claims. Telemarketing fraud also continues to be a significant law enforcement priority. The FTC will continue to pursue telemarketing cases and enforce the National Do Not Call Registry. The FTC also will continue its outreach to consumers and industry, and its collaboration with other law enforcement agencies, as it monitors deceptive debt counseling and subprime lending practices. Other priorities include protecting consumers from more traditional scams and deceptive practices that have moved to the Internet.

One of the most effective tools in the battle against fraud and deception has been the law enforcement sweep – simultaneous law enforcement actions by federal, state, and/or local partners against numerous defendants nationwide that focus on a particular, widespread type of fraud and deception. Each sweep is supported by consumer education aimed at preventing future losses to the public. Since its first sweep in 1995, the FTC and its partners have brought more than 2,465 law enforcement actions in 85 sweeps against fraudulent and deceptive operators. This total includes 575 actions brought by the FTC alone. Thus, for every action that the FTC brings, its partners bring an average of three. In FY 2005, the FTC led five sweeps resulting in a total of 213 actions, including 42 FTC actions. In addition to leveraging agency resources, sweeps generate substantial local, regional, and international interest, thus further raising consumer awareness.

With advances in technology, spammers, spyware operators, fraudulent telemarketers, and other scam artists can strike quickly on a global scale. 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 FTC has implemented a comprehensive program to combat cross-border consumer protection law violations. This program includes a recently released report on proposed legislation, the U.S. SAFE WEB Act, 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. The FTC is building a network of cooperation to combat illegal spam and last year formed the "London Action Plan on International Spam Enforcement Cooperation," endorsed by 26 agencies from 20 countries and seven 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 an MOU on spam enforcement cooperation in February 2005 with a Spanish agency.

In the nonfraud area, the FTC works to ensure compliance with the consumer protection statutes that it enforces. Given its broad jurisdiction and limited resources, it focuses on the most serious identified problems, using varied enforcement tools and encouraging self-regulation in appropriate situations. Information obtained from its Consumer Information System database and from monitoring national advertising enables the agency to focus its law enforcement actions on areas that pose the greatest risks to consumer health, safety, and economic well-being. One area of particular concern to the FTC is the advertising and marketing directed to youth, including violent entertainment products, online gambling, pornography, and alcohol. The FTC also works with industry and interested groups to support private initiatives where appropriate.

### **Performance Measures and Results**

The agency's FY 2005 target was to save consumers more than \$400 million by stopping fraudulent practices in the marketplace. In FY 2005, the FTC saved consumers an estimated \$366 million, which represents 92 percent of the annual target. Because the amount of savings varies year-to-year, in its 2003 - 2008 Strategic Plan the FTC also set a target of saving consumers at least \$2 billion by FY 2008. Having exceeded its annual target in FY 2003 and having achieved 87 percent in FY 2004, and 92 percent this year, the agency is on track to meet its \$2 billion target. Consumer savings are measured by estimating the annual fraudulent and deceptive sales made by defendants in the 12 months prior to the FTC's filing a complaint. The savings calculation actually may underestimate the FTC's impact because it assumes that the fraud and deception would have continued for only one

additional year. However, it provides a uniform method for calculating savings and minimizes speculation about the likely duration of the fraud and deception. The law enforcement actions included in this measure were taken against individuals or companies, as well as scam artists operating schemes on the Internet. The FTC's experience in most cases is that once it files a complaint in federal district court and obtains a court order, the defendants stop their fraudulent practices. If they fail to comply, they are subject to contempt proceedings. Thus, in stopping these frauds, the agency stops further consumer losses to these defendants. By publicizing these law enforcement actions and distributing consumer education materials, it seeks to alert consumers to fraudulent and deceptive practices, educate them to avoid such practices in the future, and ultimately increase consumer confidence in the marketplace, while deterring similar behavior by would-be violators.

As an indicator of the usefulness of the FTC's consumer complaint databases, the agency measures the number of data searches by its staff and other law enforcement personnel. In FY 2005, more than 79,000 data searches of *Consumer Sentinel* complaints were conducted by the FTC and other law enforcement personnel, far exceeding the target of 26,000. However, *Consumer Sentinel* made several major changes and improvements beginning in late September 2003, and *Consumer Sentinel* staff projects that some of the FTC and external law enforcement personnel usage may be related to the testing of these changes. The number of identity theft searches by law enforcement personnel in FY 2005 is 1,680, or 91 percent of the target of 1,850.

#### **Performance Measure 1.2.1**

Dollar savings for consumers from FTC actions that stop fraud and deception.

(numbers in millions)

FY 2001 Actual: \$487

FY 2002 Actual: \$561

FY 2003 Actual: \$606

FY 2004 Actual: \$349

**FY 2005 Target: \$400**

**FY 2005 Actual: \$366\***

(\*target not met – see Part I: Program Performance Overview)

#### **Performance Measure 1.2.3**

Number of data searches conducted by FTC and law enforcement personnel of the FTC's *Consumer Sentinel* database.

(numbers in thousands)

FY 2003 Actual: 28

FY 2004 Actual: 87

**FY 2005 Target: 26**

**FY 2005 Actual: 79**

#### **Performance Measure 1.2.4**

Number of data searches by law enforcement personnel of the FTC's identity theft database.

FY 2003 Actual: 2,167

FY 2004 Actual: 2,120

**FY 2005 Target: 1,850**

**FY 2005 Actual: 1,680\***

(\*target not met – see Part I: Program Performance Overview)

## Performance Assessment and Future Trends

Based on *Consumer Sentinel* data, Internet fraud is significant and continues to grow. The FTC targets the most pervasive online fraud and moves quickly to stop large, fast-growing Internet scams. In particular, the FTC has brought more than 75 spam-related cases against 220 individuals and companies. The FTC expects fraud to continue to grow as the use of the Internet rises and spam increases and, in response, it will increase its efforts to slow online fraud and prevent consumer injury. In particular, online fraud has the potential to reach consumers worldwide and cause great economic injury. As its technological expertise continues to develop, the agency will be better able to detect and deter online fraud before these schemes take hold. This effort, combined with strategies such as law enforcement sweeps, demonstrates the FTC's effectiveness in preventing consumer injury.

The FTC also continues to target deceptive and fraudulent advertising and other practices aimed at Hispanic consumers. The FTC will target frauds on the basis of *Consumer Sentinel* and other data that identify the top problems for Hispanic consumers, the products and services aimed at the Hispanic community that are extensively advertised, particularly in major media, and the practices causing significant economic or other harm to this community.

The FTC also will build on its coordination with criminal law enforcers. The FTC's Criminal Liaison Unit (CLU) facilitates prosecution of consumer fraud by coordinating with criminal law enforcement authorities. CLU was active in developing a partnership with the U.S. Attorney's Office in the Southern District of Florida, and organizing a law enforcement sweep, Project Biz Opp Flop, with that office. To date, 19 people who worked for five business opportunity firms have been charged criminally with mail fraud, wire fraud, conspiracy, and/or criminal contempt; 11 of these defendants have already entered guilty pleas and four have been sentenced, with prison terms ranging from 57 to 81 months.

In addition to fighting fraud, the agency also focuses on compliance with traditional advertising laws and the FTC's Rules and Guides. It works cooperatively with its law enforcement partners, industry, and consumer groups to increase compliance. The scope of the agency's current and upcoming priorities spans its broad jurisdiction, and this broad jurisdiction makes it difficult to measure the overall impact of its nonfraud activities. The FTC is exploring using new performance measures that focus its impact in more narrowly defined areas. Nonetheless, it will continue to use business and consumer education, as well as selective enforcement, to ensure broad compliance with the rules and regulations it enforces.



With respect to identity theft, although Congress established the FTC as the central clearinghouse for identity theft complaints, the FTC – a civil law enforcement agency – has no criminal authority to prosecute identity theft crimes. The information contained in its database, however, directly supports such criminal prosecutions. The agency has learned from experience that hands-on information and training provided to other law enforcement agencies greatly enhances their abilities to mine the information in the complaint database and ultimately prosecute identity theft crimes more successfully. Consequently, the FTC and its partners have provided identity theft training for local, state, and federal criminal enforcement groups.

### **Objective 1.3: Prevent Consumer Injury Through Education**

Consumer and business education is a first line of defense against fraud and deception.

#### **Strategies**

The FTC is committed to using education and outreach as cost-effective methods to prevent consumer injury, increase business compliance, and add an extra dimension to its law enforcement program. Virtually every consumer protection effort contains an educational component, from compliance surfs and law enforcement sweeps to the announcement of new rules and regulations. Through reports, publications, Web sites, media events, speeches, advocacies, and collaborative activities with other organizations, the FTC reaches tens of millions of consumers and businesses every year. In FY 2005, the agency issued 107 new or revised publications – covering traditional subjects such as weight-loss claims and credit issues; high-tech subjects such as spyware, peer-to-peer file sharing, phishing, and spam; and timely subjects such as identity theft, telemarketing, and privacy. The FTC also issued new electronic education tools, including e-cards and teaser Web sites.

The Consumer Information System database helps the FTC tailor its education efforts to topical areas where fraud, deception, unfair practices, and information gaps are causing the greatest injury. Consumers are given the tools they need to spot potentially fraudulent and other illegal promotions, and businesses are advised how they can comply with the law. As with the agency's law enforcement, more of its educational efforts now involve the Internet. The FTC not only addresses consumer issues involving the Internet, such as spam and shopping online, but it also uses the Internet as a tool to reach consumers, for example, through its Web sites, online banner public service announcements, and online distribution of informational pieces called "news consumers can use."

The FTC coordinates with hundreds of private and public partners to provide information about specific campaigns, products, and services. It continues to manage the consumer.gov Web site,

which is linked with the interagency firstgov.gov Web site, which offers one-stop access to federal consumer information. The FTC continues to increase the federal agency partnership base for consumer.gov, with more than 180 agencies participating. In FY 2005, the FTC once again took the

lead in organizing National Consumer Protection Week. This year's campaign theme was identity theft. Its partner organizers were the National Association of Consumer Agency Administrators, AARP, the National Consumers League, the Council of Better Business Bureaus, the Consumer Federation of America, the U.S. Postal Service, the U.S. Postal Inspection Service, the National Association of Attorneys General, and the Department of Justice.

To reach the expanding population of Hispanic consumers in the United States, the FTC has furthered its Hispanic Outreach Program. The Spanish-language page on the FTC Web site has been expanded and includes translations of more than 100 consumer publications.

### Performance Measures and Results

The FTC gauges the impact of its education efforts by tracking the number of consumer and business education publications it distributes to the public in response to consumer requests. Ideally, the agency would like to measure the extent to which its educational materials improve consumer understanding and help them get better value for their money. This effect would be extremely difficult to measure, but tracking the distribution of publications provides a rough idea of how many consumers believe the information will prove useful. In FY 2005, the FTC exceeded its target of 20 million publications by distributing 35.3 million publications. This includes 6 million publications related to identity theft, double the target of 3 million and 1,157,000 Spanish-language publications, far exceeding the target of 500,000. The FTC exceeded these targets in

#### Performance Measure 1.3.1

Total number of education publications distributed to or accessed electronically by consumers.

(numbers in millions)

FY 2001 Actual: 15.0

FY 2002 Actual: 19.3

FY 2003 Actual: 28.0

FY 2004 Actual: 26.5

**FY 2005 Target: 20.0**

**FY 2005 Actual: 35.3**

#### Performance Measure 1.3.2

Number of education publications related to identity theft distributed to or accessed electronically by consumers.

(numbers in millions)

FY 2003 Actual: 3.0

FY 2004 Actual: 3.7

**FY 2005 Target: 3.0**

**FY 2005 Actual: 6.0**

#### Performance Measure 1.3.3

Number of Spanish-language education publications distributed to or accessed electronically by consumers.

(numbers in thousands)

FY 2003 Actual: 458

FY 2004 Actual: 737

**FY 2005 Target: 500**

**FY 2005 Actual: 1,157**

FY 2005 due to the continuing increase in Web hits, interest in identity theft education, and communication of the availability of Spanish-language consumer materials.

### **Performance Assessment and Future Trends**

The FTC seeks to alert as many consumers as possible to the telltale signs of fraud, deception, and unfair business practices, and other critical consumer protection issues. Use of the Internet to disseminate information about fraud and technology-related matters plays an integral role in the FTC's education, deterrence, and enforcement efforts, permitting the agency to reach vast numbers of consumers and businesses quickly, simply, and at low cost.

The measure of the number of publications distributed by the FTC indicates its impact in educating consumers, although it does not fully capture the millions of FTC publications that are distributed to consumers by others. While the number of print publications the FTC distributed remained relatively static, the number of publications accessed through the Internet soared as more consumers and businesses go online. In 1996, the agency distributed only 140,000 publications online. In FY 2005, approximately 21 million online publications were distributed. These numbers illustrate the Internet's coming of age as a mainstream medium and highlight its usefulness in any large-scale educational campaign. Consequently, the FTC will continue to increase its use of its Web site, [ftc.gov](http://ftc.gov), and the multi-agency Web site, [consumer.gov](http://consumer.gov), to reach consumers, businesses, law enforcement officials, and the media more efficiently and effectively.

In FY 2006, the FTC will continue to focus consumer and business education efforts on subjects identified by its consumer complaint databases where information gaps cause the greatest injury, such as financial literacy, spam, privacy, globalization, Internet scams, fraudulent schemes, and identity theft. In the privacy area, it will use an approach that has proven successful in the past by establishing an outreach program to increase consumer awareness of and business compliance with the privacy information required by the Gramm-Leach-Bliley Act, including the Safeguard Rule, and FACT Act. The FACT Act also makes the FTC a participant in the Financial Literacy and Education Commission. The FTC will continue to creatively use technology, including new interactive media, to extend the reach of consumer and business education. Also, as highlighted by its performance measures, the agency will continue to focus outreach in the identity theft arena and its efforts to reach the nation's growing Hispanic population. The FTC will continue to work to identify and educate underserved consumer groups to help protect them from becoming victims of fraud.

## **Goal 2: Maintain Competition Prevent Anticompetitive Mergers and Other Anticompetitive Business Practices in the Marketplace**

The work of the FTC's Maintaining Competition Mission is critical to protect and strengthen the free and open markets that are the cornerstone of a vibrant economy. Aggressive competition among sellers in an open marketplace gives consumers the benefit of lower prices, higher quality products and services, maximum choice, and innovation leading to beneficial new products and services. The FTC's goal is to promote vigorous competition by using the antitrust laws to prevent anticompetitive mergers and stop business practices that diminish competition, such as agreements among competitors about prices or other aspects of competition (referred to as nonmerger enforcement). The agency applies three related objectives to achieve this broad-reaching goal:

- **Identify anticompetitive mergers and practices that cause the greatest consumer injury.**
- **Stop anticompetitive mergers and practices through law enforcement.**
- **Prevent consumer injury through education.**

First, the FTC staff identifies mergers and business practices that have resulted in or are likely to result in anticompetitive effects by conducting thorough factual investigations and applying economic analysis to distinguish between actions that threaten the operation of free markets and those that are benign or pro-competitive. This step is critical because a merger or business practice may be either neutral, beneficial (by enabling sellers to be more efficient and pass those savings along to consumers), or harmful (by enabling sellers to reduce the output of their product and raise the price to consumers). Thus, indiscriminate or ill-considered intervention in the marketplace may do more harm than good.

Second, once the FTC identifies a harmful or potentially harmful merger or business practice, it takes enforcement action under the antitrust laws to stop it, either through an administrative challenge or in federal court. In many instances, the agency is able to reach an agreement with the parties that remedies its competitive concerns and avoids litigation.

Third, the FTC seeks to prevent anticompetitive activity by educating businesses and consumers about the antitrust laws and its efforts to ensure competitive markets. Increased knowledge and understanding facilitate businesses' efforts to comply with the law and enable consumers to identify anticompetitive activity more readily and bring it to the FTC's attention for possible enforcement action.

## **Objective 2.1: Identify Anticompetitive Mergers and Practices That Cause the Greatest Consumer Injury**

The first step in preventing anticompetitive mergers and anticompetitive business conduct is determining which mergers and business practices are anticompetitive.

### **Strategies**

The FTC seeks to identify anticompetitive mergers and practices with as much accuracy as possible. While certain business conduct (such as price fixing among competitors) is clearly anticompetitive, mergers and many other forms of business conduct can benefit, harm, or have no effect on consumers. Consequently, both under- and over-enforcement can harm consumers' interests. The agency seeks to take enforcement action against transactions or conduct that harms consumers, but at the same time, to avoid taking enforcement action that prevents businesses from completing transactions or engaging in practices that fundamentally benefit consumers or would have no effect. The FTC also tries to accomplish this task as efficiently as possible so that it can devote the bulk of its resources to further investigation of, and possible challenge to, the most problematic mergers and practices. A related, but important, consideration is to conduct the inquiry in a way that minimizes the cost or inconvenience to businesses.

The premerger notification requirements of the Hart-Scott-Rodino (HSR) Act provide the FTC with an effective starting point for identifying anticompetitive mergers, acquisitions, and joint ventures (collectively referred to as mergers) before they are consummated. The HSR Act requires companies to report certain proposed mergers to the FTC and Department of Justice (which jointly enforce the HSR Act) and wait for a specified period (usually 30 days) to allow for antitrust review.

The FTC's staff carefully examines each transaction reported under the HSR Act to determine whether it poses a threat to competition. The agency seeks to identify as many of the competitively harmless transactions as possible within the initial waiting period, both to conserve resources and to minimize the delay imposed on businesses. In most cases, the staff can make a reasonable judgment about whether a merger has the potential to be anticompetitive or not after an initial screening based on materials filed with the HSR Act notification. The agency may authorize a more extensive investigation of transactions that raise more difficult questions. Under the HSR Act, the agency may issue a formal request for additional information from the parties (a "second request"), which extends the initial waiting period. Given the typical scope and complexity of the issues, and the fact that the HSR statute permits only one request for additional information relating to a transaction, an investigation extended by the issuance of a second request almost always requires a

significant investment of resources by both the agency and the parties.

Most transactions reported under the HSR Act raise no antitrust issues, and the antitrust agencies permit these to proceed. Together, the FTC and the Department of Justice Antitrust Division issued second requests in less than 3 percent of reported mergers in FY 2005. Moreover, the enforcement agencies frequently complete the initial screening in less time than the 30 days allowed under the HSR Act. In these instances, the government grants “early termination” of the HSR Act waiting periods, allowing transactions to go forward more quickly. Approximately two of every three filed transactions received early termination in FY 2005.

Amendments to the HSR Act, effective in 2001, changed the criteria governing which mergers must be reported under the Act. Despite the revised filing thresholds that are now adjusted annually for inflation, and some decline in merger activity from the historic peak levels reached during the late 1990's and 2000, the FTC has continued to face a demanding merger review workload. The renewal of economic growth, together with the increased pace of mergers in FY 2005, indicates that merger activity may be on the rise. The agency received 1,207 HSR filings in FY 2005, a 13 percent increase over the FY 2004 total. In addition, the dollar value of transactions is also on the rise; with the value of transactions reported during FY 2005 about 45 percent higher than the total for FY 2004. The number of mergers requiring investigation also increased. The FTC issued 22 second requests, a 10 percent increase over FY 2004.

While the HSR Act amendments reduced the number of mergers subject to the advance reporting requirement, they did not change the standard of legality for mergers. While the vast majority of potentially problematic mergers continue to be subject to the revised HSR filing requirements, smaller merger transactions may still be anticompetitive. Consequently, the FTC now devotes more attention to the identification of unreported, usually consummated, mergers that could harm consumers. This effort involves monitoring the trade press, industry sources, and the Internet to stay informed of industry developments; following up on case leads from congressional offices, other Executive Branch agencies, and state and local governments; and encouraging consumers, businesses, and the bar to notify the FTC of possibly anticompetitive mergers.

In the nonmerger area, agency staff review complaints received from consumers, businesses, congressional offices, and elsewhere to identify potentially anticompetitive nonmerger business practices. In addition to responding to complaints from the public, the FTC has pursued a “positive agenda” of planned initiatives; that is, it has taken a systematic and proactive approach to identifying specific conduct likely to pose the greatest threat to consumer welfare. Fundamentally, the focus continues to be on the types of practices, such as agreements among competitors, that are most likely to harm consumers. Other considerations include whether the relevant sector of the economy is one,

such as health care or energy, that has a significant impact on consumers' daily lives. Also the agency considers the deterrent effects of antitrust enforcement on businesses, and whether the FTC has enforcement experience in an area that will enable the agency to make an impact quickly and efficiently. Finally, consideration is given to whether the matter presents an opportunity to contribute positively to the development of antitrust law.

### Performance Measures and Results

The FTC used two performance measures to determine how well it identified anticompetitive mergers and practices in FY 2005. The first measure is the percentage of HSR second request investigations concluded during the fiscal year that ultimately resulted in enforcement action (i.e., consent agreements, administrative complaints, Commission authorizations to seek a preliminary injunction, and merger transactions abandoned after the FTC initiated an antitrust investigation). The target for this measure is for at least 60 percent, but no more than 80 percent, of second request investigations to result in an enforcement action. The universe for this measure consists of investigations completed during the fiscal year, regardless of when the second request was issued, because second request investigations often extend beyond fiscal year boundaries. Matters ultimately resulting in enforcement action typically involve more extensive investigations than those that do not, so limiting the universe to those transactions in which a second request was issued and the matter was concluded within the same fiscal year could skew the results by disproportionately excluding enforcement outcomes.

#### Performance Measure 2.1.1

Percent of HSR requests resulting in enforcement action.

FY 2001 Actual: 68%

FY 2002 Actual: 68%

FY 2003 Actual: 70%

FY 2004 Actual: 55%

**FY 2005 Target: 60-80%**

**FY 2005 Actual: 52%\***

(\*target not met – see Part I: Program Performance Overview)

#### Performance Measure 2.1.3

Percent of nonmerger investigations which resulted in enforcement action.

FY 2004 Actual: 63%

**FY 2005 Target: 60-80%**

**FY 2005 Actual: 50%\***

(\*target not met – see Part I: Program Performance Overview)

Meeting the minimum percentage set for the measure (60 percent) signifies that the agency effectively identified likely candidates for enforcement action during the initial HSR waiting period. The upper percentage of the target range for this measure (80 percent) is also important. Because the need for enforcement is apparent from the beginning in many transactions, the agency could raise its percentage under this measure by setting overly rigorous standards for the issuance of second requests. However, such an approach would likely screen out some matters for which a fuller investigation would demonstrate the need for enforcement. Therefore, a result approaching 90 or

100 percent on this measure would suggest that the agency potentially may have failed to pursue some illegal mergers.

In FY 2005, the FTC took enforcement action in 13 of 25, or 52 percent, of the second request merger investigations concluded during the fiscal year. This figure is approximately equal to the 55 percent recorded for this measure in FY 2004 and is consistent with the percentage in prior fiscal years from 2001 - 2003. The agency issued 25 second requests in FY 2005, an increase of five over FY 2004. This increase is consistent with the higher number of reported mergers, and does not reflect a change in the standards governing when a second request is warranted.

The FTC began using a new measure of its success in identifying possibly illegal conduct in FY 2004. This measure is a ratio similar to that used to measure the agency's success in identifying anticompetitive mergers: the percentage of significant nonmerger investigations (i.e., those in which the Commission has used compulsory process – its authority to compel the submission of information) that ultimately result in enforcement action.

The target for this measure is that between 60 and 80 percent of investigations result in enforcement action, where the universe consists of significant nonmerger investigations that were completed during the fiscal year. A percentage below 60 percent may suggest that the FTC is targeting enforcement resources ineffectively by investigating too many competitively benign practices (and unduly burdening businesses as a result). A percentage higher than 80 percent may suggest that the agency is focusing too narrowly and thus potentially allowing problematic business practices to go forward without sufficient review.

In FY 2005, the FTC took enforcement action in two of four or 50 percent of the completed nonmerger investigations in which it used compulsory process. The agency authorized the use of compulsory process in an additional seven nonmerger investigations, a 75 percent increase over FY 2004 levels. These and other investigations are continuing and will be included in the measure when completed in the coming fiscal years.

### **Performance Assessment and Future Trends**

The issuance of a second request is a significant step in a merger investigation. Because the law permits only one second request, the FTC typically issues a very comprehensive request that calls for all relevant information on all possible issues in the investigation. Given the size of the parties involved and the necessarily broad scope of the inquiry, a response may consist of hundreds (or even thousands) of boxes of documents and as many electronic files. Gathering and examining this



material involves a major resource commitment by the parties and by FTC attorneys and economists. The HSR Act prevents the parties from proceeding with the merger while this process is taking place. Consequently, a second request can sometimes result in significant delays in closing a transaction.

For all of these reasons, the FTC does not lightly issue a second request. In fact, it does as much as possible within the initial 30 day waiting period to determine which transactions pose no competitive threat, so that the truly benign mergers may proceed without the delay and expense of a second request. In FY 2005, for example, the FTC issued second requests in approximately 2 percent of the mergers reported under the HSR Act. At the same time, it is far easier to remedy an anticompetitive merger before it is consummated, so the agency makes every effort to identify and scrutinize potentially harmful mergers during the HSR waiting period.

The FTC's first performance measure reflects the balance between these two considerations. If the staff uses the initial HSR waiting period effectively, the agency should be able to "clear" the great majority of reported transactions, permitting them to go forward without further delay or burden. The FTC should also be able to isolate for more intensive investigation those transactions that could be harmful. While the initial screening process should permit as many benign transactions as possible to pass through, the focus should not be so narrow that only those transactions in which an antitrust problem is relatively obvious are subject to further investigation, while other transactions that may be similarly harmful, but in more subtle ways, can proceed unchallenged.

## **Objective 2.2: Stop Anticompetitive Mergers and Practices Through Law Enforcement**

Law enforcement represents the most direct method by which the FTC pursues its goal of stopping mergers and business practices that significantly threaten competition and harm consumers. In both merger and nonmerger enforcement, the FTC focuses primarily on transactions or practices most likely to harm consumers, that is, mergers of firms competing in the same market or markets, and agreements among direct competitors. Other activities, such as unilateral action by a single firm, or a merger or agreement involving a supplier and customers or between a firm and a potential competitor, also may threaten competition and therefore are subject to FTC scrutiny.

Since the FTC and DOJ jointly enforce the HSR Act, the FTC directs much of its attention and resources to certain segments of the economy that are particularly important to consumers and in which it has particular expertise. These include energy and natural resources, food, health care, consumer goods and services, pharmaceuticals, and technology.

## Strategies

To stop potentially anticompetitive mergers and practices through law enforcement, the FTC seeks legal remedies under the antitrust laws, through federal court action, administrative proceedings, or negotiated settlements. For mergers, the preferred – that is, the most effective and cost-efficient – strategy is to prevent anticompetitive mergers before they occur. The agency implements this strategy primarily through its authority to seek a federal court injunction preventing the transaction. In many cases, the merging parties elect not to defend a court challenge and instead agree to resolve competitive concerns through a consent agreement. This approach is suitable when the competitive problem relates to only a portion of the transaction, so a divestiture of assets sufficient to preserve or restore competition will allow other competitively neutral or beneficial aspects of the merger to go forward. In other instances, the parties may abandon a transaction after assessing the likely outcome of an FTC court challenge.

When a merger already has been consummated, the FTC generally relies on administrative litigation to restore competition lost as a result of the merger. Administrative litigation seeking to restore competition following an alleged illegal merger likely will become more frequent in light of the revisions to HSR premerger filing thresholds.

In nonmerger matters, the FTC seeks to stop ongoing activity that harms competition. The Commission may initiate administrative proceedings before an Administrative Law Judge to adjudicate the issues and establish a basis for an order that the parties to the proceeding “cease and desist” the conduct. The FTC also has authority to seek relief in federal courts, though it historically has used this option sparingly in nonmerger matters. Again, the agency is often able to negotiate a consent agreement with the parties that remedies the problem without need for litigation.

In both merger and nonmerger matters, thorough investigation, as well as sophisticated legal and economic analysis, is of critical importance to ensuring accurate assessment of the potential for competitive harm resulting from the transaction or conduct in question and, if necessary, demonstrating the likelihood of harm before an adjudicative body. When the FTC concludes that the likelihood of such harm indicates a law violation, and no settlement is possible, the Commission authorizes its staff to litigate the matter.

As described above, the “life cycle” of an FTC enforcement matter includes identification of potentially anticompetitive activity, investigation, and a decision to close the matter or to take enforcement action (usually a settlement but sometimes litigation). With the abatement of the 1990's merger wave, the FTC has devoted significant attention to restoring its nonmerger program.

Beginning in 2001, the agency emphasized identification of anticompetitive conduct, opening at least twice the number of nonmerger investigations in each of the years 2001-2003 as it opened in 2000.

### **Performance Measure 2.2.1**

Percentage of positive outcomes when the FTC challenges anticompetitive mergers and practices.

FY 2001 Actual: 94%  
FY 2002 Actual: 100%  
FY 2003 Actual: 100%  
FY 2004 Actual: 100%  
**FY 2005 Target: 80%**  
**FY 2005 Actual: 95%**

### **Performance Measure 2.2.3**

Dollar volume of commerce in markets in which the FTC took successful action to protect competition from anticompetitive mergers.

(numbers in billions)

FY 2004 Actual: \$ 8.5  
**FY 2005 Target: \$ 40.0**  
**FY 2005 Actual: \$ 61.8**

### **Performance Measure 2.2.5**

Dollar volume in markets in which the FTC took successful action to protect competition from anticompetitive conduct.

(numbers in billions)

FY 2004 Actual: \$ 2.6  
**FY 2005 Target: \$ 20.0**  
**FY 2005 Actual: \$ 19.4\***  
(\*target not met – see Part I: Program Performance Overview)

As work was completed on these investigations, the result was a significant number of nonmerger enforcement actions.

Many of the FTC's nonmerger inquiries of the past few years have involved complicated policy questions or cutting-edge legal issues, and many of the investigations resulted in issuance of an administrative complaint (though settlement remained a more frequent outcome). At the same time, the 2001 change in HSR filing thresholds dictated more focus on non-reportable mergers, which are normally contested through administrative proceedings.

Together, these factors resulted in an increase in the number of administrative complaints issued. In FY 2003, for example, the Commission issued more administrative complaints than in any year since 1985, and it issued an additional three complaints in FY 2004. Accordingly, the focus in FY 2005 was more on litigating these cases than on developing new ones.

## **Performance Measures and Results**

Economic theory and evidence demonstrate that competition results in lower prices, better quality, and more innovation in markets. Because successful enforcement of the antitrust laws protects competition and therefore promotes these consumer benefits, it is important that the FTC succeed when it challenges anticompetitive mergers and practices. Even if the agency successfully identifies an anticompetitive merger or practice, consumers derive no benefit unless it obtains a positive outcome – that is, appropriate relief, through either settlement or successful litigation.

The frequency with which the agency obtains positive outcomes is an important indicator of its success in producing tangible benefits for consumers. In FY 2005, the FTC's target was to obtain a positive result in at least 80 percent of the matters in which it determined that a merger or a course of conduct is anticompetitive. Positive results include the parties' abandonment of an anticompetitive transaction after antitrust concerns are identified, an administrative consent agreement to resolve antitrust concerns, or a successful challenge in court. A negative result occurs when parties refuse to settle antitrust concerns raised by the agency, and court action fails to achieve the agency's objectives. This is not to say that the FTC, or any law enforcement agency, should win every case. Some cases involve very close questions, on which reasonable minds can and do differ. Other cases may be very difficult from a litigation standpoint, but still worth pursuing, and all of the FTC's antitrust challenges are defended by highly competent and well-financed counsel.

In addition, the FTC's responsibilities include taking action to help shape the development of the antitrust laws. Fulfillment of this duty requires occasionally litigating cases involving more than the usual degree of risk of a negative result, such as cases in which there is no clear precedent and the FTC is seeking to establish a new legal principle. In other instances, the FTC brings cases seeking to benefit consumers by clarifying, or perhaps improving upon, existing precedent. The FTC now has several cases pending in administrative litigation that involve legal issues that have not been resolved definitively by the courts.

The agency's complaints are grounded on sound policy considerations and the outcomes of staff investigations as judged by the Commission's "reason to believe" standard. However, the ultimate outcomes depend on legal determinations often made by courts following appeal of Commission decisions, as well as development of a full factual record. The FTC's mission includes bringing cases that highlight difficult issues and seeking to persuade the courts of the merit of its views on what the law should be. Bringing cases that test the boundaries of the law is an important part of the FTC's responsibilities, even though the results are far from certain. The target on this measure reflects the reality that, even when the agency brings a meritorious case and litigates it well, success is not assured. In addition, setting the standard too high could be detrimental if the effect were to deter the agency from bringing important, but risky, cases.

The agency exceeded its target of 80 percent for this measure in FY 2005, achieving relief through litigation, reaching a successful settlement agreement, or persuading parties not to proceed with an anticompetitive acquisition in 20, or approximately 95 percent, of 21 enforcement matters brought to conclusion during the fiscal year.

Antitrust enforcement saves consumers money by preventing price increases that likely would have occurred due to the loss of competition if an anticompetitive merger had gone forward unchallenged, or that have occurred as a result of anticompetitive conduct. In past years, the FTC estimated the dollar savings to consumers resulting from its enforcement actions. Some stakeholders commented, however, that this methodology was flawed in certain respects. Accordingly, the agency replaced the two “consumer savings” measures beginning in FY 2004.

The revised measures indicate the scope of the FTC’s antitrust enforcement activities without attempting to quantify the specific benefit to consumers. For both merger and nonmerger enforcement, the agency now measures the volume-of-commerce in markets in which it takes successful enforcement action. The measures provide similar indications of the scope of FTC antitrust enforcement activity, without the troublesome aspects of the previous consumer savings measures.

As noted in the FTC’s 2003-2008 Strategic Plan, external factors, such as level of merger activity, may cause the results to fluctuate significantly from year to year. Consequently, the two volume-of-commerce targets are each expressed in terms of an aggregate target for the five-year strategic plan period, rather than as yearly targets.

The five-year target for the volume-of-commerce in markets benefitting from FTC merger enforcement action is \$200 billion. In FY 2005, the FTC’s merger enforcement actions affected markets in which the total volume-of-commerce was \$61.8 billion. This figure well exceeds the annual average needed over the five-year Strategic Plan period to meet the target.

The five-year target for the volume-of-commerce in markets benefitting from FTC nonmerger enforcement action is \$100 billion. In FY 2005, the FTC’s nonmerger enforcement actions affected markets in which the total volume-of-commerce was \$19.4 billion. This figure is almost exactly the annual average needed over the five-year Strategic Plan period to meet the target but represents a significant increase over the result for FY2004.

### **Performance Assessment and Future Trends**

The high success rate of positive outcomes in actions initiated by the FTC helps deter anticompetitive behavior. Parties who agree to cease and desist orders, or who abandon mergers about which the agency has expressed concern, do so in recognition of both the FTC’s policy expertise and its ability to successfully litigate contested matters. If the agency were perceived to be less successful in obtaining the relief it deems necessary on behalf of consumers, more parties would resist rather than settling FTC charges.

The results on the two volume-of-commerce measures illustrate why the agency expressed its targets in terms of five-year amounts. The FY 2005 increase in these measures over FY 2004 results indicates that future results should be higher and the five-year targets attainable. Several factors support this conclusion. First, merger activity is increasing but is still short of the level it is likely to reach as the economy continues its recent pattern of growth. Second, the continued trend of administrative litigation means that much of the FTC's current merger and nonmerger enforcement efforts are being devoted to ongoing matters that are not yet included in any measure. Third, the size of individual FTC cases varies widely, and a small number of large matters can have a significant impact on these measures. Finally, the agency's record over the past several years is consistent with the targets, and viewed comprehensively, the FTC's productivity over the past year has been extremely high.

### **Objective 2.3: Prevent Consumer Injury Through Education**

In addition to its law enforcement activity, the FTC provides substantial information to the business community and consumers about the role of the antitrust laws and businesses' obligations under those laws.

#### **Strategies**

The FTC uses education and outreach to help prevent consumer injury, increase business compliance, and augment its law enforcement efforts. The agency pursues this strategy through guidance to the business community; outreach efforts to federal, state, and local agencies, business groups, and consumers; development and publication of antitrust guidelines, policy statements, and reports; and speeches and testimony. By using these mechanisms to signal its enforcement policies and priorities, the FTC deters would-be violators of the antitrust laws.

FTC law enforcement efforts also are made more effective by public awareness of what types of conduct are likely to be challenged as law violations. The FTC seeks to make its law enforcement presence visible and its enforcement policies transparent in order to serve its objectives through deterrence. Each successful enforcement action not only promotes competition in specific market(s), but also serves to communicate to the business and legal communities that the FTC can and will move successfully to challenge the type of merger transaction or conduct at issue. The agency explains the relevant facts and issues of cases in which it obtains a consent agreement in press releases and in published "Analyses To Aid Public Comment" so the nature of the problem is clear. Through press releases about FTC actions and publication of related materials on the agency Web

site, [ftc.gov](http://ftc.gov), the public facts underlying FTC actions provide bases for companies to evaluate the likelihood that other transactions likely would face challenge.

At the close of this fiscal year, nine administrative proceedings were continuing, far more than at any time in the past two decades, signifying continuation of heavy litigation demands on the agency. Each of these cases may provide (or has provided) an opportunity for the FTC to set out in detail its analysis of important legal issues. Understanding fully the types of transactions or conduct the FTC is likely to challenge, and the reasons for the agency's actions, greatly facilitates antitrust lawyers' counseling of their clients and prevents many anticompetitive mergers from being proposed or anticompetitive practices from being implemented.

In addition, the FTC educates the public through guidelines; congressional testimony (such as testimony on entry into hospital markets); conferences, hearings, and workshops (such as the series of hearings on the interrelationship between antitrust and intellectual property law and hearings on health care and competition law and policy); advisory opinions (addressing issues such as the scope of the Nonprofit Institutions Act); and reports (such as the report on factors affecting gasoline price changes).

As a complement to FTC enforcement activity, the agency also advises, when asked, other federal and state government officials about the possible effect that various regulatory proposals may have on competition. By providing economic analysis and other informed guidance, the FTC can help policymakers better understand the impact of their decisions in creating, maintaining, or forestalling competitive markets. The FTC has a long and distinguished history in this area. The FTC advocates market-based solutions through the publication of studies and reports, as well as participation in state and federal legislative and regulatory forums. The agency also participates as an *amicus curiae* (friend of the court) in judicial proceedings when the FTC's involvement can help remove protectionist regulations, when substantial questions of antitrust law are involved, or when the FTC can add a different perspective to the deliberations because of special knowledge or experience.

## **Performance Measures and Results**

The FTC uses the number of times (hits) that members of the public visit antitrust-related content on the FTC's Web site ([ftc.gov](http://ftc.gov)) as a good indicator of the quantity of information provided to the public, as well as its quality (because visitors will stay longer and return more often if the information is helpful). In FY 2005, the FTC's Web site recorded approximately 9.8 million hits on antitrust-related content, close to its target of 10 million hits. This result indicates a significant continued public interest in the FTC and its Maintaining Competition Mission. In addition, the

broad and increasing distribution of educational and policy materials through electronic channels represents important leveraging of the agency's resources.

### **Performance Assessment and Future Trends**

Use of the Internet to disseminate information about antitrust and other competition-related matters plays an integral role in the FTC's education and deterrence efforts, permitting the agency to convey a wealth of information quickly, simply, and inexpensively to the business, legal, and regulatory communities, and to consumers. The performance measure is an indicator of the FTC's effectiveness because it measures outcome based on the

agency's constituencies' assessment of the usefulness of the agency's published materials. That is, the level of activity on the FTC's antitrust Web site depends to a large degree on the scope, utility, and reliability of the information made available there. People will revisit the site to the extent that what they find there is of value. Matters that are of great importance to the public – as determined by the public – will draw a large number of visitors. But if the material presented is irrelevant, difficult to understand, or misleading, then interest in the site inevitably will diminish. Educating the legal and business communities about the applicable legal standards and enforcement policies helps to facilitate their compliance with the law, while educating the public in general, including policymakers, about the benefits of competition helps to ensure continued support for the agency's efforts.

The FTC possesses a broad array of policy instruments that complement its enforcement authority and help to educate the public. Through the use of hearings, workshops, research projects, reports, studies, advocacy filings, and amicus briefs – all in coordination with its enforcement initiatives – the agency provides intellectual leadership on competition issues and offers valuable education to the public. From the beginning, the FTC was conceived to be more than just an enforcement agency. President Woodrow Wilson saw the FTC as "an indispensable instrument of information and publicity, as a clearing house for the facts by which both the public mind and the managers of great business undertakings shall be guided."

Today's FTC has fully integrated all of the agency's various capabilities and applies them in a strategic and sensible way to accomplish its goals directly, and indirectly, by facilitating public understanding of policy and the agency's objectives. The FTC remains strongly committed to the

#### **Performance Measure 2.3.2**

Measure and establish appropriate target for the number of hits on the FTC antitrust Web site relevant to business and legal communities.

(numbers in millions)

FY 2004 Actual: 11.0

**FY 2005 Target: 10.0**

**FY 2005 Actual: 9.8\***

(\*target not met – see Part I:

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Overview)



importance of education and outreach and will continue to place emphasis on these efforts and expand its activities in this area in the future.

With the growing importance of the Internet as a vital source of information in today's society, the volume of traffic on the FTC's Web site will continue to be a meaningful indicator of FTC success in educating the public at large, policy makers, and the business and legal communities, and in stimulating public interest in the agency's work. The agency will continue to seek ways to refine this important information to gain better understanding of its success in fulfilling this objective and to help assess how it might do so more effectively.

## **Part III: Audited Financial Statements**

### **Message from the Chief Financial Officer**

The Federal Trade Commission recognizes the importance of public disclosure and accountability. This report is a demonstration of our commitment to fulfill the FTC's fiduciary responsibilities to American taxpayers.

I am pleased to present the Federal Trade Commission's financial statements for FY 2005. For the ninth consecutive year, our inspector general, aided by an independent public accounting firm, issued an unqualified opinion on the FTC's consolidated financial statements. This is the highest possible audit result.

These financial statements fairly present the FTC's financial position and were prepared in conformity with the hierarchy of accounting principles approved by the Federal Accounting Standards Advisory Board (FASAB) and the Office of Management and Budget Circular A-136, Financial Reporting Requirements. The FTC is fully committed to the principles of the Chief Financial Officers Act of 1990 and the Federal Financial Management Improvement Act of 1996.

Our goals for FY 2006 include continuing the same high level of quality financial services that resulted in our unqualified opinion and improving those services. We also will focus on continuing to implement our Five-year Financial Management Strategic Plan. In the past year, we documented our current financial management processes and systems, and took steps to develop our requirements for a new core financial management system that will improve our operations and permit us to better integrate financial, program, and performance data. We also have brought our agency stakeholders into the process and will work closely with them to improve our services and continue to produce timely, reliable, and useful data.

James D. Baker  
Acting Chief Financial Officer

## **Limitations of the Financial Statements**

Responsibility for the integrity and objectivity of the financial information presented in the financial statements rests with FTC management. The accompanying financial statements have been prepared in conformity with the hierarchy of accounting principles approved by the Federal Accounting Standards Advisory Board (FASAB) and the Office of Management and Budget (OMB) Circular A-136, Financial Reporting Requirements. FTC is fully committed to the principles and objectives of the Chief Financial Officers (CFOs) Act of 1990, the Accountability of Tax Dollars Act of 2002 (ATDA), and the Federal Financial Management Improvement Act of 1996. Comparative data for the prior fiscal year is presented. The statements should be read with the realization that they are for a component of the U.S. Government, i.e., a sovereign entity.

## **Audit of FTC's 2005 Principal Statements**

The Office of Inspector General of the Federal Trade Commission has examined the agency's financial statements. The inspector general's report on the principal statements, internal controls, and compliance with certain laws and regulations accompanies the statements.

## **Financial Resources and Results of Operations**

The accompanying statements summarize the FTC's financial position, disclose the net cost of operations and changes in net position, provide information on budgetary resources and financing, and present the sources and disposition of custodial revenue for the years ended September 30, 2005 and 2004. The FTC had total assets of \$259.2 million and \$252.9 million as of September 30, 2005 and 2004, respectively. Approximately \$131.6 million and \$145.0 million of the 2005 and 2004 assets, respectively, were funds collected or to be collected and distributed through the consumer redress program, under the agency's Consumer Protection Mission. In addition, \$42.0 million in fiscal year 2005 and \$41.4 million in fiscal year 2004 was held in a divestiture fund and will be subsequently disbursed per the terms of the divestiture agreement under the agency's Maintaining Competition Mission. In addition, \$85.6 million and \$66.5 million in equity assets in fiscal years 2005 and 2004, respectively, represent fund balances in appropriated accounts, account receivables, and net capital assets.

Revenue and financing sources received in fiscal years 2005 and 2004 totaled \$211.9 and \$193.4 million, respectively. Exchange revenue, classified as earned revenue on the financial statements, was received from three sources; the collection of premerger notification filing fees, Do Not Call

(DNC) user fees, and reimbursements received for services provided to other government agencies. Financing was received through direct appropriations and imputed costs absorbed by others.

Exchange revenue totaled \$118.5 million and \$98.4 million for fiscal years 2005 and 2004, respectively. The primary source of exchange revenue collected, \$99.5 million in fiscal year 2005 and \$83.6 million in fiscal year 2004, was premerger filing fees. The FTC collects a filing fee from each business entity that files a *Notification and Report form* transaction, as required by the Hart-Scott-Rodino (HSR) Anti-Trust Improvement Act. Qualifying mergers with a transaction amount over \$50 million in total assets are charged a filing fee. The fee is based on a three-tiered structure: \$45,000, \$125,000, and \$280,000, depending upon the combined total of assets of the merger transaction. The fee is divided equally between the FTC and the Antitrust Division of the Department of Justice (DOJ). The disposition of amounts collected for the DOJ is reported on the Statements of Custodial Activity. The number of filings increased by 198 over the previous year with 1,592 and 1,394 recorded in fiscal years 2005 and 2004, respectively. Premerger filing fees represented 47.0 percent and approximately 43.2 percent of the total revenue sources to the agency in fiscal years 2005 and 2004, respectively.

The second largest source of exchange revenue was Do Not Call fees. The FTC collects fees associated with the implementation and enforcement of the National Do Not Call Registry sufficient to cover registry costs. The Registry operates under Section 5 of the FTC Act, which enforces the Telemarketing Sales Rule (TSR). Telemarketers under the FTC's jurisdiction are required to pay a user fee and download from the DNC database a list of consumer's telephone numbers who do not wish to receive calls. Fees are based on the number of area codes downloaded and have resulted in collection of fees of \$18.0 million and \$14.0 million for fiscal years 2005 and 2004, respectively. DNC fees represented 8.5 percent and 7.2 percent of the total financing sources for fiscal year 2005 and 2004, respectively.

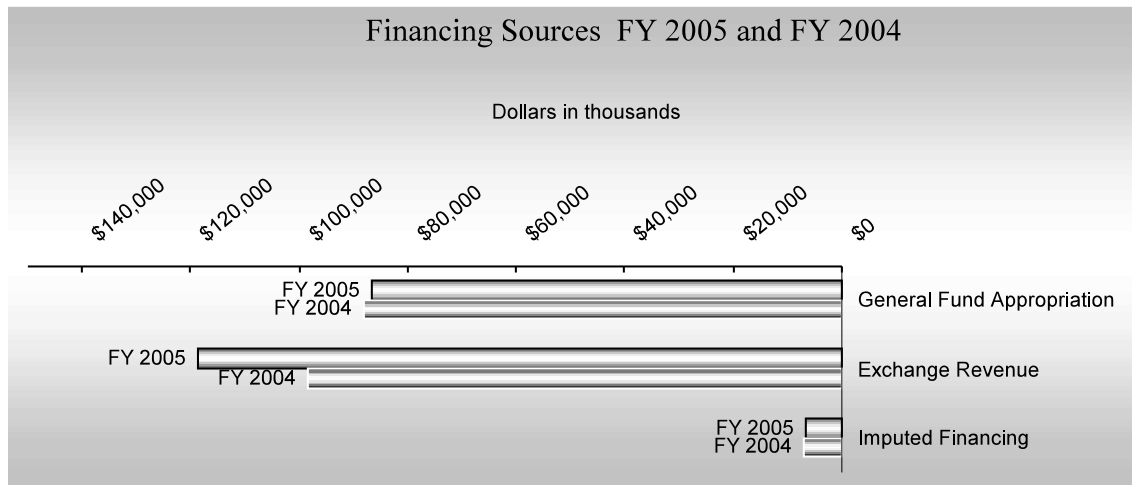
An additional source of exchange revenue was earned through reimbursable agreements with other federal agencies. Total earnings were \$1.0 million and \$0.8 million, represented 0.5 percent and 0.4 percent for fiscal years 2005 and 2004, respectively.

In addition to exchange revenue, other financing sources were realized through a direct appropriation from the General Fund of the Treasury, and other non-expenditure transfers, in the amount of \$86.8 million in fiscal year 2005 and \$88.1 million in fiscal year 2004. The budgetary authority appropriated from the General Fund was reduced by the amount of offsetting collections (HSR and DNC fees) received during the year to arrive at the final amount of resources appropriated from the

General Fund. Direct appropriation and transfers represent 40.9 percent and 45.6 percent of total funding sources received for fiscal years 2005 and 2004, respectively.

An imputed revenue source was recognized to provide unfunded employee benefits cost in the amount of \$6.6 million and \$7.0 million in fiscal years 2005 and 2004, respectively. These represented 3.1 percent and 3.6 percent of total financing sources for fiscal years 2005 and 2004, respectively

Financing sources that are not needed to fund the cost of operations are added to Cumulative Results of Operations and Net Position. The accompanying chart compares major financing sources for fiscal years 2005 and 2004.



The gross cost of operations for 2005 fiscal year was \$196.5 million and represents an increase of 5.7 percent over the fiscal year 2004 gross cost of operations which was \$185.9 million. During 2005, expenses for salaries and related benefits totaled \$ 124.5 million, or 63.4 percent of the gross cost of operations. Rental expense was \$17.2 million, or 8.7 percent, and the remaining \$54.8 million, or 27.9 percent, included travel, facility maintenance and equipment rental, utilities, imputed benefit costs, depreciation, and other items. These costs supported 1,019 staff-years employed in fulfilling the FTC’s missions, a decrease of 38 staff years over the previous fiscal year.

## **Custodial Activity**

The Statement of Custodial Activity (SCA) is a required financial statement under *Statement of Federal Financial Accounting Concepts (SFFAC) No. 2* for those federal agencies that collect non-exchange revenues (e.g., taxes, duties, fines, and penalties) for the general fund of the Treasury, a trust fund, or other recipient entities.

Fighting consumer fraud is one of the FTC's highest priorities; consumers lose billions of dollars a year by perpetrators of traditional fraud and fraud on the Internet. In fraud cases, the FTC files actions in federal district court to bring an immediate halt to ongoing business activities and freeze defendants' assets. The FTC then pursues court orders that permanently ban the fraudulent activities and provide redress to consumers. In non-fraud cases, usually involving advertising claims, redress may be obtained for consumers in settlement of administrative complaints. In addition, when a company or individual violates an FTC Trade Regulation Rule, a statute enforced by the agency or a prior agency order, the FTC seeks federal district court orders permanently barring future violations and requiring payment of civil penalties. These agency enforcement activities often generate substantial funds that are used to provide redress to consumers who have been injured by deceptive practices. If not possible, these funds and civil penalty funds are transferred to the Treasury Department as non-exchange revenue. These activities are reported on the SCA, which forms part of the FTC's financial statement package.

In addition to the fines and penalties collected and transferred to the general fund of the Treasury, the SCA also identifies the portion of the premerger filing fees collected during the year which are transferred to DOJ.

## Office of Inspector General Opinion Letter

Chairman Majoras:

The Office of Inspector General has audited the Federal Trade Commission's (the Commission) Balance Sheets as of September 30, 2005 and 2004, and the related Statements of Net Cost, Statements of Changes in Net Position, Statements of Budgetary Resources, Statements of Financing, and Statements of Custodial Activity for the years then ended, and has considered internal control over financial reporting and the FTC's compliance with laws and regulations.

### *Opinion on Financial Statements*

In our opinion, the financial statements referred to above, including the notes thereto, present fairly, in all material respects, the Commission's assets, liabilities and net position as of September 30, 2005 and 2004, and the net costs and changes in net position, its budgetary resources, financing and custodial activities for the years then ended, in conformity with accounting principles generally accepted in the United States.

### *Other Accompanying Information*

Our audits were conducted for the purpose of forming an opinion on the FY 2005 and 2004 principal financial statements of the Commission taken as a whole. The information discussed below is presented for purposes of additional analysis and is not a required part of the principal financial statements.

- The information in the Required Supplementary Information section has been subjected to the auditing procedures applied in the audit of the Commission's principal financial statements and, in our opinion, is fairly stated in all material respects in relation to the principal financial statements taken as a whole.
- The information in the Management Discussion and Analysis and Program Performance sections of the Commission's annual financial statements is supplementary information required by the Federal Accounting Standards Advisory Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit the information and express no opinion on it. This information is, however, addressed in our assessment of internal control discussed below.

### ***Opinion on Internal Control***

In planning and performing our audits, we considered the Federal Trade Commission's internal control over financial reporting by obtaining an understanding of the Commission's internal control, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 01-02, "*Audit Requirements for Federal Financial Statements*". We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control. Consequently, we do not provide an opinion on internal control.

With respect to internal control related to performance measures reported in the Management Discussion and Analysis and Program Performance sections, we obtained an understanding of the design of significant internal controls relating to the existence and completeness assertions, as required by OMB Bulletin No. 01-02. Our procedures were not designed to provide assurance on internal control over reported performance measures, and, accordingly, we do not provide an opinion on such controls.

### ***Reportable Conditions***

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions. Under standards issued by the American Institute of Certified Public Accountants, reportable conditions are matters coming to our attention relating to significant deficiencies in the design or operation of the internal control that, in our judgment, could adversely affect the Commission's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Material weaknesses are reportable conditions in which the design or operation of one or more of the specific internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected. However, we noted no matters involving the internal control and its operation that we considered to be material weaknesses as defined above.



We noted certain other matters involving the internal control over financial reporting that we have reported to the Commission's management in a separate letter (Management Letter AR 06-069A).

### ***Compliance with Laws and Regulations***

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of the Commission's compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts and certain other laws and regulations specified in OMB Bulletin No. 01-02, including the requirements referred to in the Federal Financial Management Improvement Act (FFMIA) of 1996. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to the Commission. However, the objective of our audit of these financial statements, including our tests of compliance with selected provisions of applicable laws and regulations, was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

Material instances of noncompliance are failures to follow requirements, or violations of prohibitions contained in statutes and regulations, that cause us to conclude that the aggregation of the misstatements resulting from those failures or violations is material to the statement of financial position referred to above or that sensitivity warrants disclosure thereof.

The results of our test of compliance disclosed no instances of noncompliance with laws and regulations that are required to be reported under Government Auditing Standards or OMB Bulletin No. 01-02.

Under FFMIA, we are required to report whether the agency's financial management systems substantially comply with the Federal financial management systems requirements, Federal accounting standards, and the United States Government Standard General Ledger at the transaction level. To meet this requirement, we performed tests of compliance with FFMIA Section 803(a) requirements.

The results of our tests disclosed no instances in which the agency's financial management systems did not substantially comply with the three requirements discussed in the preceding paragraph.

With respect to items not tested, nothing came to our attention to cause us to believe the Commission had not complied, in all respects, with those provisions.

### ***Responsibilities and Methodology***

Management has the responsibility for:

- preparing the financial statements in conformity with generally accepted accounting principles described in Note 1 to the financial statements;
- establishing and maintaining an effective internal control over financial reporting; and
- complying with applicable laws and regulations.

Our responsibility is to express an opinion on these financial statements based on our audit. Generally accepted auditing standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misrepresentation and presented fairly in accordance with generally accepted accounting principles. We performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on these financial statements and not to provide an opinion on the internal control over financial reporting. We also are responsible for testing compliance with selected provisions of applicable laws and regulations that may materially affect the financial statements.

In order to fulfill these responsibilities, we

- obtained an understanding of the design of relevant internal controls and determined whether they had been placed in operation;
- assessed control risk;
- examined, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- assessed the accounting principles used and significant estimates made by management;
- evaluated the overall presentation of the financial statements;
- tested compliance with selected provisions of the laws and regulations that may materially affect the financial statements; and
- performed other procedures that we considered necessary in the circumstances.

Our audits were conducted in accordance with auditing standards generally accepted in the United States; *Government Auditing Standards*, as issued by the Comptroller General of the United States; and OMB Bulletin No. 01-02. We believe that our audits provide a reasonable basis for our opinion.

While this report is intended solely for the information and use of the Federal Trade Commission, the Office of Management and Budget and the Congress, it is also a matter of public record, and its distribution is, therefore, not restricted.



Howard L. Sribnick  
Inspector General  
Federal Trade Commission

Washington, D.C.  
October 28, 2005

## Office of Inspector General Top Management Challenges of the FTC

### I. Performance Measurement and Accountability

**Management Challenge:** To enhance accountability of the Federal Trade Commission to the American public by focusing on results and tying agency programs to reliable cost data.

**Agency Progress in Addressing the Challenge:** The Government Performance Results Act of 1993 (GPRA) holds federal agencies accountable for using resources efficiently and effectively and achieving program results. In addition, government-wide initiatives such as the President's Management Agenda attempt to refocus government operations using a performance and results model. GPRA requires agencies to establish strategic and annual plans with results-oriented goals, set annual targets, track progress, and measure results. The intent is to provide Congress, the president and the public with objective, useful and reliable information about Federal programs.

Reviews of other federal agencies' performance reporting by the Government Accountability Office and their respective IG's have found that performance measures were frequently not clear or quantifiable, some activities lacked performance measures, while other reported performance results were not always valid.

A recent review of performance activity by the FTC's OIG has shown, among other things, that the agency does not have a formal, ongoing process to review and adjust the agency's Strategic Plan. The review also illustrated the need for full engagement of staff and management to ensure that FTC's Strategic Plan is current, reflects all of the agency's over-arching programmatic and organizational goals, and is used as an effective management tool. The Strategic Plan must be viewed as the initial step in preparing a foundation for the agency's budget request and its performance plan, providing guidance relevant to routine and informative performance reporting, and enabling the agency to demonstrate accountability to the public through the Performance and Accountability Report.

**The Challenge Ahead:** To focus on outcome-oriented reporting that is accurate and verifiable, develop measurable outcome-oriented goals, and make adjustments based on performance feedback and program evaluations.

## II. Information Technology Management

**Management Challenge:** Securing the agency’s critical systems and networks from destruction, data loss or compromise.

**Agency Progress in Addressing the Challenge:** Information security has been an ongoing challenge at most Federal agencies, including the FTC. Some weaknesses identified by the OIG in past security reviews include untested or inadequate system security plans, systems placed into production before accreditation by the CIO, failure to adhere to NIST standards in the certification and accreditation of major applications and timely deletion of accounts for separating employees. The OIG also identified weaknesses in parameter controls that enabled the OIG’s team of “ethical hackers” to obtain privileged access to select FTC systems

Within the last year, the FTC certified and accredited seven of its nine Major Applications and General Support Systems, completed 51 of the 111 issues identified in prior IT security evaluations and developed a schedule to address the remaining 60 issues, instituted a scanning and remediation process and modified inventory management to include interconnections to other systems.

**The Challenge Ahead:** While taking steps to safeguard systems and information from the most creative and sophisticated “IT intruders,” it is sometimes easy to overlook basic security controls, such as changing default passwords on modems and newly purchased systems, limiting employees’ access to systems and data needed to perform their job responsibilities and ensuring that background checks for employees with access to the agency’s most sensitive systems are performed and updated regularly. The challenge for the agency’s IT managers is to remain focused on basic security controls as they strive to stay one step ahead of new, highly sophisticated security threats.

**FEDERAL TRADE COMMISSION**  
**BALANCE SHEETS**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

|   | <u>2005</u>       | <u>2004</u>       |
|---|-------------------|-------------------|
| <b>Entity Assets:</b>                   |                   |                   |
| Intragovernmental Assets:               |                   |                   |
| Fund Balance with Treasury (Note 2)     | \$ 60,571         | \$ 44,627         |
| Accounts Receivable, Net (Note 4)       | 87                | 121               |
| Total Intragovernmental Assets          | <u>60,658</u>     | <u>44,748</u>     |
| Property and Equipment, Net (Note 5)    | 15,096            | 14,270            |
| Total Entity Assets                     | <u>75,754</u>     | <u>59,018</u>     |
| <b>Non-Entity Assets:</b>               |                   |                   |
| Intragovernmental Assets:               |                   |                   |
| Fund Balance with Treasury (Note 2)     | 17,642            | 19,531            |
| Cash and Other Monetary Assets (Note 3) | 81,468            | 111,489           |
| Accounts Receivable, Net (Note 4)       | 84,355            | 62,879            |
| Total Non-Entity Assets                 | <u>183,465</u>    | <u>193,899</u>    |
| <b>Total Assets</b>                     | <u>\$ 259,219</u> | <u>\$ 252,917</u> |

*The accompanying notes are an integral part of these statements.*

**FEDERAL TRADE COMMISSION**  
**BALANCE SHEETS**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

|  | <u>2005</u>       | <u>2004</u>       |
|--|-------------------|-------------------|
| <b>Liabilities:</b>                                  |                   |                   |
| Liabilities Covered by Budgetary Resources:          |                   |                   |
| Intragovernmental Liabilities:                       |                   |                   |
| Accrued Benefits                                     | \$ 716            | \$ 645            |
| Accounts Payable                                     | 2,468             | 1,510             |
| Total Intragovernmental Liabilities                  | <u>3,184</u>      | <u>2,155</u>      |
| With the Public                                      |                   |                   |
| Accounts Payable                                     | 7,731             | 7,867             |
| Accrued Salaries                                     | 3,918             | 3,625             |
| Total Liabilities Covered by Budgetary Resources     | <u>14,833</u>     | <u>13,647</u>     |
| Liabilities Not Covered by Budgetary Resources:      |                   |                   |
| Intragovernmental Liabilities:                       |                   |                   |
| Undisbursed Premerger Filing Fees                    | 9,389             | 6,530             |
| Other Liabilities (Note 6)                           | 702               | 1,380             |
| Total Intragovernmental Liabilities                  | <u>10,091</u>     | <u>7,910</u>      |
| Actuarial FECA Liabilities                           | 2,018             | 1,948             |
| Accrued Annual Leave                                 | 7,583             | 7,496             |
| With the Public (Note 6)                             | 173,744           | 186,384           |
| Total Liabilities Not Covered by Budgetary Resources | <u>193,436</u>    | <u>203,738</u>    |
| Total Liabilities                                    | <u>208,269</u>    | <u>217,385</u>    |
| <b>Net Position:</b> (Note 7)                        |                   |                   |
| Balances:  |                   |                   |
| Unexpended Appropriations                            | 14                | 36                |
| Cumulative Results of Operations                     | 50,936            | 35,496            |
| Total Net Position                                   | <u>50,950</u>     | <u>35,532</u>     |
| <b>Total Liabilities and Net Position</b>            | <u>\$ 259,219</u> | <u>\$ 252,917</u> |

*The accompanying notes are an integral part of these statements.*

**FEDERAL TRADE COMMISSION**  
**STATEMENTS OF NET COST**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

|  | <b>2005</b>      | <b>2004</b>      |
|--|------------------|------------------|
| <b>Program Costs</b>                           |                  |                  |
| <u>Maintaining Competition Mission:</u>        |                  |                  |
| Intragovernmental gross costs                  | \$ 21,833        | \$ 19,692        |
| Less: Intragovernmental earned revenue         | (864)            | (722)            |
| Intragovernmental net costs                    | 20,969           | 18,970           |
| Gross costs with the public                    | 62,653           | 62,083           |
| Less: Earned revenue with the public (Note 12) | (99,511)         | (83,598)         |
| Net costs with the public                      | (36,858)         | (21,515)         |
| Net Cost Maintaining Competition Mission       | (15,889)         | (2,545)          |
| <u>Consumer Protection Mission:</u>            |                  |                  |
| Intragovernmental gross costs                  | 28,941           | 25,063           |
| Less: Intragovernmental earned revenue         | (117)            | (86)             |
| Intragovernmental net costs                    | 28,824           | 24,977           |
| Gross costs with the public                    | 83,051           | 79,015           |
| Less: Earned revenue with the public (Note 12) | (18,052)         | (13,984)         |
| Net costs with the public                      | 64,999           | 65,031           |
| Net Cost of Consumer Protection Mission        | 93,823           | 90,008           |
| <b>Net Cost of Operations</b>                  | <b>\$ 77,934</b> | <b>\$ 87,463</b> |

*The accompanying notes are an integral part of these statements.*

**FEDERAL TRADE COMMISSION**  
**STATEMENTS OF CHANGES IN NET POSITION**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

|                                   | <b>2005</b>                            |                              | <b>2004</b>                            |                              |
|-----------------------------------|--|------------------------------|--|------------------------------|
|                                   | Cumulative<br>Results of<br>Operations | Unexpended<br>Appropriations | Cumulative<br>Results of<br>Operations | Unexpended<br>Appropriations |
| <b>Beginning Balances</b>         | \$ 35,496                              | \$ 36                        | \$ 27,910                              | \$ 142                       |
| Budgetary Financing Sources:      |  |                              |  |                              |
| Appropriations Received           | -                                      | 87,838                       | -                                      | 88,435                       |
| Appropriations Transferred-In/Out | -                                      | -                            | -                                      | 67                           |
| Other Adjustments (Rescissions)   | -                                      | (1,106)                      | -                                      | (536)                        |
| Appropriations Used               | 86,754                                 | (86,754)                     | 88,072                                 | (88,072)                     |
| Other Financing Sources:          |  |                              |  |                              |
| Imputed Financing (Note 9)        | 6,620                                  | -                            | 6,977                                  | -                            |
| <b>Total Financing Sources</b>    | 93,374                                 | (22)                         | 95,049                                 | (106)                        |
| <b>Net Cost of Operations</b>     | (77,934)                               | -                            | (87,463)                               | -                            |
| <b>Ending Balances</b>            | \$ 50,936                              | \$ 14                        | \$ 35,496                              | \$ 36                        |

*The accompanying notes are an integral part of these statements.*



**FEDERAL TRADE COMMISSION**  
**STATEMENTS OF BUDGETARY RESOURCES**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

|  | <b>2005</b>       | <b>2004</b>       |
|--|-------------------|-------------------|
| <b>Budgetary Resources:</b>                      |                   |                   |
| Budget authority                                 |                   |                   |
| Appropriation                                    | \$ 87,838         | \$ 88,435         |
| Net Transfers - Current Year Authority           | -                 | 68                |
| Net Transfers - Prior Year Balances              | -                 | (1)               |
| Unobligated Balance:                             |                   |                   |
| Beginning of Period                              | 8,427             | 8,642             |
| Spending Authority from Offsetting Collections   |                   |                   |
| Earned   |                   |                   |
| Collected  | 118,579           | 98,500            |
| Receivable from Federal Sources                  | (34)              | (110)             |
| Change in Unfilled Customer Orders               |                   |                   |
| Without Advance from Federal Sources             | 258               | 40                |
| Anticipated for rest of year, without advances   | -                 | -                 |
| Recoveries of Prior Year Obligation              | 773               | 2,306             |
| Enacted Reductions                               |                   |                   |
| Rescissions - New Budget Authority               | (1,106)           | (536)             |
| <b>Total Budgetary Resources</b>                 | <b>\$ 214,735</b> | <b>\$ 197,344</b> |
| <b>Status of Budgetary Resources:</b>            |                   |                   |
| Obligations incurred                             |                   |                   |
| Direct   | 82,007            | 89,213            |
| Reimbursable                                     | 118,802           | 99,704            |
| Subtotal   | 200,809           | 188,917           |
| Unobligated Balance                              |                   |                   |
| Available  | 5,287             | 1,027             |
| Not Available                                    | 8,639             | 7,400             |
| <b>Total Status of Budgetary Resources</b>       | <b>\$ 214,735</b> | <b>\$ 197,344</b> |
| <b>Summary of Obligations and Outlays</b>        |                   |                   |
| <b>Obligated balance net beginning of period</b> | <b>\$ 36,200</b>  | <b>\$ 32,257</b>  |
| Obligated balance net end of period:             |                   |                   |
| Accounts receivable                              | (87)              | (121)             |
| Unfilled customer orders from federal sources    | (313)             | (55)              |
| Undelivered orders                               | 32,212            | 22,729            |
| Accounts payable                                 | 14,833            | 13,647            |
| <b>Total obligated balance net end of period</b> | <b>\$ 46,645</b>  | <b>\$ 36,200</b>  |
| Outlays:   |                   |                   |
| Disbursements                                    | 189,366           | 182,739           |
| Collections                                      | (118,579)         | (98,500)          |
| <b>Net Outlays</b>                               | <b>\$ 70,787</b>  | <b>\$ 84,239</b>  |

*The accompanying notes are an integral part of these statements.*

**FEDERAL TRADE COMMISSION**  
**STATEMENTS OF FINANCING**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

|  | <b>2005</b>      | <b>2004</b>      |
|--|------------------|------------------|
| <b>Resources Used to Finance Activities:</b>   |                  |                  |
| Budgetary Resources Obligated  |                  |                  |
| Obligations incurred   | \$ 200,809       | \$ 188,917       |
| Less: Spending authority from offsetting collections and recoveries  | (119,576)        | (100,736)        |
| Obligations net of offsetting collections and recoveries   | 81,233           | 88,181           |
| Other Resources  |                  |                  |
| Imputed financing from costs absorbed by others  | 6,620            | 6,977            |
| Total Resources Used to Finance Activities   | 87,853           | 95,158           |
| <b>Resources Used to Finance Items not Part of the Cost of Operations:</b>   |                  |                  |
| Change in budgetary resources obligated for goods<br>and services ordered but not yet received or provided         | (9,225)          | (2,697)          |
| Resources that finance the acquisition of assets   | (4,127)          | (7,063)          |
| Total resources used to finance items not part of the net cost of operations                                       | (13,352)         | (9,760)          |
| Total Resources Used to Finance the Net Cost of Operations   | 74,501           | 85,398           |
| <b>Components of the Net Cost of Operations that will not Require or Generate Resources in the Current Period:</b> |                  |                  |
| Components Requiring or Generating Resources in Future Periods:  |                  |                  |
| Increase in annual leave liability   | 87               | 313              |
| (Decrease) increase in FECA liability  | 45               | (179)            |
| Total components of the net cost of operations that will not require or generate resources in future periods       | 132              | 134              |
| Components not Requiring or Generating Resources:  |                  |                  |
| Depreciation and amortization  | 3,301            | 1,931            |
| Total components of the Net Cost of Operations that will not require or generate resources                         | 3,301            | 1,931            |
| Total Components of the Net Cost of Operations that will not Require or Generate Resources in the Current Period   | 3,433            | 2,065            |
| <b>Net Cost of Operations</b>  | <b>\$ 77,934</b> | <b>\$ 87,463</b> |

*The accompanying notes are an integral part of these statements.*

**FEDERAL TRADE COMMISSION**  
**STATEMENTS OF CUSTODIAL ACTIVITY**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

(Refer to Note 11)

|  | <u>MC Mission</u> | <u>CP Mission</u> | <u>2005</u>       | <u>2004</u>       |
|--|-------------------|-------------------|-------------------|-------------------|
| <b>Sources of Collections:</b>             |                   |                   |                   |                   |
| Cash Collections:                          |                   |                   |                   |                   |
| Premerger Filing Fees (Net of Refunds) (a) | \$ 99,511         | \$ -              | \$ 99,511         | \$ 82,190         |
| Civil Penalties and Fines (b)              | -                 | 6,479             | 6,479             | 6,542             |
| Redress (c)                                | -                 | 62,181            | 62,181            | 337,585           |
| Divestiture Fund (d)                       | 708               | -                 | 708               | 184               |
| Funeral Rule Violations                    | -                 | 7                 | 7                 | 30                |
| Net Collections                            | <u>100,219</u>    | <u>68,667</u>     | <u>168,886</u>    | <u>426,531</u>    |
| Accrual Adjustments (e)                    | -                 | 21,476            | 21,476            | (179,016)         |
| Total Non-exchange Revenues                | <u>\$ 100,219</u> | <u>\$ 90,143</u>  | <u>\$ 190,362</u> | <u>\$ 247,515</u> |
| <b>Disposition of Revenue Collected:</b>   |                   |                   |                   |                   |
| Amounts Transferred to:                    |                   |                   |                   |                   |
| Treasury General Fund                      | -                 | 20,095            | 20,095            | 20,932            |
| Department of Justice                      | 96,652            | -                 | 96,652            | 77,259            |
| Receivers (f)                              | -                 | 182               | 182               | 161               |
| Redress to Claimants (g)                   | -                 | 66,109            | 66,109            | 294,058           |
| Contrator Fees Net of Interest Earned (h)  | -                 | 6,291             | 6,291             | 7,638             |
| Attorney Fees (h)                          | -                 | 8,712             | 8,712             | 3,208             |
| Court Registry                             | -                 | 2,755             | 2,755             | -                 |
| Net Disbursements                          | <u>96,652</u>     | <u>104,144</u>    | <u>200,796</u>    | <u>403,256</u>    |
| Change in Liability Accounts (i)           | 3,567             | (14,001)          | (10,434)          | (155,741)         |
| Total Disposition of Revenues Collected    | <u>\$ 100,219</u> | <u>\$ 90,143</u>  | <u>\$ 190,362</u> | <u>\$ 247,515</u> |
| <b>Net Custodial Collections</b>           | <u>\$ -</u>       | <u>\$ -</u>       | <u>\$ -</u>       | <u>\$ -</u>       |

**FEDERAL TRADE COMMISSION**  
**REQUIRED SUPPLEMENTARY INFORMATION**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

**Intragovernmental Assets:**

| <b>Trading Partner Agency:</b>        | <b>Fund Balance with Treasury</b> |                   | <b>Accounts</b>   | <b>2005</b>      | <b>2004</b>      |
|---------------------------------------|-----------------------------------|-------------------|-------------------|------------------|------------------|
|                                       | <b>Entity</b>                     | <b>Non-Entity</b> | <b>Receivable</b> |                  |                  |
| Treasury                              | \$ 60,571                         | \$ 17,642         | \$ -              | \$ 78,213        | \$ 64,158        |
| Agency for International Development  | -                                 | -                 | 33                | 33               | 59               |
| Other Government Agencies             | -                                 | -                 | 54                | 54               | 62               |
| <b>Total Intragovernmental Assets</b> | <b>\$ 60,571</b>                  | <b>\$ 17,642</b>  | <b>\$ 87</b>      | <b>\$ 78,300</b> | <b>\$ 64,279</b> |

**Intragovernmental Liabilities:**

| <b>Trading Partner Agency:</b>                  | <b>Accrued Benefits</b> | <b>Accounts Payable</b> | <b>NA</b>   | <b>Total 2005</b> | <b>Total 2004</b> |
|---|-------------------------|-------------------------|-------------|-------------------|-------------------|
| Covered by Budgetary Resources:                 |                         |                         |             |                   |                   |
| Department of Labor                             | \$ 4                    | \$ -                    | \$ -        | \$ 4              | \$ 18             |
| U.S. Postal Inspection Service                  | -                       | 125                     | -           | 125               | 12                |
| Government Printing Office                      | -                       | 1,274                   | -           | 1,274             | 7                 |
| General Services Administration                 | -                       | 416                     | -           | 416               | 1,370             |
| Office of Personnel Management                  | 549                     | 44                      | -           | 593               | 513               |
| U.S. Environmental Protection                   | -                       | 100                     | -           | 100               | -                 |
| Homeland Security                               | -                       | 416                     | -           | 416               | -                 |
| Department of Treasury                          | 163                     | 93                      | -           | 256               | 235               |
| <b>Total Covered by Budgetary Resources</b>     | <b>\$ 716</b>           | <b>\$ 2,468</b>         | <b>\$ -</b> | <b>\$ 3,184</b>   | <b>\$ 2,155</b>   |
| Not Covered by Budgetary Resources:             |                         |                         |             |                   |                   |
| Department of Justice                           | \$ -                    | \$ 9,389                | \$ -        | \$ 9,389          | \$ 6,530          |
| Department of Labor                             | -                       | 370                     | -           | 370               | 395               |
| Department of Treasury                          | -                       | 332                     | -           | 332               | 985               |
| <b>Total Not Covered by Budgetary Resources</b> | <b>\$ -</b>             | <b>\$ 10,091</b>        | <b>\$ -</b> | <b>\$ 10,091</b>  | <b>\$ 7,910</b>   |

**FEDERAL TRADE COMMISSION**  
**Required Supplementary Information**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

**Exchange Revenue from Reimbursable Agreements**

| <b><u>Trading Partner:</u></b>                             | <b><u>2005</u></b>   | <b><u>2004</u></b>   |
|--|----------------------|----------------------|
| U.S. Department of State                                   | \$ 401               | \$ 142               |
| U.S. Agency for International Development                  | 332                  | 429                  |
| Department of Justice                                      | 42                   | 90                   |
| Federal Mine Safety & Health Review Commission             | 38                   | 41                   |
| U.S. Trade and Development Agency                          | 29                   | 36                   |
| Board of Governors of the Federal Reserve System           | 21                   | -                    |
| Federal Deposit Insurance Corp.                            | 21                   | -                    |
| Securities and Exchange Commission                         | 21                   | -                    |
| Office of the Comptroller of the Currency                  | 21                   | -                    |
| Medicare Payment Advisory Commission/GSA                   | 19                   | 20                   |
| U.S. Postal Inspection Service                             | 17                   | 8                    |
| National Credit Union Admin                                | 15                   | -                    |
| Department of Commerce                                     | 4                    | 3                    |
| U.S. Patent and Trademark Office                           | -                    | 39                   |
| <b>Total Exchange Revenue from Reimbursable Agreements</b> | <b><u>\$ 981</u></b> | <b><u>\$ 808</u></b> |

**Related Costs:**

| <b><u>Budget Function Classification:</u></b> | <b><u>2005</u></b>   | <b><u>2004</u></b>   |
|---|----------------------|----------------------|
| Other Advancement of Commerce                 | \$ 981               | \$ 808               |
| <b>Total Related Costs</b>                    | <b><u>\$ 981</u></b> | <b><u>\$ 808</u></b> |

**FEDERAL TRADE COMMISSION**  
**Required Supplementary Information**  
**For the Years Ending September 30, 2005 and 2004**  
**(Dollars in thousands)**

**Intragovernmental Expenses:**

| <b><u>Trading Partner:</u></b>               | <b>2005</b>      | <b>2004</b>      |
|--|------------------|------------------|
| Office of Personnel Management               | \$ 21,109        | \$ 18,117        |
| General Services Administration              | 18,422           | 18,331           |
| Social Security Administration               | 5,254            | 5,151            |
| Government Printing Office                   | 2,270            | 646              |
| Department of Homeland Security              | 1,038            | -                |
| Department of the Interior                   | 865              | 864              |
| Department of Transportation                 | 709              | 724              |
| Department of Labor                          | 265              | 258              |
| United States Postal Service                 | 247              | 214              |
| Department of Health and Human Services      | 229              | 218              |
| U.S. Environmental Protection                | 185              | -                |
| Department of State                          | 64               | 33               |
| Department of Justice                        | 53               | 107              |
| National Archives and Records Administration | 46               | 39               |
| Department of the Treasury                   | 14               | 15               |
| Department of Commerce                       | 4                | -                |
| Veterans Administration                      | -                | 37               |
| Other  | -                | 1                |
| <b>Total Intragovernmental Expenses</b>      | <b>\$ 50,774</b> | <b>\$ 44,755</b> |

**Mission:**

|   |                  |                  |
|---|------------------|------------------|
| Maintaining Competition                 | \$ 21,833        | \$ 19,692        |
| Consumer Protection                     | 28,941           | 25,063           |
| <b>Total Intragovernmental Expenses</b> | <b>\$ 50,774</b> | <b>\$ 44,755</b> |

**FEDERAL TRADE COMMISSION**  
**Notes to the Statements of Custodial Activity**  
**Accrual Adjustments**  
**September 30, 2005 and 2004**  
**(Dollars in thousands)**

Exhibit A

| <b>Part 1</b>                                | <u>MC Mission</u>    | <u>-----CP Mission-----</u> |                  |                    | <u>2005</u>      | <u>2004</u>         |
|--|----------------------|-----------------------------|------------------|--------------------|------------------|---------------------|
|  | <u>Civil Penalty</u> | <u>Civil Penalty</u>        | <u>Redress</u>   | <u>Subtotal CP</u> |                  |                     |
| Judgments Receivable - Net Beginning         | \$ -                 | \$ 985                      | \$ 61,894        | \$ 62,879          | \$ 62,879        | \$ 241,895          |
| Add:   |                      |                             |                  |                    |                  |                     |
| Current Year Judgments (Note 11 j)           | -                    | 6,664                       | 834,985          | 841,649            | 841,649          | 451,467             |
| Prior Year Recoveries (Note 11 k)            | -                    | -                           | 2,921            | 2,921              | 2,921            | 914                 |
| Less:  |                      |                             |                  |                    |                  |                     |
| Collections by FTC/Contractors Receivers     | -                    | (6,479)                     | (62,181)         | (68,660)           | (68,660)         | (344,127)           |
| Collections by DOJ for Litigation Fees/Other | -                    | (199)                       | -                | (199)              | (199)            | (178)               |
| Less:  |                      |                             |                  |                    |                  |                     |
| Adjustments to Allowance (Note 11 l)         | -                    | (639)                       | (753,596)        | (754,235)          | (754,235)        | (287,092)           |
| <b>Judgments Receivable - Net, Ending</b>    | <u>\$ -</u>          | <u>\$ 332</u>               | <u>\$ 84,023</u> | <u>\$ 84,355</u>   | <u>\$ 84,355</u> | <u>\$ 62,879</u>    |
| <b>Part 2</b>                                |                      |                             |                  |                    |                  |                     |
| Judgments Receivable - Net Ending            | \$ -                 | \$ 332                      | \$ 84,023        | \$ 84,355          | \$ 84,355        | \$ 62,879           |
| Judgments Receivable - Net Beginning         | -                    | 985                         | 61,894           | 62,879             | 62,879           | 241,895             |
| <b>Accrual Adjustment</b>                    | <u>\$ -</u>          | <u>\$ (653)</u>             | <u>\$ 22,129</u> | <u>\$ 21,476</u>   | <u>\$ 21,476</u> | <u>\$ (179,016)</u> |

**FEDERAL TRADE COMMISSION**  
**Notes to the Statements of Custodial Activity**  
**Change in Liability Accounts**  
**September 30, 2005 and 2004**  
**(Dollars in thousands)**

Exhibit B

|                                     | MC Mission      |               |               | Subtotal MC     | CP Mission      |                    | Subtotal-CP        | Total              |
|-------------------------------------|-----------------|---------------|---------------|-----------------|-----------------|--------------------|--------------------|--------------------|
|                                     | Pre-Merger      | Divestiture   | Civil Penalty |                 | Civil Penalty   | Redress            |                    |                    |
| Liabilities @ 09/30/05              | \$ 9,389        | \$ 42,084     | \$ -          | \$ 51,473       | \$ 332          | \$ 131,660         | \$ 131,992         | \$ 183,465         |
| Liabilities @ 09/30/04              | \$ 6,530        | \$ 41,376     | \$ -          | \$ 47,906       | \$ 985          | \$ 145,008         | \$ 145,993         | \$ 193,899         |
| <b>Change in Liability Accounts</b> | <u>\$ 2,859</u> | <u>\$ 708</u> | <u>\$ -</u>   | <u>\$ 3,567</u> | <u>\$ (653)</u> | <u>\$ (13,348)</u> | <u>\$ (14,001)</u> | <u>\$ (10,434)</u> |

|                                     | MC Mission      |               |               | Subtotal MC     | CP Mission        |                     | Subtotal-CP         | Total               |
|-------------------------------------|-----------------|---------------|---------------|-----------------|-------------------|---------------------|---------------------|---------------------|
|                                     | Pre-Merger      | Divestiture   | Civil Penalty |                 | Civil Penalty     | Redress             |                     |                     |
| Liabilities @ 09/30/04              | \$ 6,530        | \$ 41,376     | \$ -          | \$ 47,906       | \$ 985            | \$ 145,008          | \$ 145,993          | \$ 193,899          |
| Liabilities @ 09/30/03              | 1,600           | 41,191        | -             | 42,791          | 2,105             | 304,744             | 306,849             | 349,640             |
| <b>Change in Liability Accounts</b> | <u>\$ 4,930</u> | <u>\$ 185</u> | <u>\$ -</u>   | <u>\$ 5,115</u> | <u>\$ (1,120)</u> | <u>\$ (159,736)</u> | <u>\$ (160,856)</u> | <u>\$ (155,741)</u> |



**FEDERAL TRADE COMMISSION**  
**Notes to the Financial Statements**  
**For the Years Ended September 30, 2005 and 2004**

***NOTE 1 -- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES***

***(a) Reporting Entity***

The Federal Trade Commission (FTC) was created by the Federal Trade Commission Act of 1914. The FTC enforces a variety of federal antitrust and consumer protection laws. The FTC seeks to ensure that the nation's markets function competitively and are vigorous, efficient, and free of undue restrictions. The FTC also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the FTC's efforts are directed toward stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the FTC performs economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments when requested.

***(b) Fund Accounting Structure***

The FTC's financial activities are accounted for by federal account symbol. They include the accounts for appropriated funds and other fund groups described below for which the FTC maintains financial records and consumer redress accounts for which the agency has management oversight.

General Funds Consist of salaries and expense appropriation accounts used to fund agency operations and capital expenditures.

Deposit Funds Consist of monies held temporarily by the FTC as an agent for others.

Suspense Funds Represent receipts awaiting proper classification, or held in escrow, until ownership is established and proper distributions can be made.

Receipt Accounts Reflect civil penalties and other miscellaneous receipts that are collected but not retained by the FTC. Cash balances are automatically transferred to the general fund of the Treasury at the end of each fiscal year.

***(c) Basis of Accounting and Presentation***

The financial statements present the financial position, net cost of operations, changes in net position, budgetary resources, financing, and custodial activities of the FTC, in accordance with accounting principles generally accepted in the United States of America and the form and content requirements of Office of Management and Budget (OMB) Circular A-136. They have been prepared from the books and records of the FTC and include the accounts of all funds under the control of the FTC. Accounting principles generally accepted in the United States of America encompass both accrual and budgetary transactions. Under the

**FEDERAL TRADE COMMISSION**  
**Notes to the Financial Statements**  
**For the Years Ended September 30, 2005 and 2004**

accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal constraints and controls over the use of federal funds. The accompanying financial statements are prepared on the accrual basis of accounting.

In addition, the accompanying statements include information on the activities of the agency's consumer redress program. Independent agents under current contract with the FTC administer the program and maintain the financial records for consumer redress activity.

***(d) Budget Authority***

Congress annually passes appropriations that provide the FTC with authority to obligate funds for necessary expenses to carry out mandated program activities. These funds are available until expended, subject to OMB apportionment and to Congressional restrictions on the expenditure of funds. Also, the FTC places internal restrictions on fund expenditures to ensure the efficient and proper use of all funds. Appropriated funding is derived from various revenues and financing sources.

***(e) Fund Balances with the U.S. Treasury***

Fund balances with Treasury consist of appropriated funds that are available to pay current liabilities and to finance authorized purchase commitments, and restricted funds, which include deposit and suspense funds. The FTC's fund balances with Treasury are carried forward until such time as goods or services are received and payment is made or until the funds are returned to the U.S. Treasury. With the exception of cash held in consumer redress custodial accounts by FTC's contracted agents, the FTC does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by the U.S. Treasury.

***(f) Advances and Prepayments***

Payments in advance of the receipt of goods and services are recorded as advances and prepayments and recognized as an expense when the related goods and services are received.

***(g) Accounts Receivable***

Entity accounts receivable include amounts due from other federal entities and from current and former employees and vendors. Non-entity accounts receivable include uncollected civil monetary penalties imposed as a result of the FTC's enforcement activities and uncollected redress judgments. Since the FTC does not retain these receipts, a corresponding liability is also recorded for non-entity accounts receivable.

**FEDERAL TRADE COMMISSION**  
**Notes to the Financial Statements**  
**For the Years Ended September 30, 2005 and 2004**

Opening judgment receivable balances reflect the Federal Accounting Standards Advisory Board (FASAB) standard for the recognition of losses using the collection criterion of “more likely than not.” This criterion results in receivable balances that are more conservatively stated than those valued by the private sector under generally accepted accounting principles. The Board states that it is appropriate to recognize the nature of federal receivables, which, unlike trade accounts of private firms or loans made by banks, are not created through credit screening procedures. Rather, these receivables arise because of the assessment of fines from regulatory violations. In these circumstances, historical experience and economic realities indicate that these types of claims are frequently not fully collectible.

The FTC recognizes an allowance for uncollectible non-entity accounts receivable by individual account analysis based on the debtor’s ability and willingness to pay, and the probable recovery of amounts from secondary sources, including liens, garnishments, and other applicable collection tools. Entity accounts receivable are considered fully collectible, and therefore no allowance is recorded.

***(h) Property and Equipment***

Commercial vendors and the General Services Administration, which charges the FTC a Standard Level Users Charge (SLUC) that approximates the commercial rental rates for similar properties, provide the land and buildings in which the FTC operates.

Property and equipment consists of equipment, leasehold improvements, and software. All items with an acquisition value greater than \$100,000 and a useful life over two years are capitalized and depreciated using the straight-line method of depreciation. Service lives range from three to twenty years.

Internal use software development and acquisition costs of \$100,000 are capitalized as software development in progress until the development stage has been completed and the software successfully tested. Upon completion and testing, software development-in-progress costs are reclassified as internal use software costs and amortized using the straight-line method over the estimated useful life of three years. Purchased commercial software that does not meet the capitalization criteria is expensed.

***(i) Liabilities***

Liabilities represent the amount of monies or other resources that are likely to be paid as the result of a transaction or event that has already occurred. Liabilities classified as not covered by budgetary resources are liabilities for which appropriations have not been enacted and liabilities resulting from the agency’s custodial activities. *See Note 11.* Also, the Government, acting in its sovereign capacity, can abrogate FTC liabilities (other than contracts).

**FEDERAL TRADE COMMISSION**  
**Notes to the Financial Statements**  
**For the Years Ended September 30, 2005 and 2004**

**(j) *Undisbursed Premerger Filing Fees Liability***

A liability is recorded for the undisbursed filing fees collected under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, which are due to the Department of Justice in a subsequent period.

**(k) *Federal Employees' Compensation Act (FECA) Actuarial Liability and Accrued FECA Claims***

The FTC records an estimated liability for future workers' compensation claims based on data provided from the Department of Labor (DOL). The FTC also records a liability for actual claims paid on its behalf by the DOL.

**(l) *Accrued Leave***

A liability for annual leave is accrued as leave is earned and reduced when leave is taken. At year end, the balance in the accrued annual leave account is adjusted to reflect the liability at current pay rates and leave balances. Accrued annual leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken.

**(m) *Employee Health Benefits and Life Insurance***

FTC employees are eligible to participate in the contributory Federal Employees Health Benefit Program (FEHBP) and the Federal Employees Group Life Insurance Program (FEGLIP). The FTC contributes a percentage to each program to pay for current benefits.

**(n) *Post-Retirement Health Benefits and Life Insurance***

FTC employees eligible to participate in the FEHBP and the FEGLIP may continue to participate in these programs after their retirement. The Office of Personnel Management (OPM) has provided the FTC with certain cost factors that estimate the true cost of providing the post-retirement benefit to current employees. The FTC recognizes a current cost for these and other retirement benefits (ORB) at the time the employee's services are rendered. The ORB expense is financed by OPM, and offset by the FTC through the recognition of an imputed financing source on the Statement of Financing. During fiscal years 2005 and 2004, the cost factors relating to FEHBP were \$4,903 and \$4,420, respectively, per employee enrolled. During fiscal years 2005 and 2004, the cost factor relating to FEGLIP was 0.02 percent of basic pay per employee enrolled. *See Note 9, Imputed Financing.*

**FEDERAL TRADE COMMISSION**  
**Notes to the Financial Statements**  
**For the Years Ended September 30, 2005 and 2004**

*(o) Employee Retirement Benefits*

FTC employees participate in either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). Employees hired after December 31, 1983, are covered by FERS and Social Security, while employees hired prior to January 1, 1984, may elect to either join FERS or remain in CSRS. Approximately 24 percent of FTC employees participate in CSRS. For employees participating in CSRS, the FTC contributes seven percent of the employee's gross earnings to the CSRS Retirement and Disability Fund. For employees participating in FERS, the FTC contributes 11.2 percent to the Federal Employees' Retirement Fund. Employees participating in FERS are covered under the Federal Insurance Contributions Act (FICA) for which the FTC contributes a matching amount to the Social Security Administration. FTC contributions are recognized as current operating expenses.

The Thrift Savings Plan (TSP) is a defined contribution retirement savings and investment plan for employees covered by either CSRS or FERS. CSRS participating employees may contribute up to 10 percent of earnings for 2005, nine percent for 2004, to TSP, but do not receive a matching contribution from the FTC. FERS participating employees may contribute up to 15 percent and 14 percent of earnings for the years 2005 and 2004, respectively, to the TSP plan. For FERS employees, the FTC contributes one percent of the employee's gross pay to the TSP. The FTC also matches 100 percent of the first three percent contributed and 50 percent of the next 2 percent contributed. FTC contributions are recognized as current operating expenses. Although the FTC contributes a portion for pension benefits and makes the necessary payroll withholdings, it is not responsible for contribution refunds, employee's retirement benefits, or the retirement plan assets. Therefore, the FTC financial statements do not report CSRS and FERS assets, accumulated plan benefits, or unfunded liabilities, if any, which may be applicable to employees. Such reporting is the responsibility of the OPM.

However, the FTC recognizes the full cost of providing future pension benefits to covered employees at the time the employees' services are rendered. OPM has provided the FTC with certain cost factors that estimate the true service cost of providing the pension benefits to covered employees. The cost factors used to arrive at the service cost are 25.0 percent of basic pay for CSRS covered employees and 12.0 percent of basic pay for FERS covered employees during fiscal years 2005 and 2004. The pension expense recognized in the financial statements equals this service cost to covered employees less amounts contributed by these employees. If the pension expense exceeds the amount contributed by the FTC as employer, the excess is recognized as an imputed financing cost. The excess total pension expense over the amount contributed by the agency must be financed by OPM and is recognized as an imputed financing source, non-exchange revenue.

**FEDERAL TRADE COMMISSION**  
**Notes to the Financial Statements**  
**For the Years Ended September 30, 2005 and 2004**

***(p) Net Position***

The FTC's net position is composed of the following:

Unexpended appropriations include the amount of unobligated balances and undelivered orders. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation.

Cumulative results of operations represent the net results of operations since inception, the cumulative amount of prior period adjustments, the remaining book value of capitalized assets, and future funding requirements.

***(q) Exchange Revenues***

The Federal Accounting Standards Advisory Board defines exchange revenue as inflows of resources to a governmental entity that the entity has earned. They arise from exchange transactions that occur when each party to the transaction sacrifices value and receives value in return.

Exchange revenues are earned through the collection of fees under the Hart-Scott-Rodino Act. This Act, in part, requires the filing of premerger notifications with the FTC and the Antitrust Division of the Department of Justice (DOJ) and establishes a waiting period before certain acquisitions may be consummated. Mergers with transaction amounts over \$50 million require the acquiring party to pay a filing fee. The filing fees are based on the transaction amount and follow a three-tiered structure: \$45,000, \$125,000, and \$280,000. The FTC retains one-half of the HSR premerger filing fees collected. Revenue is recognized when all required documentation under the HSR Act has been received by the agency. Fees not retained by the FTC are maintained in a suspense fund until transferred to the DOJ and not reported as revenue to the FTC.

Exchange revenues are also earned through the collection of fees for the national Do Not Call Registry. This registry operates under Section 5 of the FTC Act, which enforces the Telemarketing Sales Rule (TSR). The Do Not Call Implementation Act, P.L. 108-010, gives the FTC authority to establish fees for fiscal years 2003 through 2007 sufficient to offset the implementation and enforcement of the provisions relating to the Do Not Call Registry. Telemarketers are required to pay an annual subscription fee and download from the Do Not Call Registry database a list of telephone numbers of consumers who do not wish to receive calls. Fees are based on the number of area codes downloaded. The minimum charge was \$40 to download one area code. The maximum charge was \$11,000 for all area codes within the United States. Effective September 1, 2005, the new minimum charge is \$56 and the maximum charge is \$15,400. Fees collected over expenses are retained for use in other FTC missions.

**FEDERAL TRADE COMMISSION**  
**Notes to the Financial Statements**  
**For the Years Ended September 30, 2005 and 2004**

Exchange revenue is also earned for services provided to other Government agencies through reimbursable agreements. The FTC recovers the full cost of services, primarily salaries and related expenses. Revenue is earned at the time the expenditures are incurred against the reimbursable order. All exchange revenues are deducted from the full cost of the FTC's programs to arrive at net program cost.

***(r) Appropriations Used***

In addition to exchange revenue, the FTC receives financing sources through direct appropriation from the general fund of the Treasury to support its operations. A financing source, appropriations used, is recognized to the extent these appropriated funds have been consumed. In fiscal years 2005 and 2004, the FTC received a financing source in the form of a direct appropriation that represented approximately 41 percent and 46 percent of total revenues and financing sources realized.

***(s) Methodology for Assigning Cost***

Total costs were allocated to each mission based on two components: a) direct costs to each mission and b) indirect costs based on the percentage of direct FTE used by each mission.

***(t) Use of Estimates***

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

***NOTE 2 -- FUND BALANCES WITH TREASURY***

Fund balances with Treasury consisted of the following at September 30, 2005 and 2004:

| <b>(Dollars in thousands)</b>     | Unobligated      |                 |                 | 2005             | 2004             |
|-----------------------------------|------------------|-----------------|-----------------|------------------|------------------|
|                                   | Obligated        | Available       | Not available   | Total            | Total            |
| General Funds Entity              | \$ 46,645        | \$ 5,287        | \$ 8,639        | \$ 60,571        | \$ 44,627        |
| Non-Entity Funds                  |                  |                 |                 |                  |                  |
| Undisbursed Premerger Filing Fees | -                | -               | -               | 9,389            | 6,530            |
| Deposit Funds - Redress           | -                | -               | -               | 8,253            | 13,001           |
| Total Non-Entity                  | -                | -               | -               | 17,642           | 19,531           |
| <b>Total</b>                      | <b>\$ 46,645</b> | <b>\$ 5,287</b> | <b>\$ 8,639</b> | <b>\$ 78,213</b> | <b>\$ 64,158</b> |



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The obligated balance includes accounts payable and undelivered orders that have reduced unexpended appropriations but have not yet decreased the cash balance on hand.

*Other Information* Deposit and suspense funds stated above are not available to finance FTC activities and are classified as non-entity assets, and a corresponding liability is recorded.

**NOTE 3 -- CASH AND OTHER MONETARY ASSETS**

Cash and other monetary assets held as non-entity assets consist of redress judgment amounts on deposit with FTC's distribution agents and divestiture fund deposits. A corresponding liability is recorded for these assets.

Cash and other monetary assets consisted of the following as of September 30, 2005 and 2004:

| (Dollars in thousands)        | 2005             | 2004              |
|-------------------------------|------------------|-------------------|
| Non-Entity:                   |                  |                   |
| Redress Contractors           | \$ 39,384        | \$ 70,113         |
| Divestiture Fund (Note 11(d)) | 42,084           | 41,376            |
| <b>Total Non-Entity</b>       | <b>\$ 81,468</b> | <b>\$ 111,489</b> |

**NOTE 4 -- ACCOUNTS RECEIVABLE**

Accounts receivable consisted of the following as of September 30, 2005 and 2004:

| (Dollars in thousands)                           | Currently Due       | Allowance           | 2005<br>Net      | 2004<br>Net      |
|--|---------------------|---------------------|------------------|------------------|
| Entity Assets:                                   |                     |                     |                  |                  |
| Intragovernmental-<br><b>Accounts Receivable</b> | \$ 87               | \$ -                | \$ 87            | \$ 121           |
| Non-Entity Assets:                               |                     |                     |                  |                  |
| Consumer Redress                                 | \$ 1,270,723        | \$ 1,186,700        | \$ 84,023        | \$ 61,894        |
| Civil Penalties                                  | 971                 | 639                 | 332              | 985              |
| <b>Total Non-Entity Assets</b>                   | <b>\$ 1,271,694</b> | <b>\$ 1,187,339</b> | <b>\$ 84,355</b> | <b>\$ 62,879</b> |

For more detailed information on non-entity receivables, see Exhibit A.



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***NOTE 5 -- PROPERTY, PLANT, AND EQUIPMENT, NET***

Capitalized property and equipment, net of accumulated depreciation, consisted of the following as of September 30, 2005 and 2004:

| (Dollars in thousands)  |              |                   |                          |                     |                     |
|-------------------------|--------------|-------------------|--------------------------|---------------------|---------------------|
| Asset Class             | Service Life | Acquisition Value | Accumulated Depreciation | 2005 Net Book Value | 2004 Net Book Value |
| Equipment & Furniture   | 5-20 yrs     | \$ 7,173          | \$ 3,734                 | \$ 3,439            | \$ 2,841            |
| Leasehold Improvements  | 10-15 yrs    | 5,004             | 965                      | 4,039               | 3,968               |
| Software                | 3 yrs        | 8,702             | 3,501                    | 5,201               | 951                 |
| Software-in-Development |              | 2,417             | -                        | 2,417               | 6,510               |
| <b>Total</b>            |              | <u>\$ 23,296</u>  | <u>\$ 8,200</u>          | <u>\$ 15,096</u>    | <u>\$ 14,270</u>    |

Property and equipment are depreciated using the straight-line method. Depreciation expense was \$3.3 million and \$1.9 million for fiscal years ending September 30, 2005 and 2004, respectively and is contained in the accumulated depreciation.

***NOTE 6 -- LIABILITIES NOT COVERED BY BUDGETARY RESOURCES***

A breakout of Intragovernmental Other Liabilities and Liabilities With the Public as of September 30, 2005 and 2004 are shown below:

***(a) Intragovernmental and With the Public***

| (Dollars in thousands)        |                   |                   |
|-------------------------------|-------------------|-------------------|
|                               | 2005              | 2004              |
| Intragovernmental             |                   |                   |
| Other Liabilities:            |                   |                   |
| Civil Penalty Collections Due | \$ 332            | \$ 985            |
| Accrued FECA Claims           | 370               | 395               |
| <b>Total</b>                  | <u>\$ 702</u>     | <u>\$ 1,380</u>   |
| With the Public               |                   |                   |
| Undisbursed Redress           | \$ 47,637         | \$ 83,114         |
| Divestiture Fund Due          | 42,084            | 41,376            |
| Redress Net Collections Due   | 84,023            | 61,894            |
| <b>Total</b>                  | <u>\$ 173,744</u> | <u>\$ 186,384</u> |

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**(b) Other Information**

Civil Penalty Collections Due represents the contra account for accounts receivable due for civil monetary penalties, which will be transferred to the general fund of the Treasury upon receipt.

Accrued FECA Claims consists of workers compensation claims payable to the Department of Labor (DOL), which will be funded in a future period.

Undisbursed Redress includes redress in FTC's Treasury deposit account, or with FTC redress contractors.

Divestiture Fund Due represents the contra account for the divestiture fund held by one of FTC's contractors until distribution of the funds are ordered per terms of the agreement.

Redress Net Collections Due represents the contra account for accounts receivable due from judgments obtained as a result of the agency's consumer redress litigation.

**NOTE 7 -- NET POSITION**

Net position consisted of the following as of September 30, 2005 and 2004:

| <b>(Dollars in thousands)</b>                       | 2005             | 2004             |
|---|------------------|------------------|
| Unexpended Appropriations:                          |                  |                  |
| Unobligated - Available                             | \$ 7             | \$ 20            |
| Undelivered Orders                                  | 7                | 16               |
| Total Unexpended Appropriations                     | 14               | 36               |
| Cumulative Results of Operations:                   |                  |                  |
| Invested Capital                                    | 15,096           | 14,270           |
| Retained Fees:                                      |                  |                  |
| Unobligated - Available                             | 5,280            | 1,007            |
| Unobligated - Not Available                         | 8,639            | 7,400            |
| Undelivered Orders, net of unfilled customer orders | 31,892           | 22,658           |
| Future Funding Requirements                         | (9,971)          | (9,839)          |
| Total Cumulative Results of Operations              | 50,936           | 35,496           |
| <b>Total Net Position</b>                           | <b>\$ 50,950</b> | <b>\$ 35,532</b> |

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***NOTE 8 -- COMMITMENTS AND CONTINGENCIES***

Commitments The FTC is committed under obligations for goods and services that have been ordered but not yet received (undelivered orders) at fiscal year end. Undelivered orders, net of unfilled customer orders from federal sources, were \$31.9 million and \$22.7 million as of September 30, 2005 and 2004, respectively.

Contingencies The FTC is a party in various administrative proceedings, legal actions, and claims brought by or against it. In the opinion of FTC management and legal counsel, the ultimate resolution of these proceedings, actions, and claims, will not materially affect the financial position or the results of operation of the FTC.

Leases The FTC rents approximately 568,000 square feet of space in both commercial and government-owned properties for use as offices, storage and parking. Space leases for government-owned property are made with the General Services Administration (GSA).

Leases of commercial property are made through and managed by GSA. The Commission has leases on three government-owned properties and nine commercial properties. The FTC's current leases expire at various dates through 2013. Two leases provide for tenant improvement allowances totaling \$7.1 million and provide that these costs be amortized over the length of the leases. Under the terms of the leases, the FTC agrees to reimburse the landlord for the principal balance of the unamortized portion of the tenant improvement allowance in the event the agency vacates the space before lease expiration.

Rent expenditures for the years ended September 30, 2005 and 2004, were approximately \$17.3 million and \$17.1, respectively.

Future minimum lease payments due under leases of government-owned property as of September 30, 2005, are as follows:

(Dollars in thousands)

|  |                 |
|--|-----------------|
| Fiscal Year                                |                 |
| 2006                                       | \$ 1,611        |
| 2007                                       | 1,189           |
| 2008                                       | 1,133           |
| 2009                                       | 589             |
| 2010                                       | -               |
|  | <hr/>           |
| <b>Total Future Minimum Lease Payments</b> | <b>\$ 4,522</b> |

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Future minimum lease payments under leases of commercial property due as of September 30, 2005 are as follows:

(Dollars in thousands)

|  |                         |
|--|-------------------------|
| Fiscal Year                                |                         |
| 2006                                       | \$ 10,826               |
| 2007                                       | 10,800                  |
| 2008                                       | 10,995                  |
| 2009                                       | 11,001                  |
| 2010                                       | 11,079                  |
| Thereafter                                 | <u>20,752</u>           |
| <b>Total Future Minimum Lease Payments</b> | <b><u>\$ 75,453</u></b> |

***NOTE 9 -- IMPUTED FINANCING***

Imputed financing recognizes actual costs of future benefits, which include the FEHBP, FEGLI, and pension benefits that are paid by other federal entities. Imputed financing was composed of the following:

|                            |                        |                        |
|----------------------------|------------------------|------------------------|
| (Dollars in thousands)     | <u>2005</u>            | <u>2004</u>            |
| FEHBP                      | \$ 4,327               | \$ 4,049               |
| FEGLI                      | 14                     | 13                     |
| Pension Benefits           | <u>2,279</u>           | <u>2,915</u>           |
| <b>Total Imputed Costs</b> | <b><u>\$ 6,620</u></b> | <b><u>\$ 6,977</u></b> |

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***NOTE 10 -- PENSION EXPENSE***

Pension expenses in 2005 and 2004 consisted of the following:

| (Dollars in thousands)              | Employer         |                 | 2005                     | 2004                     |
|-------------------------------------|------------------|-----------------|--------------------------|--------------------------|
|                                     | Contributions    | Imputed Costs   | Total Pension<br>Expense | Total Pension<br>Expense |
| Civil Service Retirement System     | \$ 1,773         | \$ 2,482        | \$ 4,255                 | \$ 4,691                 |
| Federal Employees Retirement System | 7,819            | (203)           | 7,616                    | 7,347                    |
| Thrift Savings Plan                 | 3,164            | -               | 3,164                    | 2,998                    |
| <b>Total</b>                        | <b>\$ 12,756</b> | <b>\$ 2,279</b> | <b>\$ 15,035</b>         | <b>\$ 15,036</b>         |

***NOTE 11 -- CUSTODIAL ACTIVITIES***

The FTC functions in a custodial capacity with respect to revenue transferred or transferable to recipient government entities or the public. These amounts are not reported as revenue to the FTC. The major components of the FTC's custodial activities are discussed below.

***(a) Premerger Filing Fees***

All Hart-Scott-Rodino (HSR) premerger filing fees are collected by the FTC pursuant to section 605 of P.L. 101-162, as amended, and are divided evenly between the FTC and the DOJ. The collected amounts are then credited to the appropriations accounts of the two agencies (FTC's "Salaries and Expenses" and DOJ's "Salaries and Expenses, Antitrust Division"). During fiscal years 2005 and 2004, respectively, FTC collected \$199.0 million and \$167.4 million in HSR fees. Total collections in the amount of \$99.5 million were retained for distribution, of which \$90.3 million of this collection was transferred to DOJ in 2005 and \$77.3 million in 2004. As of September 30, 2005 the undistributed collections remaining in the amount of \$9.2 million represent amounts to be transferred to DOJ in a future period.

***(b) Civil Penalties and Fines***

Civil penalties collected in connection with the settlement or litigation of the FTC's administrative or federal court cases are collected by either the FTC or DOJ as provided for by law. DOJ assesses a fee equivalent to three percent of amounts collected before remitting them to the FTC. The FTC then deposits these collections into the U.S. Treasury. Civil penalties collected also include amounts collected for undecided civil penalty cases held in suspense until final disposition of the case.

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**(c) Redress**

The FTC obtains consumer redress in connection with the settlement or litigation of both its administrative and its federal court cases. The FTC attempts to distribute funds thus obtained to consumers whenever possible. If consumer redress is not practical, the funds are paid (disgorged) to the U. S. Treasury, or on occasion, other alternatives, such as consumer education, are explored. Major components of the program include eligibility determination, disbursing redress to claimants, and accounting for the disposition of these funds. Collections made against court-ordered judgments totaled \$62.2 and \$337.6 during fiscal years 2005 and 2004, respectively.

The sources of these collections are as follows:

**(Dollars in thousands)**

|             | 2005             | 2004              |
|-------------|------------------|-------------------|
| Contractors | \$ 3,076         | \$ 259,031        |
| Receivers   | 25,761           | 1,085             |
| FTC         | <u>33,344</u>    | <u>77,469</u>     |
| Total       | <u>\$ 62,181</u> | <u>\$ 337,585</u> |

**(d) Divestiture Fund**

One judgment obtained by the FTC on behalf of its maintaining competition mission stipulates the divestiture of assets by the defendants into an interest-bearing account to be monitored by the agency. The account balance represents principal and related interest held in one of the FTC's contractor accounts as stipulated in the judgment. A corresponding liability is recorded. Net Interest earned in fiscal year 2005 and 2004, was \$708,000 and \$184,000, respectively. Interest earnings were significantly higher in fiscal year 2005 due to a substantial interest rate increase over the period.

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Divestiture Fund activity in fiscal years 2005 and 2004 consisted of the following:

| <b>(Dollars in thousands)</b> | <u>2005</u>             | <u>2004</u>             |
|-------------------------------|-------------------------|-------------------------|
| Beginning Balance             | \$ 41,376               | \$ 41,192               |
| Interest                      | 866                     | 261                     |
| Expense                       | <u>(158)</u>            | <u>(77)</u>             |
| Net Total                     | 708                     | 184                     |
| <b>Ending Balance</b>         | <u><u>\$ 42,084</u></u> | <u><u>\$ 41,376</u></u> |

*(e) Accrual Adjustments*

These adjustments represent the difference between the agency's opening and closing accounts receivable balances. Accounts receivable are the funds owed to the agency (as a custodian) and ultimately to consumers or other entities. See Exhibit A for computation of accrual adjustments to the Statements of Custodial Activity.

*(f) Receivers*

Funds forwarded to receivers for distribution to consumers was \$182,000 and \$162,000 for fiscal year 2005 and 2004, respectively.

*(g) Redress to Claimants*

Redress to claimants consists of amounts distributed to consumers by the FTC, one of its contracted agents, the court appointed receiver, or the defendant. In fiscal year 2005 a total of \$66.1 million was distributed to consumers: \$40.3 million was paid by the FTC and its contracted agents, and \$25.8 million was paid by receivers. In fiscal year 2004, a total of \$294.1 million was distributed to consumers: \$293.0 million was paid by the FTC and its contracted agents, and \$1.1 million was distributed by receivers.

*(h) Contractor Fees Net of Interest Earned*

Collections against monetary judgments are often deposited with one of the agency's two redress contractors until distributions to consumers occur. Funds are deposited in interest-bearing accounts, and the interest earnings are used to fund administrative expenses. Contractor expenses for the administration of redress activities and funds management amounted to \$6.8 million and \$8.0 million during the years ended September 30, 2005 and 2004, respectively. Interest earned was \$0.5 million and \$0.4 million during fiscal years

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2005 and 2004, respectively, with the difference of \$6.3 million and \$7.6 million representing net expense.

The FTC was required to pay attorney fees of \$8.7 million and \$3.2 million in fiscal year 2005 and 2004, respectively.

***(i) Change in Liability Accounts***

Liability accounts contain funds that are in the custody of the agency or its agents, and are owed to others (consumers, receivers for fees, and/or the Department of Justice). See Exhibit B for the computation of liability account changes.

***(j) Current Year Judgments***

A judgment is a formal decision handed down by a court. Redress judgments include amounts that defendants have agreed, or are ordered to pay, for the purpose of making restitution to consumers deemed to have been harmed by the actions of the defendant(s) in the case. For purposes of presentation in Exhibit A, redress judgments include cases in which the FTC, or one of its agents, is directly involved in the collection or distribution of consumer redress. In fiscal years 2005 and 2004, the agency obtained and reported in Exhibit A monetary redress judgments against defendants totaling \$835.0 million and \$445.5 million, respectively.

The FTC does not include in the presentation of Exhibit A current redress judgment cases in which the FTC, or one of its agents, is not directly involved with the collection or distribution of consumer redress. These are cases in which the defendant, or other third party, has been ordered to pay redress directly to the consumers. In most of these cases, the judgment has ordered redress in the form of refunds or credits.

The agency also obtained civil penalty judgments of \$6.6 million and \$6.0 million in fiscal years 2005 and 2004, respectively.

***(k) Treasury Referrals and Prior Year Recoveries***

Monetary judgments six months or more past due are referred to the Department of Treasury for follow-up collection efforts in keeping with the Debt Collection Improvement Act of 1996 (DCIA). Treasury's Debt Management Services (DMS) administers the program, and deducts 18 percent from amounts ultimately collected for its fee. Collections, net of fees, are returned to the FTC for distribution to either consumers, in the form of redress, or to the general fund of the Treasury as disgorged amounts. In fiscal years 2005 and 2004, \$1.5 million and \$41,000 (net of fees) were collected by DMS based on FTC referrals and are reported as collections on the Statements of Custodial Activity. The FTC refers to DMS only those cases as defined in DCIA. This excludes cases that are in receivership, or



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bankruptcy or foreign debt. During 2005 and 2004, \$104.6 million and \$2.0 million were referred to the DMS for collection.

Prior year recoveries include amounts collected on cases that were written off in a previous year. In fiscal years 2005 and 2004, \$2.9 million and \$914,000 were collected.

***(l) Adjustments to the Allowance***

Adjustments to the allowance for redress, totaling \$753.6 million, represent adjustments to the provision for uncollectible amounts. Adjustments to the allowance for civil penalty, totaling \$639 million, represent adjustments to the provision for uncollectible amounts.

***NOTE 12 -- EARNED REVENUES***

Earned revenue with the public consisted of the following:

| <b>(Dollars in thousands)</b> | <u>2005</u>       | <u>2004</u>      |
|-------------------------------|-------------------|------------------|
| HSR Premerger filing fees     | \$ 99,511         | \$ 83,598        |
| Do-Not-Call registry fees     | <u>18,052</u>     | <u>13,984</u>    |
| Total                         | <u>\$ 117,563</u> | <u>\$ 97,582</u> |

HSR premerger filing fees earned represent one-half of fees collected under the provisions of the Hart-Scott-Rodino Act. *See Note 1 (q), Exchange Revenues.* Revenue is recognized when earned; i.e., all required documentation under the HSR Act has been received by the agency.

Do-Not-Call Registry fees represent collections of subscription fees paid by telemarketers under the Do Not Call Implementation Act, P. L. 108-010. *See Note 1 (q), Exchange Revenues.* Revenue is recognized when collected and the Telemarketer is given access to download data from the Do Not Call database. The Do Not Call Registry was implemented during fiscal year 2003 and began operations in September 2003.

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***NOTE 13 -- STATEMENTS OF NET COST***

The Statements of Net Cost are consolidated for the FTC using a Budget Functional Classification (BFC) code. BFC codes are used to classify budget resources presented in the Budget of the United States Government per OMB. FTC is categorized under BFC code 376 – Other Advancement of Commerce. Gross cost and earned revenue for the FTC fall under this code, regardless of whether the fees are intragovernmental or with the public.

Note 13 – Statements of Net Cost (continued)

(Dollars in thousands)

Gross Cost and Earned Revenue:

|         | <u>BFC Code</u> | <u>Gross Cost</u> | <u>Earned Revenue</u> | <u>Net Cost</u> |
|---------|-----------------|-------------------|-----------------------|-----------------|
| FY 2005 | 376             | \$ 196,478        | \$ (118,544)          | \$ 77,934       |
| FY 2004 | 376             | \$ 185,853        | \$ (98,390)           | \$ 87,463       |

Intragovernmental Gross Cost and Earned Revenue:

|         | <u>BFC Code</u> | <u>Gross Cost</u> | <u>Earned Revenue</u> | <u>Net Cost</u> |
|---------|-----------------|-------------------|-----------------------|-----------------|
| FY 2005 | 376             | \$ 50,774         | \$ (981)              | \$ 49,793       |
| FY 2004 | 376             | \$ 44,755         | \$ (808)              | \$ 43,947       |

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***NOTE 14 -- STATUS OF BUDGETARY RESOURCES***

***(a) Apportionment Categories of Obligations Incurred***

Obligations incurred reported on the Statement of Budgetary Resources in 2005 and 2004 consisted of the following:

| <b>(Dollars in thousands)</b>  | <u>2005</u>              | <u>2004</u>              |
|--------------------------------|--------------------------|--------------------------|
| Direct Obligations:            |                          |                          |
| Category A                     | <u>\$ 82,007</u>         | <u>\$ 89,213</u>         |
| Reimbursable Obligations:      |                          |                          |
| Category A                     | 117,563                  | 98,856                   |
| Category B                     | <u>1,239</u>             | <u>848</u>               |
| Total Reimbursable Obligations | <u>118,802</u>           | <u>99,704</u>            |
| Total                          | <u><u>\$ 200,809</u></u> | <u><u>\$ 188,917</u></u> |

***(b) Explanation of Differences Between the Statement of Budgetary Resources and the Budget of the United States Government***

The Budget of the United States Government with actual amounts for the year ended September 30, 2005, has not been published as of the issue date of these financial statements. This document will be available in December 2005.



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