FEDERAL TRADE COMMISSION

FISCAL YEAR 2004
CONGRESSIONAL JUSTIFICATION

Budget Summary

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FEDERAL TRADE COMMISSION
FISCAL YEAR 2004 OVERVIEW STATEMENT AND BUDGET REQUEST

This statement supports a Federal Trade Commission Fiscal Year 2004 budget request of $191,132,000 and 1,074 Full Time Equivalent staff years (FTE). [1] It exceeds by $19,533,000 the FY 2003 request for $171,599,000 and 1,074 FTE that the FTC submitted to Congress in February 2002. Included in the $19,533,000 difference is $11,000,000 that was requested in a December 2002 budget amendment. The amendment increases the FY 2003 funds available for the FTC's Do-Not-Call initiative from $5,000,000 to $16,000,000. Thus, the net FY 2004 increase over FY 2003, as amended, is only $8,533,000. Details of the FY 2004 funding request are described more fully in the following section titled "Needed Resources -Fiscal Year 2004."

FTC MISSION

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

RECENT ACCOMPLISHMENTS AND ACTIVITIES

The FTC is a small agency but one that has a major impact on consumers and the marketplace. The agency's results show a significant return-on-investment for consumers and businesses alike. Among recent accomplishments, the FTC:

- Attacked fraud in FY 2002 by filing 113 federal court actions and obtaining 82 orders totaling $195 million in consumer redress and $1.1 million in civil penalties. In addition, the FTC sought 18 permanent injunctions. Alleged schemes the FTC shut down involved Internet scams, deceptive advertising of electronic abdominal exercise devices, work-at-home deals, deceptive lending practices, and "Miss Cleo's" psychic services, to name a few.

[1] Excludes funds for the Administration's proposed legislation to require agencies to fund directly the cost of employee health and retirement benefits.

- Took enforcement action in FY 2002 to prevent anticompetitive effects in 24 proposed or completed mergers. The value of the markets affected by these actions totals more than $30 billion.

- Negotiated a settlement, which became effective in November 2002, through which the FTC expects to recover as much as $60 million for consumer redress to compensate nearly 28,000 borrowers who were victims of deceptive lending. The FTC alleged that the lending company misled homeowners about the interest rate and other fees; ultimately, the victimized consumers ended up paying fees totaling 10 to 25 percent of the loan amounts.

- Negotiated the largest consumer protection settlement in FTC history that, once final, should provide as much as $240 million in redress to homeowners. The FTC alleged that consumers were induced through misrepresentations into refinancing existing debts into home loans with high interest rates and fees, and purchasing high-cost credit insurance. We expect court approval of the settlement in early 2003.

- Amended the Telemarketing Sales Rule (TSR) in December 2002 to create a centralized national "Do-Not-Call" database. Once the amendments are effective, a consumer will be able, through one simple Web site registration or telephone call, to register a preference not to receive telemarketing calls from organizations within the FTC's jurisdiction. The TSR amendments also address the use of "pre-acquired account information," impose new restrictions on the practice of "call abandonment," and require telemarketers to transmit caller-ID information.

- Protected consumer privacy by bringing more than 30 enforcement actions, including those involving children's privacy, pretexting (obtaining personal information under false pretenses), and deceptive spam.

- Stopped branded drug manufacturers from eliminating competition from cheaper generic equivalents. The most recent FTC cases involved generic drugs for high blood pressure, anxiety, angina and other cardiac problems.

- Protected competition in the petroleum industry by investigating three oil mergers valued at a total of $43 billion, and requiring appropriate divestitures to prevent anticompetitive effects. The divestitures ensured continued competition in refining, distribution, and retail sale of gasoline in markets across the United States.

- Leveraged resources through coordinated actions with other law enforcement agencies against specific types of fraud and deception. In FY 2002, the FTC and 93 law enforcement partners targeted Internet health fraud, cold-call telemarketing, in-bound telemarketing, Internet scams, and fake business opportunities, resulting in 252 separate law enforcement actions.

- Strengthened the FTC's role as a key player in protecting consumers against identity theft and other fraudulent practices. By the end of December 2002, identity theft calls to the FTC's toll-free number, 877-ID-THEFT, totaled 380,000 and the FTC's database of consumer complaints and inquiries, made through the Internet, mail, and calls to 877-FTC-HELP on a range of topics, totaled 2.2 million. From these sources, the FTC made available through its *Consumer Sentinel* secure Web site nearly one million fraud and identity theft complaints to more than 610 law enforcement partners.

CURRENT AND PLANNED ACTIVITIES

As detailed below, the FTC will continue to concentrate the resources of its Consumer Protection Mission and Maintaining Competition Mission in areas that have a considerable impact on the lives and pocketbooks of American consumers.

CONSUMER PROTECTION MISSION

Consumer Privacy and Security Consumers continue to be deeply concerned about their privacy and the security of their personal information. These concerns have been heightened by the proliferation of online and offline databases containing information that can be used to steal a consumer's identity.

- Do-Not-Call Upon Congressional appropriation of funding, to be offset by related fees, the FTC will implement the TSR amendment that calls for the creation of a national Do-Not-Call registry. The FTC will contract with a third party to create the registry and will implement the system by rolling it out geographically over several months until it covers the entire nation. After the telemarketers have access to the system, the FTC will investigate those who make calls to consumers that have registered their telephone number and take action to enforce any violations of this amendment or other TSR amendments, including the improper use of pre-acquired account information and failure to provide required caller ID information.

- Identity Theft Identity theft is the number-one consumer complaint received by the FTC. In 2002, the FTC, U.S. Secret Service, and Department of Justice initiated a series of seminars to provide hundreds of local and state law enforcement officers with practical tools to combat identity theft. This training will continue in FY 2003.

- Children's Online Privacy Protection Act (COPPA) COPPA requires that commercial Web sites give notice of their information practices and obtain parental consent before collecting, using, or disclosing personal information about children under the age of 13. Since April 2001, the FTC has brought six COPPA cases and obtained agreements requiring payment of civil penalties totaling $175,000. The FTC will use agency survey results, industry results, and traditional surveillance methods to identify Web sites that are collecting personal information from children without first obtaining parental consent. Through education, voluntary compliance efforts, and law enforcement, the FTC will seek to educate these entities and bring them into compliance with COPPA.

- Pretexting Cases The FTC has taken its first steps to enforce prohibitions against "pretexting" – the use of false pretenses to obtain customer financial information – which is prohibited under the Gramm-Leach-Bliley Act. FTC staff found apparent violations after a surf of 1,000 Web sites and a review of 500 publications. The FTC sent warning notices to 200 firms and settled three actions in federal court involving the most egregious situations. The FTC will continue enforcement efforts against the abusive practice of pretexting that threatens the security of consumers' personal financial information.

- Spam The Spam database, now maintained by the agency, holds approximately 24 million pieces of spam, and over 80 thousand messages are e-mailed to *FTC@uce.gov* each day. In February 2002, the FTC announced federal court settlements with seven individuals who allegedly were disseminating deceptive chain-letter e-mails involving pyramid schemes with "get rich quick" schemes. In April 2002, the FTC announced a law enforcement action challenging spam e-mail messages that deceptively claimed that consumers had won a free Sony PlayStation 2 or other prize through a promotion purportedly sponsored by Yahoo, Inc. When consumers responded to the e-mail message, they were routed to an adult Internet site via a 900-number modem connection that charged them up to $3.99 a minute. In November 2002, the FTC and 12 law enforcement partners brought 30 enforcement actions as part of an initiative to fight deceptive spam and Internet scams. Also under the initiative, ten agencies participated in the FTC's "Spam Harvest," designed to test which actions consumers take online that put them most at risk for receiving spam. The FTC will continue its efforts to pursue law enforcement actions against deceptive or fraudulent spammers and inform consumers about how they might reduce the amount of unwanted spam they receive.

- Microsoft "Passport" In August 2002, the FTC announced a settlement with Microsoft Corporation regarding the privacy and security of personal information collected from consumers through its "Passport" web services. Although the FTC found no evidence of actual security breaches, it alleged, among other things, that Microsoft misrepresented the measures it uses to maintain and protect the privacy and confidentiality of consumers' personal information collected through its Passport and Passport Wallet services. As part of the settlement, Microsoft will implement a comprehensive information security program for Passport and similar services. The FTC will continue to bring privacy and security cases involving sensitive information and claims touting the privacy and security features of products and services.

Health Care The cost of health care has grown increasingly significant to both the economy and American families. The FTC is committed to identifying and stopping deceptive practices involving bogus or ineffective remedies.

- Internet Projects The Internet has become the newest medium for opportunistic predators marketing "snake oil." To respond to this growing consumer threat, the FTC has initiated programs to protect consumers from scams that prey upon their health concerns, including developing "teaser" Web sites to educate consumers on how to recognize fraudulent health care products and remedies.

- Bioterrorism-related Fraud Following the September 11 tragedies and the anthrax mailings, the FTC targeted purveyors of phony products claimed to cure bioterrorism-related diseases. FTC staff members teamed with staff from the offices of state Attorneys General to surf the Web for bioterror scams and seek appropriate remedies to shut down the sites. The FTC will continue to investigate fraudulent activities that prey upon citizen fears in response to tragic events.

International Consumer Protection The number of consumer protection cases with an international component continues to rise as consumers increasingly receive solicitations from around the world via the Internet.

- Cross-Border Fraud The FTC is stepping up its efforts to counter cross-border fraud. In addition to other activities, the FTC has formed partnerships with Canadian officials to target international lottery scams, phony advance-fee credit card offers, and bogus credit card loss-protection schemes. In January 2003, the FTC launched a new Web site, www.ftc.gov/crossborder, to help consumers spot, stop, and avoid cross-border fraud.

- *econsumer.gov.* Seventeen countries, including the United States, participate in *econsumer.gov*, a Web site created and managed by the FTC. Consumers from around the world can use the site to file cross-border e-commerce complaints, contact international law enforcement agencies, and access educational materials in many languages. This Web site will continue to be an integral part of the FTC's efforts to enhance international consumer protection.

Specific Consumer Groups The FTC has implemented a variety of initiatives that assist particular consumer groups. Such groups include children, non-English speaking consumers, and military personnel and their families.

- Children FTC initiatives on behalf of children include addressing the marketing of both violent entertainment and online gambling to underage audiences. In a September 2000 report, the FTC concluded that the entertainment industry targeted advertising of violent video games, movies, and music to children. Subsequently, in response to congressional directives, the FTC has since issued three follow-up reports, the most recent in June 2002. We plan to prepare another follow-up report in FY 2003.

- Spanish-Speaking Consumers In FY 2002, the FTC instituted a Hispanic Outreach Program. This effort includes the creation of a dedicated page on the FTC Web site, *Proteccion Para el Consumidor*, and the translation of several consumer education publications. The FTC also has provided an online Consumer Complaint form and undertaken outreach efforts to Hispanic media. We are translating additional materials and the Program is expanding.

- *Military Sentinel* In September 2002, the FTC and the Department of Defense launched *Military Sentinel* – the first online consumer complaint database explicitly tailored to the unique needs of the military community. The system offers members of the military and their families a way to file complaints and gain immediate access to the FTC's full range of education and information. It also gives DOD and law enforcement officers secure access to the complaints entered.

MAINTAINING COMPETITION MISSION

Mergers Merger enforcement continues to be a staple of the FTC's Competition Mission. Although the number of individual premerger reports required under the Hart Scott Rodino Act has decreased, there has not been a significant reduction in the agency's merger workload, for several reasons:

- First, reported mergers continue to increase in both size and complexity, requiring greater resources to analyze and investigate the many product and geographic markets involved. Adjusting for inflation, the total value of reported mergers during FY 2001 was about 80 percent higher than the total value for those in FY 1995, despite the decreased number of filings in FY 2001, which in part resulted from a higher size-of-transaction filing threshold.

- Second, although new legislation did raise the reporting threshold in FY 2001, it did not change the legal standard for assessing whether mergers are lawful. Thus, the agency must devote more resources to identifying non-reportable mergers that may have harmed competition.

- Third, resource-intensive merger litigation continues at a high level. While most merger challenges are resolved through settlements and the divestiture of assets, it is sometimes necessary to litigate. In FY 2002, the FTC filed two administrative cases and authorized federal court challenges in five others, more than in any other year in the last decade.

Nonmerger Activity The reduction in merger filings will allow the Competition Mission to refocus attention on anticompetitive nonmerger activity in critical areas of the economy, such as health care, energy, and high technology, as outlined below. During the merger wave of the last four to five years, the agency saw little increase in its staffing. Competition Mission FTE grew only from 343 in FY 1990 to 355 in FY 2000 – an increase of just 3 percent – while the number of reported mergers during the same period grew from 2,271 to 4,752 – an increase of 109 percent. To cope with the skyrocketing merger workload and the tight deadlines under the Hart Scott Rodino Act, the FTC diverted nonmerger staff resources to merger matters. Thus, the agency reduced the attention traditionally devoted to nonmerger matters. Because of the current decrease in merger filings, the FTC has begun to restore the balance of resources between merger and nonmerger work.

Health Care The Competition Mission devotes significant resources on the health care industry to stop collusion and other anticompetitive practices that drive up health care costs and decrease quality. Given the growing importance of pharmaceuticals in the treatment of disease and other health problems, the FTC has placed particular emphasis on that industry. In just five years, between 1995 and 2000, American drug expenditures doubled, making the FTC's work in this area especially critical for American consumers. Today, cases against pharmaceutical companies account for the majority of the FTC's antitrust resources devoted to health care. Besides enforcement actions involving prescription drugs, the FTC has many other health care initiatives underway.

- Report on Generic Drugs In July 2002, the FTC issued a report entitled "Generic Drug Entry Prior to Patent Expiration: An FTC Study," which evaluated the balance achieved under the Hatch-Waxman Act in facilitating generic entry while still maintaining incentives to develop new drug products. The report called for changes in the law to ensure that generic entry is not delayed unreasonably, including by anticompetitive activity of branded drug makers. In October 2002, President Bush announced in the White House Rose Garden a new FDA rule to implement key FTC recommendations.[2] The rule would limit pharmaceutical firms' alleged misuse of Hatch Waxman Act provisions and speed up consumer access to lower-cost generic drugs.

- Drug Information Databases Pharmacies, hospitals, doctors, and third-party payers rely on drug information databases for data about drug prices, effects, interactions, and eligibility under various payment plans. A recent FTC case involved a major firm that acquired the company that owned its only competitor in the drug information database market. The FTC obtained a settlement that required the defendant to divest the competitor database and disgorge $19 million in alleged illegal profits.

- Health Care Providers In FY 2002, the FTC reached settlements with five groups of physicians for allegedly engaging in collusive practices that drove up consumers' costs. One settlement, with a group of over 1,000 doctors in the Dallas-Fort Worth area, resolved charges that they entered into agreements to fix fees and refuse to deal with health plans. The proposed order would stop further alleged anticompetitive collusive conduct.

- Workshop on Health Care and Competition Law and Policy In September 2002, the FTC hosted a public workshop on the impact of competition law and policy on the cost, quality, and availability of health care, and on incentives for innovation. The goal was to promote dialogue, learning, and consensus building among all interested parties.

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[2] President Takes Action to Lower Prescription Drug Prices by Improving Access to Generic Drugs (visited January, 10, 2003, "*http://www.whitehouse.gov/news/releases/2002/10/20021021-4.html*"

Energy Given its importance to the economy, energy is another area to which the agency devotes significant resources. In addition to bringing enforcement actions involving multi-billion dollar petroleum mergers, the FTC has implemented studies related to the energy industry to increase understanding and inform enforcement efforts:

- Study of Refined Petroleum Prices During two public conferences in August 2001 and May 2002, participants identified key factors in setting petroleum prices, including increased dependency on foreign crude sources, changes in industry business practices, restructuring of the industry through mergers and joint ventures, and new governmental regulations. The FTC will issue a report in FY 2003 based on the information gathered through these public conferences.

- Gasoline Price Monitoring The FTC also initiated a project this past spring to monitor the wholesale and retail prices of gasoline. FTC staff is inspecting wholesale gasoline prices for 20 U.S. cities and retail gasoline prices for 360 cities. Anomalies in the data could alert the agency to the possibility of anticompetitive conduct in various markets and prompt further inquiry. The effort also should increase understanding of the factors affecting the price of gasoline.

High Technology As an agency with a history of keeping pace with marketplace developments, the FTC is well-positioned to take a leading role in assessing the impact of high technology on domestic and world markets. In addition to bringing enforcement actions in high tech areas, the FTC is studying the impact of the Internet and intellectual property on competition law and policy.

- Standards Setting As technology advances, efforts will increase to establish industry standards for the development and manufacture of new products. Standard setting is generally procompetitive, but the standard-setting *process* – which involves meetings of competitors – can be an area that poses antitrust concern. The FTC recently filed a complaint against a participant in a standard setting group, alleging that the respondent failed to disclose – in violation of the group's rules – that it had a patent on the standard adopted, allowing it to reap billions in royalties and potentially increasing consumer prices for the electronic products affected. The FTC will continue to pursue investigations in this important area to ensure that standard-setting abuses do not harm robust and efficiency-enhancing competition in high-tech markets.

- Intellectual Property Hearings In 2002, the FTC and DOJ commenced a series of hearings on "Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy." The hearings respond to the growth of the knowledge-based economy, the increasing role in antitrust policy of innovation-based considerations, and the importance of managing the intersection of intellectual property and competition law to realize their common goal of promoting innovation.

- Internet Task Force In 2001, the FTC's Internet Task Force began to evaluate potentially anticompetitive regulations and business practices that could impede e-commerce. The Task Force has discovered that many states have enacted regulations that have the effect of protecting existing bricks-and-mortar businesses from new Internet competitors. The Task Force is also considering whether private companies may be hindering e-commerce through the use of potentially anticompetitive tactics. In October 2002, the Task Force held a public workshop to (1) enhance the FTC's understanding of these issues, (2) educate policymakers about the effects of possibly protectionist state regulations, and (3) educate private entities about the types of business practices that may or may not be viewed as problematic.

International Competition Because competition increasingly takes place in a worldwide market, cooperation with competition agencies of other nations is a critical component of the FTC's competition enforcement program. Given differences in laws, cultures, and priorities, it is unlikely that there will be complete convergence of international antitrust policy in the foreseeable future. However, areas of agreement far exceed those of divergence, and instances in which international differences will result in conflicting results are likely to remain rare.

- ICN and ICPAC The FTC, DOJ, and twelve other antitrust agencies from around the globe launched the International Competition Network (ICN) in October 2001. The ICN is an outgrowth of the International Competition Policy Advisory Committee's (ICPAC) recommendation that competition officials from developed and developing countries convene a forum to work together on competition issues raised by economic globalization and the proliferation of antitrust regimes. Sixty-one jurisdictions already have joined the ICN.

- Organization for Economic Cooperation and Development (OECD) The FTC is participating in the continuing work of the OECD on, among other things, merger process convergence, implementation of an OECD recommendation on hard-core cartels (e.g., price-fixing agreements), and regulatory reform.

NEEDED RESOURCES - FISCAL YEAR 2004

The FTC's FY 2004 budget requests $191,132,000 and maintains 1,074 FTE. This level of resources is needed to allow the FTC in FY 2004 to continue its past record of accomplishments in enhancing consumer protection and protecting competition in the United States and, increasingly, abroad. The FY 2004 request is a difference of $19,533,000 over the FY 2003 appropriation request the FTC submitted to Congress in February 2002. The difference includes:

For FY 2003 -
- $11,000,000 representing an amendment in December 2002 to raise the FY 2003 funding level of the Do-Not-Call initiative from $5,000,000 to $16,000,000;

For FY 2004 -
- $2,000,000 for additional infrastructure changes in FY 2004 of the Do-Not-Call system; and,
- $6,533,000 for mandatory pay and non-pay related expenses.

<u>Do-Not-Call Expenses of an additional $11,000,000 in FY 2003 and $2,000,000 in FY 2004</u>.
The FTC's initial FY 2003 budget request to Congress requested $5,000,000 for the implementation and management of a basic Do-Not-Call system. This system will protect consumers from unwanted and intrusive telemarketing calls by establishing a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers. The initial FY 2003 request was amended to add $11,000,000 and bring the total FY 2003 request to $16,000,000. This increase was needed to cover an FTC cost revision to include, in part, a toll-free-number, enforcement costs, and a more robust consumer complaint processing capability. The $2,000,000 request in FY 2004 will raise to $18,000,000 the total amount of funds available for Do-Not-Call activities. This FY 2004 increase provides funds for infrastructure technology enhancements that are needed to support the new system. The enhancements include changes to the FTC's Consumer Information and Consumer Sentinel systems that are needed to accommodate an expected and significant increase in the use of Do-Not-Call complaint data by the FTC's federal, state and local law enforcement partners.

<u>Mandatory Base Expenses [$6,533,000]</u> Mandatory base expenses include: (1) the annualized cost for three months of the FY 2003 year pay increase, and nine months cost of a FY 2004 pay raise at an annual rate of 2.4 percent [$3,555,000]; (2) one additional work day in FY 2004 [$423,000]; (3) inflationary costs of non-personnel services [$1,055,000]; and (4) increased space rental costs primarily for newly leased space at 601 New Jersey Avenue, N.W., in Washington, DC [$1,500,000].

OFFSETTING COLLECTIONS

This submission assumes that total offsetting collections, from Hart-Scott-Rodino filing fees and Do-Not-Call fees, will provide the FTC with $177,000,000 in FY 2004. The FTC assumes the $14,132,000 difference between offsetting collections and the agency's full request will be funded through a direct appropriation.

Hart-Scott-Rodino (HSR) Premerger Filing Fees

Offsetting HSR fee collections are expected to provide the FTC with $159,000,000 in FY 2004. The fees are authorized by section 605 of Public Law 101-162, as amended effective February 1, 2001, in the FY 2001 Commerce-Justice-State Appropriations Act (Section 630, Public Law 106-553). The amount of HSR revenue that can be collected in FY 2003 is uncertain. A variety of causes led to a significant reduction of offsetting collection receipts in FY 2001 and FY 2002. A major cause of the reduction is the weak economy in the United States since early 2001. The FTC will monitor closely FY 2003 collections and keep the Appropriations Committees fully informed regarding the amount of HSR offsetting collections actually collected.

Do-Not-Call Fees

This submission also assumes offsetting collections of $18,000,000 from Do-Not-Call fees. In December 2002, the FTC adopted "Do Not Call" amendments to its Telemarketing Sales Rule under the Telemarketing Fraud and Abuse Act (15 U.S.C. 6101, *et seq.*), and expects to receive statutory authority for the collection of the offsetting fees in the FY 2003 appropriations process. The fee will be assessed, collected, and used in FY 2004 to implement, maintain, and enforce a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers.

GOVERNMENT PERFORMANCE AND RESULTS ACT ("GPRA")

The FY 2004 budget request is based on the FTC's current GPRA Strategic Plan for FY 2000 - 2005, and supported by the FY 2003 and FY 2004 Performance Plans. Over the past year, the FTC re-examined its performance measures and revamped those that did not measure its outcomes effectively. The FY 2003 and FY 2004 Performance Plans, contained later in this submission, include these new measures.

In the Consumer Protection Mission, the FTC made changes to performance measures in the FY 2003 Performance Plan and carried them forward to the FY 2004 Performance Plan. In total, the agency eliminated one measure and added five measures. As foreshadowed in the FY 2001 Performance Report, the agency has eliminated the measure that reported the total expenditures of deceptive or unfair advertising campaigns. To replace the eliminated measure, the Plan includes two new measures related to the database searches used by FTC staff and its law enforcement partners to investigate and pursue instances of potential fraud, deception, and unfair practices. The other three new performance measures supplement existing measures by capturing the number of (1) consumer complaints and inquiries received that relate to identity theft, (2) educational messages published that relate to identity theft, and (3) Spanish-language educational messages delivered to consumers.

For FY 2004, in the Maintaining Competition Mission, we have replaced or refined five measures. A measure of the percent of investigations with authorized compulsory process that resulted in enforcement actions has replaced the performance measure that reported the annual number of nonmerger investigations opened. Measures of the size of commerce of the markets in which the agency took action have replaced the two performance measures that reported consumer savings resulting from FTC antitrust enforcement. We believe that the new measures provide a more objective assessment of the breadth and magnitude of the FTC's enforcement activities than the measures they replace. We refined the other two measures of FTC impact in educating the public about the antitrust laws to portray how and what is measured to facilitate more effective assessment of the FTC's impact.

The FTC will develop its Strategic Plan for FY 2003 - 2008 over the next several months and will continue its effort to develop performance measures that effectively assess its outcomes. The previously mentioned changes to the performance measures in FY 2003 and 2004 will be incorporated into the new Strategic Plan.

FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT

The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") amends the Federal Deposit Insurance Act. Among other things, FDICIA imposes certain disclosure requirements on non-federally insured depository institutions and requires that the FTC prescribe the manner and content of those disclosures. The FDICIA also imposes audit obligations on the agency. And, in addition, FDICIA authorizes the FTC, in consultation with the Federal Deposit Insurance Corporation, to exempt depository institutions from a prohibition that bars them from taking or facilitating the taking of deposits unless the state supervisor of the state in which the institution is chartered has determined that the institution meets all eligibility requirements for federal deposit insurance.

In past communications with Congress, as in this communication, the FTC consistently opposes the FDICIA's assignment of these responsibilities to the FTC. Each year since enactment of the FDICIA amendment, appropriation language has barred the FTC from implementing the regulatory and enforcement requirements under section 151 of the Act. Consistent with these previous prohibitions, the requested appropriation language for FY 2004 continues to prohibit the FTC from spending funds on responsibilities under section 151 of the Act.

PRESIDENT'S MANAGEMENT AGENDA

The FTC is focusing its ongoing management improvement efforts on the President's five management initiative areas. Over the past decade, the agency has found new ways to meet growing demands and reach out to more consumers and businesses without an appreciable addition of personnel. The FTC's long-term, concerted efforts to work better and smarter have made this efficiency possible. The FTC's efforts to reform management and improve program performance dovetail with the President's Management Agenda. The agency has established an outstanding record of assessment, realignment, innovation, and improvement. There are several efforts underway to address, among other areas, recruitment and training, performance and costs, and reporting and systems. The FTC is committed to managing its resources effectively and achieving immediate, concrete, and measurable results in each of the five management initiatives: human capital; competitive sourcing; e-government; financial management; and integration of budget and performance.

Budget Summary
($ in thousands)

	Fiscal Year 2003		Fiscal Year 2004		Change	
Budget by Mission:	**FTE**	**Dollars**	**FTE**	**Dollars**	**FTE**	**Dollars**
Consumer Protection	569	$104,226	569	$109,689	0	$5,463
Maintaining Competition	505	78,373	505	81,443	0	3,070
Total	1,074	$182,599	1,074	$191,132	0	$8,533
Budget by Organization:						
Headquarters	928	$166,572	928	$174,545	0	$7,973
Regions	146	16,027	146	16,587	0	560
Total	1,074	$182,599	1,074	$191,132	0	$8,533
Budget by Funding Source:						
Offsetting Collections						
Direct Budget Authority		$16,599		$14,132		-$2,467
HSR Filing Fees Current Year		150,000		159,000		9,000
Do-Not-Call Fees		16,000		18,000		2,000
Total		$182,599		$191,132		$8,533

Summary of Changes
($ in thousands)

	FY 2003 Estimate	FY 2004 Estimate	Net Change
Budget Authority.	$182,599	$191,132	+$8,533
Full-time Equivalents.	1,074	1,074	0

Explanation of Change:	FTE	Dollars
FY 2003 Budget Request	1,074	$171,599
Do-Not-Call Budget Amendment	- - -	11,000
FY 2003 Estimate	1,074	$182,599
Base Adjustments:		
Annualization of three months of the FY 2003 pay increase and nine months of the FY 2004 increase	- - -	+$3,555
One additional work day in FY 2004	- - -	+423
Increase in other non-personnel services.	- - -	+1,055
Increase in space costs	- - -	+1,500
Sub-total Base Adjustments	0	+$6,533
Do-Not-Call:		
Needed infrastructure support	- - -	+$2,000
Total Change.	0	+$8,533
FY 2004 Request	1,074	$191,132

Annual Performance Plan Objectives by Program FTE

Consumer Protection Mission

	Fiscal Year 2003				Fiscal Year 2004			
	CP Obj. 1	**CP Obj. 2**	**CP Obj. 3**	**Prgm. Total**	**CP Obj. 1**	**CP Obj. 2**	**CP Obj. 3**	**Prgm. Total**
Advertising Practices	7	55	2	64	7	55	2	64
Marketing Practices	13	127	5	145	13	127	5	145
Financial Practices	6	46	2	54	6	46	2	54
Enforcement	3	50	2	55	3	50	2	55
Planning & Information	47	2	4	53	47	2	4	53
International Consumer Protection	2	4	1	7	2	4	1	7
Consumer & Business Education	0	0	16	16	0	0	16	16
Economic & Consumer Policy Analysis	0	4	2	6	0	4	2	6
Program Management	6	19	3	28	6	19	3	28
CP Mission Support	28	101	12	141	28	101	12	141
Total Mission	**112**	**408**	**49**	**569**	**112**	**408**	**49**	**569**

Maintaining Competition Mission

	Fiscal Year 2003				Fiscal Year 2004			
	MC Obj. 1	**MC Obj. 2**	**MC Obj. 3**	**Prgm. Total**	**MC Obj. 1**	**MC Obj. 2**	**MC Obj. 3**	**Prgm. Total**
Premerger Notification	17	0	11	28	17	0	11	28
Merger & Joint Venture Enforcement	11	182	12	205	11	182	12	205
Merger & Joint Venture Compliance	1	9	1	11	1	9	1	11
Nonmerger Enforcement	6	95	5	106	6	95	5	106
Nonmerger Compliance	0	7	0	7	0	7	0	7
Antitrust Policy Analysis	2	3	2	7	2	3	2	7
Other Direct Mission Resources	4	9	3	16	4	9	3	16
MC Mission Support	13	101	11	125	13	101	11	125
Total Mission	**54**	**406**	**45**	**505**	**54**	**406**	**45**	**505**

Fiscal Years 1999 - 2004
Annual Performance Measures

	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Target	FY 2004 Target
Consumer Protection Mission **Goal 1: 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.						
Measure 1.1.1: (FY 2001-2004)Annual number of consumer complaints and inquiries entered into database.	----	----	430,000	680,000	450,000	500,000
Measure 1.1.2: (FY 2003-2004) Annual number of consumer complaints and inquiries related to identity theft entered into database.	----	----	----	----	155,000	170,000
Objective 1.2–Stop fraud, deception and unfair practices through law enforcement:						
Measure 1.2.1: Dollar savings for consumers from FTC actions which stop fraud.	$454 million	$265 million	$487 million	$561 million	$400 million	$400 million
Measure 1.2.2: (FY 2001-2002) Total expenditures of deceptive or unfair advertising campaigns stopped.	----	----	$86 million	$40 million	----	----
Measure 1.2.3:(FY 2003-2004) Number of data searches conducted by FTC and other law enforcement personnel of the FTC's Consumer Sentinel.	----	----	----	----	20,000	20,000
Measure 1.2.4: (FY 2003-2004) Number of data searches conducted by law enforcement personnel reviewing the FTC's Identity Theft complaints.	----	----	----	----	1,400	1,500
Objective 1.3–Prevent consumer injury through education:						
Measure 1.3.1: Number of education publications distributed or accessed electronically by consumers.	$8.6 million	$11.0 million	$15.0 million	$19.3 million	$14.0 million	$15.0 million
Measure 1.3.2: (FY 2003-2004) Annual number of education publications related to Identity Theft distributed or accessed electronically.	----	----	----	----	$2.5 million	$2.5 million
Measure 1.3.3: (FY 2003-2004) Annual number of Spanish-language education publications distributed or accessed electronically.	----	----	----	----	Determine baseline	Compare to baseline

	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Target	FY 2004 Target
Maintaining Competition Mission **Goal 2: 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:						
Measure 2.1.1: (FY 2001-2004) Percent of HSR second requests resulting in enforcement action.	----	----	68%	68%	60-80%	60-80%
Measure 2.1.2: (FY 2001-2003) Number of nonmerger investigations opened per year.	45	25	56	59	45-70	----
Measure 2.1.3: (FY 2004) Percent of nonmerger investigations which result in enforcement action.	----	----	----	----	----	60-80%
Objective 2.2–Stop anticompetitive mergers and practices through law enforcement:						
Measure 2.2.1: Positive outcome of cases brought by FTC due to alleged violations.	80%	95%	94%	100%	80%	80%
Measure 2.2.2: (FY 1999-2003) Dollar savings for consumers resulting from FTC actions stopping anticompetitive mergers.	$1,200 million	$2,980 million	$2,500 million	$726 million	$800 million	----
Measure 2.2.3: (FY 2004) Volume of commerce in markets in which FTC took action to prevent anticompetitive mergers.	----	----	----	----	----	$40 billion
Measure 2.2.4: (FY 2001-2003) Dollar savings for consumers resulting from FTC actions stopping anticompetitive nonmerger activity.	----	----	$157 million	$86 million	$200 million	----
Measure 2.2.5: (FY 2004) Volume of commerce in markets in which FTC took action to prevent anticompetitive conduct.	----	----	----	----	----	$20 billion
Objective 2.3–Prevent consumer injury through education:						
Measure 2.3.1:(FY 2001-2003) Quantify number of education and outreach efforts.	----	----	Determine baseline (141)	285	325	----
Measure 2.3.2: (FY 2001-2003) Quantify number of hits on antitrust information on FTC Web site.	----	----	Determine baseline ($2.6 million)	$4.3 million	$3.5 million	----

	FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Actual	FY 2003 Target	FY 2004 Target
Measure 2.3.3: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to business and legal communities.	----	----	----	----	----	Determine baseline
Measure 2.3.4: (FY 2004) Measure and establish appropriate targets for the number of hits on the FTC antitrust Web site relevant to policy makers and the general public.	----	----	----	----	----	Determine baseline

Proposed Appropriations Language

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed $2,000 for official reception and representation expenses, $191,132,000, to remain available until expended: Provided, That not to exceed $300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718, as amended; Provided further, That, notwithstanding any other provision of law, not to exceed $159,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: Provided further, That $18,000,000 in offsetting collections derived from fees sufficient to implement and enforce the do-not-call provisions of the Telemarketing Sales Rule, promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2004, so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than $14,132,000: Provided further, That none of the funds made available to the Federal Trade Commission shall be available for obligation for expenses authorized by section 151 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242; 105 Stat. 2282-2285).

Program and Financing

Excludes the Administration's proposal to fully fund federal employee retirement costs.

($ in millions)

Identification Code: 29-0100-0-1-376	FY 2002 actual	FY 2003 est	FY 2004 est
Obligations by program activity:			
00.01 Consumer Protection	45	9	8
00.02 Maintaining Competition	41	8	6
01.92 Subtotal, direct program	86	17	14
09.01 Consumer Protection	37	96	102
09.02 Maintaining Competition	33	70	75
09.03 Reimbursable Program	1	1	1
09.99 Total Reimbursable Program	71	167	178
10.00 Total New Obligations	157	184	192
Budgetary resources available for obligation:			
21.40 Unobligated balance carried forward, start of year	6	8	8
22.00 New budget authority (gross)	157	184	192
22.10 Resources available from recoveries of prior year obligations	2	...	...
23.90 Total budgetary resources available for obligation	165	192	200
23.95 Total new obligations	-157	-184	-192
24.40 Unobligated balance carried forward, end of year	8	8	8
New budget authority (gross), detail:			
Discretionary:			
40.00 Appropriation	86	17	14
Spending authority from offsetting collections:			
Offsetting collections (cash):			
68.00 Offsetting collections (HSR Fees)	69	150	159
68.00 Offsetting collections (Do Not Call Fees)	...	16	18
68.00 Offsetting collections (Fed. Reimb. Programs)	1	1	1
68.26 From offsetting collections (unavailable balances)	1	...	...
68.90 Spending authority from offsetting collections (total discretionary)	71	167	178
70.00 Total new budget authority (gross)	157	184	192
Change in obligated balances:			
72.40 Obligated balance, start of year	29	22	25
73.10 Total new obligations[1]	157	184	192
73.20 Total outlays (gross)	-162	-181	-191
73.45 Recoveries of prior year obligations	-2	...	...
74.40 Obligated balance, end of year	22	25	26
Outlays (gross), detail:			
86.90 Outlays from new discretionary authority	140	170	177
86.93 Outlays from discretionary balances	22	11	14
87.00 Total outlays (gross)	162	181	191
Offsets:			
Against gross budget authority and outlays:			
Offsetting collections (cash) from:			
88.00 Federal sources	-1	-1	-1
88.40 Non-Federal sources - HSR Fees	-69	-150	-159
88.40 Non-Federal sources - Do Not Call Fees	...	-16	-18
88.90 Total, offsetting collections (cash)	-70	-167	-178
Net budget authority and outlays:			
89.00 Budget authority	87	17	14
90.00 Outlays	93	14	13

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

Object Classification

Excludes the Administration's proposal to fully fund federal employee reitrement costs.

($ in millions)

Identification Code: 29-0100-0-1-376	FY 2002 actual	FY 2003 est	FY 2004 est
Direct Obligations:			
Personnel Compensation:			
11.1 Full-time permanent	43	8	7
11.3 Other than full-time permanent	4	1	1
11.5 Other personnel compensation	1	...	...
11.9 Total Personnel compensation	48	9	8
12.1 Civilian personnel benefits	11	2	2
21.0 Travel and transportation of persons	1	...	...
23.1 Rental payments to GSA	9	2	1
23.3 Communications, utilities, and miscellaneous charges	2	1	...
25.1 Advisory and assistance services	7	2	2
25.2 Other services	1	...	....
25.3 Other purchases of goods and services from Government accounts	1	...	....
25.4 Operation and maintenance of facilities	1	...	...
25.7 Operation and maintenance of equipment	1	...	...
31.0 Equipment	4	1	1
99.0 Subtotal, obligations, Direct obligations	86	17	14
Reimbursable Obligations			
Personnel Compensation:			
11.1 Full-time permanent	35	76	80
11.3 Other than full-time permanent	4	6	6
11.5 Other personnel compensation	1	2	2
11.9 Total personnel compensation	40	84	88
12.1 Civilian personnel benefits	9	19	20
21.0 Travel and transportation of persons	1	2	2
23.1 Rental payments to GSA	5	15	17
23.3 Comm., utilities & misc. charges	1	2	3
24.0 Printing and reproduction	1	1	1
25.1 Advisory and assistance services	7	27	28
25.2 Other services	1	2	2
25.3 Other purchases of goods and services from Government accounts	1	2	2
25.4 Operation & maint. of facilities	...	1	1
25.7 Operation & maint. of equipment	...	1	1
26.0 Supplies and materials	1	1	1
31.0 Equipment	4	10	12
99.0 Subtotal, Reimbursable obligations [1]	71	167	178
99.9 Total new obligations	157	184	192

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

Personnel Summary

Identification Code: 29-0100-0-1-376	FY 2002 actual	FY 2003 estimate	FY 2004 estimate
Direct			
Full-time equivalent employment	580	97	75
Reimbursable			
Full-time equivalent employment	477 [1]	983 [2]	1,005 [2]

[1]Includes 3 FTE reimbursed by other federal agencies.

[2]Includes 6 FTE reimbursed by other federal agencies.