

FEDERAL TRADE COMMISSION



**FISCAL YEAR 2011
CONGRESSIONAL BUDGET
JUSTIFICATION SUMMARY**

Table of Contents

Overview Statement 1

Budget Request Summary 44

Summary of Changes 45

Budgeted Resources by Objective 46

Annual Performance Measures: Fiscal Years 2010 to 2011 48

Proposed Appropriations Language 53

Federal Trade Commission Fiscal Year 2011 Overview Statement

The Federal Trade Commission (FTC) is the only federal agency with jurisdiction to enhance consumer welfare and protect competition in broad sectors of the economy. It enforces the laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process. Through enforcement, advocacy, education, and policy work, the FTC protects consumers and promotes competitive markets in both the United States and around the world.

Highlights of FY 2009 Accomplishments

In fiscal year (FY) 2009, the FTC took action on a wide variety of significant consumer protection and competition matters. The highlighted actions, detailed below, helped ensure that businesses and consumers alike reaped the full benefits of market competition and product innovation.

PROTECT CONSUMERS

In these challenging economic times, protecting consumers is more important than ever. The FTC has warned consumers about economic stimulus scams and initiated a crackdown on frauds fueled by the economic downturn, including numerous foreclosure rescue schemes. Further, the FTC has given priority to addressing consumer privacy, including online behavioral advertising, technology abuses, identity theft and data security, and Do Not Call violations. The FTC also focuses on deceptive marketing of health products, deceptive “green” marketing, and issues related to marketing to children.

In FY 2009, the FTC obtained 18 administrative orders, 77 court orders amounting to more than \$342.2 million in consumer redress, and 23 court judgments for civil penalties in an amount more than \$10 million. It also filed 87 new complaints in federal district court and 27 new administrative actions.

Financial Services

The FTC has increased its focus on protecting consumers of financial services, especially consumers in financial distress, stepping-up efforts to address prohibited practices in the financial services marketplace. These practices include foreclosure “rescue” and loan modification scams; unfair, deceptive, or otherwise unlawful mortgage lending and credit offers; unlawful practices in servicing mortgages; bogus debt relief and credit “repair” services; and unlawful debt collection.

In March 2009, the FTC unveiled a new Web site at www.ftc.gov/MoneyMatters for people dealing with debt; struggling to find a job; or trying to create a budget, save, and spend wisely.

In FY 2009, the FTC filed 18 new complaints in federal district court challenging fraudulent foreclosure “rescue” and loan modification services, and also obtained two court orders settling similar actions filed in the previous year.

In April 2009, the FTC and its federal and state partners announced a new coordinated effort to target foreclosure “rescue” scams and mortgage loan modification fraud. The FTC announced that it filed five law enforcement actions and sent 71 warning letters to companies marketing potentially deceptive foreclosure assistance and mortgage modification programs. Further, as part of a new consumer education campaign, several private-sector national loan services voluntarily agreed to distribute FTC consumer alerts that provide consumers with tips for avoiding mortgage relief scams and direct them to free, legitimate counseling services for at-risk homeowners.

Foreclosure “Rescue” and Loan Modification

In July 2009, the FTC announced “Operation Loan Lies,” a coordinated law enforcement effort to crack down on mortgage modification scams, involving 189 actions by 25 federal and state agencies, including four new lawsuits against various rescue and modification services. The FTC also released “Real People. Real Stories,” a video featuring people targeted by foreclosure rescue scammers sharing lessons learned from their experiences. The FTC distributed the video, and a version in Spanish, to more than 5,000 housing counseling and consumer protection organizations around the country, and posted them at www.FTC.gov/yourhome and www.YouTube.com/FTCVideos.

In an effort to better protect financially distressed homeowners, in May 2009, the FTC initiated a rulemaking proceeding involving foreclosure rescue and loan modification services. The Mortgage Assistance Relief Services rulemaking addresses the proliferation of such services in the current economy.

Credit Offers

In December 2008, a company marketing Visa and MasterCard credit cards to consumers in the subprime credit market agreed to reverse fees charged to eligible consumers' accounts to settle FTC allegations that it violated federal law. The FTC estimates that the redress program will result in more than \$114 million in credits and cash refunds to consumers.

Mortgage Loan Advertising

In January 2009, three mortgage loan advertisers agreed to settle FTC charges that their ads violated federal law by deceptively touting low monthly payments and low rates without fully disclosing loan terms.

Payday Lending

In November 2008, the FTC and the State of Nevada charged 10 related Internet payday lenders with violating federal and state law by failing to disclose key loan terms to consumers and using abusive and deceptive collection tactics. Also charged in the complaint, but not named in the order, are four United Kingdom-based companies. In September 2009, the operation agreed to pay \$1 million to settle the charges.

Mortgage Lending

In December 2008, Gateway Funding Diversified Mortgage Services, L.P., and its general partner, Gateway Funding Inc., agreed to settle FTC allegations that they violated federal law by charging African-American and Hispanic consum-

ers higher prices for mortgage loans than non-Hispanic white consumers. In May 2009, the FTC charged Golden Empire Mortgage, Inc. with violating federal law by charging Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers. In both cases, the price disparities could not be explained by the applicants' credit characteristics or underwriting risk.

In January 2009, the FTC returned almost \$28 million to about 86,000 consumers as a result of a settlement with The Bear Stearns Companies, LLC and EMC Mortgage Corporation. The companies settled FTC charges that they misrepresented the amount borrowers owed, charged unauthorized fees, and engaged in unlawful and abusive collection practices.

In October 2008, the FTC and 24 state agencies announced "Operation Clean Sweep," a crackdown on 33 operations that deceptively claim they can remove negative information from consumers' credit reports, even if that information is accurate and timely. In the seven actions announced, the FTC seeks to halt the defendants' allegedly unlawful business practices, prohibit further violations, and make them pay consumer redress and give up their ill-gotten gains. In March 2009, the FTC charged seven other related companies with similarly violating federal law.

In November 2008, Academy Collection Service, Inc. and its owner agreed to pay \$2.25 million to settle FTC charges that their collectors misled, threatened, and harassed consumers; disclosed their debts to third parties; and deposited postdated checks early, in violation of federal law. It is the largest civil penalty the FTC has obtained in a debt collection case. In January 2010, the FTC settled charges against two individuals who oversaw Academy's Las Vegas collection center. In July 2009, the operators of another debt collection company that used false threats and other unlawful tactics to collect consumers' debts agreed to settle FTC charges that they violated federal law. The FTC issued a report in February 2009 recommending that the debt collection legal system be reformed and modernized to reflect changes in consumer debt, the debt collection industry, and technology.

Mortgage Servicing

Credit "Repair" Services

Debt Collection

Payment Processors

In June 2009, a federal court ordered a payment processor that debited consumers' bank accounts without their authorization to pay \$1,779,000 in consumer redress and to end the illegal practice.

Privacy and Identity Theft

Online Behavioral Advertising

In February 2009, FTC staff issued a report, "Self-Regulatory Principles for Online Behavioral Advertising," describing the agency's ongoing examination of online behavioral advertising and setting forth revisions to proposed principles to govern self-regulatory efforts in this area. The key issue is how to balance the potential benefits of behavioral advertising against the consumer privacy concerns that the practice raises.

Data Security

In FY 2009, the FTC pursued seven data security cases. In November 2008, Premier Capital Lending, Inc. settled FTC charges that it violated federal law by failing to provide reasonable security to protect sensitive customer data. In January 2009, the FTC charged a mortgage broker with discarding consumers' tax returns, credit reports, and other sensitive personal and financial information in an unsecured dumpster, in violation of federal law. Later, in May 2009, the FTC announced that another mortgage lender agreed to settle charges that it failed to safeguard consumer information.

In February 2009, an online seller of computer supplies and other consumer electronics and its parent company agreed to settle FTC charges that they violated federal law by failing to provide reasonable security to protect sensitive customer data. Also in February, CVS Caremark, which operates the largest pharmacy chain in the United States, agreed to settle FTC charges that it failed to take reasonable and appropriate security measures to protect the sensitive financial and medical information of its customers and employees, in violation of federal law.

In addition to law enforcement, in August 2009, the Commission issued a final rule requiring certain Web-based businesses to notify consumers when the security of their electronic health information is breached.

Identity Theft

The list of top consumer complaints received by the FTC in 2008 showed that for the ninth year in a row, identity theft was the number one complaint category. Of the complaints received, 26 percent were related to identity theft. Rental Research Services, Inc., a consumer reporting agency that failed to properly screen prospective customers and, as a result, sold at least 318 credit reports to identity thieves, agreed in March 2009 to settle FTC charges that it violated federal law. In December 2008, the FTC issued a report recommending five measures to help prevent Social Security numbers from being used for identity theft.

Technology

If consumers are not adequately protected from technology abuses, not only can they suffer economic injury, but they can also lose confidence in the technologies and e-commerce. For this reason, the FTC continues to bring cases against those who abuse technology.

In October 2008, at the request of the FTC, a U.S. district court ordered a halt to the operations of a vast international spam network that peddled prescription drugs and bogus male-enhancement products. The network has been identified as the largest “spam gang” in the world by the anti-spam organization Spamhaus. The FTC has received more than three million complaints about spam messages connected to the operation, and estimates that this network may be responsible for sending billions of illegal spam messages.

In June 2009, at the request of the FTC, a U.S. district court judge shut down Pricewert, LLC, a rogue Internet Service Provider that recruits, knowingly hosts, and actively participates in the distribution of spam, child pornography, and other harmful electronic content. The ISP shutdown resulted in an immediate, temporary 30 percent drop in spam worldwide.

In July 2009, in the first case using the U.S. SAFE WEB Act, a U.S. district court ordered key players in an international spam ring to give up \$3.7 million that they made by sending out illegal e-mail messages pitching phony hoodia weight-loss products and a “human growth hormone” pill they claimed reversed the aging process.

Spam and Phishing

Tracking Software, Spyware, and “Scareware:”

Sears Holding Management Corporation agreed in June 2009 to settle FTC charges that it failed to disclose adequately the scope of consumers’ personal information it collected via a downloadable software application.

At the request of the FTC, a U.S. district court issued a preliminary injunction in November 2008 halting the sale of keylogger spyware. According to the FTC’s complaint, CyberSpy Software, LLC marketed and sold RemoteSpy keylogger spyware to clients who would then secretly monitor unsuspecting consumers’ computers.

In December 2008, at the request of the FTC, a U.S. district court issued a temporary halt to a massive “scareware” scheme, which falsely claimed that scans had detected viruses, spyware, and illegal pornography on consumers’ computers. According to the FTC, the scheme, operated by Innovative Marketing, Inc. and ByteHosting Internet Services, LLC, has tricked more than one million consumers into buying computer security products such as WinFixer, WinAntivirus, DriveCleaner, ErrorSafe, and XP Antivirus. The court also froze the assets of those responsible for the scheme.

Digital Rights Management Technology

The FTC and the Technology Law and Public Policy Clinic at the University of Washington School of Law co-hosted a conference in March 2009 on the use of digital rights management (DRM) technologies, a widespread practice that is expected to become increasingly prevalent in the U.S. marketplace in coming years. Among other issues, the workshop addressed the need to improve disclosures to consumers about DRM limitations.

Mobile Marketing

Mobile devices, once associated only with voice telephone service, are now used for numerous data-driven technologies and services. In April 2009, the FTC issued a report, “Beyond Voice: Mapping the Mobile Marketplace,” on consumer protection issues arising in the mobile commerce marketplace.

Do Not Call

The National Do Not Call Registry, which now contains more than 191 million telephone numbers, has been enormously effective at protecting consumers from unwanted telemarketing calls at home. While most entities covered by the Do Not Call (DNC) provisions of the Telemarketing Sales Rule (TSR) comply, the FTC continues to receive complaints about bad actors. New rules took effect in December 2008 requiring that any telemarketing call that delivers a prerecorded message must include a quick and easy automated voice or keypress opt-out of receiving future calls.

In March 2009, the Department of Justice (DOJ), at the FTC's request, filed suit in federal district court charging that satellite television provider Dish Network, directly and through its authorized dealers, called numerous consumers whose numbers were on the DNC Registry. The complaint also charged the Dish Network, formerly known as EchoStar, with violating the TSR by assisting and supporting its authorized dealers in telemarketing Dish Network services via "robocalls" that deliver prerecorded telemarketing messages. Two of the Dish Network dealers settled charges in September 2009. In April 2009, the FTC announced that another satellite television provider, DIRECTV, and Comcast Corp., one of the nation's largest providers of cable and Internet services, agreed to pay a total of \$3.21 million to settle separate charges that they violated the DNC Rule, including charges that they or their telemarketers called consumers who specifically had told the companies not to call them again.

In September 2009, a company behind a massive telemarketing scheme that used hundreds of millions of random, prerecorded phone calls ("robocalls") to deceive consumers into thinking that their vehicle's warranty was about to expire, in violation of the DNC Rule, the TSR, and the FTC Act, was barred from the tactics under an FTC settlement. In addition, a new FTC rule took effect in September 2009 prohibiting telemarketers from making robocalls to consumers unless those consumers have agreed in writing to receive the calls.

In FY 2009, the FTC continued to combat the deceptive marketing of health products, particularly products making disease prevention or weight loss claims. To help provide reliable sources of health information to seniors, their family members, caregivers, and friends, the FTC developed a new booklet, "Who Cares: Sources of Information About Health Care Products and Services," and Web site, www.ftc.gov/whocares.

Weight Loss Products

In FY 2009, the FTC's cases against purported weight-loss products garnered more than \$70.9 million in court orders. In December 2008, a federal district court ordered several corporate and individual defendants who marketed three dietary supplements to pay more than \$15 million for deceiving consumers about the products' safety and effectiveness. In January 2009, Telebrands Corporation and TV Savings, LLC, marketers who made false and deceptive claims that the Ab Force weight loss belt would cause consumers to lose weight by applying electronic stimulation to their abdominal muscles, agreed to pay \$7 million to settle a subsequent FTC action to obtain consumer redress. The TV home shopping channel QVC, Inc., one of the world's largest multimedia retailers, agreed to pay \$7.5 million in March 2009 to settle FTC charges that it made false and unsubstantiated claims about two types of weight loss supplements and an energy-enhancing supplement in violation of an earlier FTC order, and about an anti-cellulite skin cream in violation of the FTC Act.

In April 2009, the FTC charged the suppliers of supposed *hoodia gordonii* with deceptive advertising for claiming that using their product would lead to weight loss and appetite suppression.

Disease Prevention and Treatment Products

In November 2008, two marketers of dietary supplements that purportedly prevented and treated diabetes settled FTC charges that they engaged in deceptive advertising practices. In January 2009, the FTC charged the marketers of Kinoki Foot Pads with making deceptive claims that the foot pads would remove toxins from the body and treat high blood pressure, depression, and a host of other medical condi-

tions. In March 2009 a marketer of dietary supplements and health-related devices, agreed to pay \$3 million to settle FTC charges that they deceptively claimed their products treated, reduced the risk of, or prevented a wide variety of serious diseases and medical conditions, including cancer, HIV/AIDS, diabetes, strokes and heart attacks, Alzheimer's disease, Parkinson's disease, arthritis, multiple sclerosis and other autoimmune diseases, ulcers, herpes, asthma, and glaucoma. In August 2009, a federal district court ordered the marketers of "Supreme Greens" and "Coral Calcium" dietary supplements to pay nearly \$70 million for deceiving consumers about the products' effectiveness and safety in supposedly curing ailments ranging from cancer and Parkinson's disease to heart disease and autoimmune diseases.

As scam artists introduced products that played off the news of Influenza A/H1N1 virus, the FTC warned Web site operators who made claims that their products can prevent, treat, or cure the virus that they must have scientific proof to support their claims. In July 2009, national pharmacy chain Rite Aid Corporation agreed to pay \$500,000 in consumer redress to settle FTC charges that it deceptively advertised that its "Germ Defense" tablets and lozenges could prevent and treat colds and the flu or reduce the severity and duration of these illnesses. The FTC also charged Rite Aid's supplier, Improvita Health Products, Inc., with false and deceptive advertising in an ongoing case. Under the terms of another settlement, CVS agreed in September 2009 to pay nearly \$2.8 million in consumer refunds to settle FTC charges of unsubstantiated advertising of its AirShield "immune boosting" dietary supplements.

In April 2009, Kellogg Company, the world's leading producer of cereal, agreed to settle FTC charges that nationwide advertising claims touting a breakfast of Frosted Mini-Wheats as "clinically shown to improve kids' attentiveness by nearly 20 percent" were false and violated federal law. In June 2009, a major alcohol supplier agreed to settle FTC charges that its advertising for the caffeinated alcohol drink Wide Eye was deceptive, unsubstantiated, and in violation of federal law.

Cold and Flu Products

Other Health Claims

“Green” Marketing

Many consumers care about saving energy as well as money, and the FTC has targeted sellers who make deceptive “green” claims. At the FTC’s request in February 2009, a federal court temporarily halted the deceptive advertising campaign and froze the assets of an operation claiming its device can boost automobile gas mileage by at least 50 percent and “turn any vehicle into a hybrid.” The FTC in March 2009 announced three federal court actions, two settled and the third in continuing litigation, against sellers that allegedly made deceptive claims for a variety of home insulation products. In June 2009, the FTC charged Kmart Corp., Tender Corp., and Dyna-E International with making false and unsubstantiated claims that their paper products were “biodegradable.” All three companies have since settled. In August 2009, the FTC charged four sellers of clothing and other textile products with deceptively labeling and advertising the items as made of bamboo fiber, when they are made of rayon. The complaints also charge the companies with making false and unsubstantiated “green” claims that their clothing and textile products are manufactured using an environmentally friendly process, that they retain the natural antimicrobial properties of the bamboo plant, and that they are biodegradable. All of the companies have settled the FTC’s complaints.

Children’s Issues

Children under 12 are reported to spend billions of dollars on goods and services every year. To introduce them to key consumer and business concepts, the FTC launched a new Web site, www.ftc.gov/YouAreHere, in October 2008. Set in a shopping mall, the Web site takes children on an experiential journey that presents the FTC’s mission and its important role in American commerce, and was recently expanded to include new sections. In March 2009, the FTC released a new consumer alert, “Virtual Worlds and Kids: Mapping the Risks,” to help parents protect their children and understand the online “places” where people use graphic characters known as avatars to represent themselves.

The FTC hosted a workshop in March 2009 to gather input for its advertising literacy initiative, which will educate and empower tweens, or preadolescents, to be better informed consumers of information. At the workshop, experts on advertising and marketing to children discussed a range of issues, including what children experience in the commercial world, what they understand about their experience, and what consumer education efforts will help them to navigate better in a commercial world.

Children's Advertising Literacy

In December 2008, Sony BMG Music Entertainment agreed to pay \$1 million to resolve FTC charges that it violated the Children's Online Privacy Protection Act (COPPA) and the FTC's implementing Rule. The FTC's complaint alleged that, through its music fan Web sites, Sony Music improperly collected, maintained, and disclosed personal information from thousands of children under the age of 13, without their parents' consent. Sony Music's civil penalty matches the largest penalty ever in a COPPA case.

Children's Online Privacy

Fraud

In July 2009, the FTC announced a law enforcement crackdown on scammers trying to take advantage of consumers during the economic downturn. Dubbed "Operation Short Change," the sweep included 15 FTC cases, 44 law enforcement actions by the Department of Justice, and actions by at least 13 states and the District of Columbia. To help consumers understand how easy it is to be conned, and how to avoid fraud, the FTC produced a new consumer education video at www.YouTube.com/ftcvideos featuring a former scammer who hawked phony business opportunities and ultimately served prison time for deceiving investors.

Scams Targeting Consumers Affected by the Economic Downturn

The FTC hosted a two-day Fraud Forum in February 2009 to examine how the FTC can more effectively protect consumers from fraudulent schemes. The first day of the Forum provided an opportunity for law enforcement, consumer advocates, business representatives, and academics to examine many aspects of fraud today. The second day, open only to law enforcement officials, focused on improving inter-agency coordination in the battle against consumer fraud.

Fraud Forum

Internet Fraud

To mark National Cyber Security Awareness Month in October 2008, the FTC announced a newly-designed and improved Web site to help consumers avoid internet fraud, secure their computers, and protect their personal information. The Web 2.0 redesign of www.OnGuardOnline.gov and its Spanish-language counterpart, www.AlertaEnLinea.gov, allows users to embed games and videos on their own blogs or Web sites, and search for topics.

Telemarketing Fraud

In December 2008, the FTC announced that it had settled charges it brought against two Quebec, Canada-based companies that allegedly deceived U.S. consumers through the fraudulent sale of telephone calling cards.

In another settlement announced in December 2008, Robert James Fischbach, who allegedly deceptively marketed advance-fee credit cards to consumers nationwide, has been prohibited from making the misrepresentations alleged in the complaint, and from violating the FTC Act and the agency's Telemarketing Sales Rule.

In February 2009 a U.S. district court granted summary judgment against an individual and entered default judgments against 22 corporations that ran an international payment-processing operation. The defendants illegally debited millions of dollars from consumers' bank accounts on behalf of Canadian telemarketers selling non-existent credit cards to U.S. consumers. The final court order imposes an \$8.6 million judgment and permanently bars the defendants from engaging in telemarketing and payment processing activities.

The FTC filed suit in June 2009 to halt the illegal operations of three telemarketer boiler rooms, alleging that the operations bilked thousands of small- and medium-sized U.S. businesses and non-profits out of millions of dollars by deceiving them into paying for listings they never ordered in worthless business directories.

Fraud against Hispanics

In October 2008, at the request of the FTC, a U.S. district court judge froze the assets of a Quebec company and ordered a halt to its allegedly unlawful practices — billing

Spanish-speaking businesses in the continental U.S. and Puerto Rico for directory listings they did not order – until the matter is resolved in court.

In February and June 2009, several major prepaid calling card companies agreed to pay a total of \$3.55 million as part of a settlement to resolve FTC charges that they made false claims to consumers about the number of minutes of talk time their prepaid calling cards would provide. In August 2009, the FTC charged Diamond Phone Card, Inc., a distributor of prepaid calling cards, with advertising that its calling cards provided more minutes than they actually delivered. All of the prepaid calling card companies targeted their advertising at recent immigrants, who depend on the cards to stay in touch with friends and family in other countries.

In a nationwide, federal-state crackdown on fraudulent telemarketers claiming to help police, firefighters, and veterans, the FTC, together with 61 state officials, including State Attorneys General, Secretaries of State, and other law enforcers of 49 states and the District of Columbia, announced in May 2009 “Operation False Charity.” Federal and state enforcers announced 76 law enforcement actions against 32 fundraising companies, 22 non-profits or purported non-profits on whose behalf funds were solicited, and 31 individuals. These include two FTC actions involving federal court complaints and proposed settlement orders against alleged sham non-profits and the telemarketers who made deceptive claims about the so-called charities. The FTC and state agencies also released new education materials, in both English and Spanish, to help consumers recognize and avoid charitable solicitation fraud.

In fiscal year 2009, the FTC continued to target various business opportunity, work-at-home, and other employment schemes, including those that use false earnings claims and other deceptive representations to lure unwary consumers into investing their savings with the hope of owning a successful small business. In November 2008, the FTC charged a nationwide marketing operation with violating federal law by deceiving consumers into buying materials they thought would help them get federal postal jobs. Another operation lured consumers with promises that they could earn big money as trained and certified “mystery shoppers,” and in December 2008 agreed to pay \$850,000 to settle charges of

Charity Fraud

Business Opportunity, Work-at-Home, and other Employment Schemes

deceptive marketing and contempt. In January 2009, the FTC obtained a \$250,000 settlement against an individual participating in a vending machine scheme.

In April 2009, at the request of the FTC, a federal court imposed a judgment of \$18.9 million against a set of entities operating an "Internet kiosk business opportunity scam," clearing the way for the FTC to distribute more than \$2 million to the victims of their illegal Ponzi scheme.

In May 2009, the marketers of a work-at-home scam who led consumers to believe they could earn \$500 or more per week processing medical bills and would receive training and access to customers agreed to settle FTC charges that their deceptive claims violated federal law.

Bogus Billing

In June 2009, the FTC obtained a \$2 million summary judgment against the leader of a scheme that defrauded businesses out of millions of dollars by billing for unauthorized listings and advertisements in non-existent business and travel directories, and for unordered and undelivered office supplies and consulting services.

Payment Systems

In February 2009, at the request of the FTC, a U.S. district court ordered a permanent halt to the illegal operations of an Internet-based check creation and delivery service that produced checks without the authorization of the account holders, and ordered the operators to give up all their ill-gotten gains.

"Negative Option" Marketing

Negative option offers typically present an opportunity to consent in advance to continue to receive products or services in the future. The seller may then interpret the consumer's silence or failure to take an affirmative action to reject goods or services, or to cancel the sales agreement, as acceptance of the offer. In January 2009, 14 defendants involved in a massive negative option telemarketing scheme agreed to pay a total of more than \$16 million to settle FTC charges. The scheme affected nearly one million consumers nationwide.

Two dietary supplement marketers that lured consumers on the Internet with allegedly deceptive weight-loss claims and bogus “free” sample offers, and then debited their bank accounts or charged their credit cards for continuing shipments without their consent, agreed in February 2009 to settle FTC charges that they violated federal law. The FTC also issued a report, “Negative Options: An FTC Workshop Analyzing Negative Option Marketing,” which provides guidance for marketers to help them avoid deception in making negative option offers.

Rebate Programs

In January 2009, the FTC announced a complaint against Market Development Specialists and its president for failing to pay rebates due to thousands of consumers nationwide within the time promised, and leaving many others with no rebate checks at all for the electronics they purchased.

Funeral Homes

The FTC continues to conduct yearly undercover inspections of funeral homes to help ensure compliance and maintain consumer confidence. In March 2009, the FTC announced that investigators working undercover in seven states during 2008 found significant violations of the Funeral Rule at 26 of the 104 funeral homes visited. Funeral homes found to have significant violations were given the option to enter the Funeral Rule Offenders Program as an alternative to the prospect of a lawsuit.

Aid to Criminal Enforcement

The FTC’s Criminal Liaison Unit (CLU) continues to work with criminal authorities to encourage prosecutions of criminal consumer fraud and to assist in those prosecutions. In fiscal year 2009, federal and state criminal authorities charged 30 FTC defendants and their associates with crimes arising from acts investigated or prosecuted by the FTC.

During this period, 32 such defendants and their associates were convicted or pled guilty, and 39 defendants were sentenced to prison terms ranging from 1 to 15 years.

International Consumer Protection

In FY 2009, the FTC's Office of International Affairs (OIA) continued to support the FTC's consumer protection mission by providing enforcement assistance to agency investigators and litigators in over forty investigations, litigation matters, and enforcement-related projects. OIA also continued to develop strong bilateral relationships with foreign consumer, privacy, and law enforcement authorities in Europe, Canada, and around the globe, and represent the agency in international organizations on a range of complex global consumer policy and enforcement issues including spam, phishing, spyware, telemarketing fraud, identity theft, data security, and privacy.

In particular, in FY 2009, the FTC used its authority under the U.S. SAFE WEB Act of 2006 to share information with eight foreign agencies from four countries in response to 14 requests in cross-border consumer protection matters, including fraudulent telemarketing scams, business directory schemes, and spam and scareware cases. The FTC also used its investigative assistance authority to issue six civil investigative demands on behalf of four agencies from three foreign countries. This type of assistance has yielded considerable cross-border cooperation; for example, in *FTC v. Atkinson*, a case filed in October 2008, a U.S. district court ordered a halt to the operations of a vast international spam-email network based, in part, on reciprocal information sharing with law enforcement colleagues in Australia, Canada, and New Zealand. As a result of this cooperation, New Zealand authorities, working in tandem with the FTC, also filed a civil case against Atkinson in the New Zealand courts. The FTC also continued to cooperate closely with its Canadian counterparts in numerous investigations and cases, including those filed as part of "Operation Mirage," which targeted cross-border business directory scams and "Operation Short Change," which cracked down on scams focusing on consumers harmed by the economic downturn.

The FTC also participated in international organizations such as the Organization for Economic Cooperation and Development (OECD) and the Asia Pacific Economic Cooperation (APEC) forum, including hosting an international conference, in conjunction with APEC and the OECD, on “Securing Personal Data in the Global Economy” in March 2009. By the end of the fiscal year, the FTC also will have conducted a total of 14 technical cooperation seminars for consumer protection agencies around the world including regional seminars for the Association of Southeast Asian Nations and the Caribbean Community consumer agencies, and missions to India, Nigeria, South Africa, and the Ukraine.

In FY 2009, the FTC also initiated a permanent International Fellows and Interns program, pursuant to authority in the U.S. SAFE WEB Act, which allows staff from counterpart agencies to work directly with the FTC on investigations and cases, subject to appropriate confidentiality protections. During FY 2009, fellows and interns from Australia, Canada, and Poland worked with the FTC staff on a variety of consumer protection matters.

Consumer Response Systems and Services

This fiscal year, the Consumer Response Center handled an average of more than 37,000 inquiries and complaints from consumers and businesses each week. Also, the FTC added more than 3.33 million fraud, identity theft, financial, and DNC complaints and inquiries to the Consumer Sentinel Network (CSN) database in FY 2009. CSN is now accessible to more than 1,700 law enforcement agencies worldwide.

MAINTAIN COMPETITION

The FTC actively enforces the antitrust laws in a range of industries of critical importance to American consumers, including healthcare, energy, real estate, technology, and retail. FY 2009 was yet another very active year in the agency’s mission to maintain competition, with the agency pursuing 26 new competition law enforcement actions and undertaking several important workshops, reports, and

advocacy letters to promote competition and educate its stakeholders of the importance of competition to consumers. The FTC also continued to vigorously monitor and enforce compliance with consent orders as well as with the reporting obligations under the Hart-Scott-Rodino (HSR) Act.

The FTC pursued 19 merger enforcement challenges, resulting in nine consent agreements, three transactions abandoned or restructured after the second request was issued or after staff raised antitrust concerns with the parties, six injunctive actions, and one issued Part 3 Administrative Complaint. In five of the six injunction cases, in addition to seeking a preliminary injunction in federal district court, the FTC also initiated Part 3 Administrative Proceedings to challenge the proposed acquisitions. In the sixth injunction case the FTC filed a complaint in federal district court seeking a permanent injunction challenging a consummated merger and seeking divestiture of assets and disgorgement of all unlawfully obtained profits. In the Part 3 matter, the agency issued an administrative complaint challenging a consummated merger and seeking the divestiture of the acquired assets to restore competition in the affected markets.

The FY 2009 merger actions span several markets, including pharmaceuticals, outpatient clinics, over-the-counter drugs, medical devices, retail distribution and consumer goods, chemicals and industrial gasses, and energy. In addition to these new enforcement actions, the FTC continued to pursue litigated matters originally brought in previous fiscal years (*Whole Foods Market Inc./Wild Oats Markets Inc.* and *Polypore International/Daramic LLC*). During FY 2009, the agency also brought two civil penalty actions to contest the violation of the respective consent orders issued by the Commission in previous years. In one of these cases the agency also contested a violation of the Medicare Modernization Act, which requires that certain drug company agreements be reported to both the FTC and the DOJ.

The FTC conducted an initial review of hundreds of mergers and granted early termination of the HSR waiting period where there was no reason to believe that competition would be harmed. The agency brought civil penalty actions to challenge violations of the reporting requirements in two instances.

As part of its nonmerger agenda, the FTC brought seven major nonmerger enforcement actions in FY 2009. These cases, which included one filed complaint and six consent orders, covered a broad range of industries. The FTC challenged agreements among competitors to fix prices or otherwise limit competition in real estate and health care services, a “pay-for-delay” pharmaceutical patent settlement agreement, a retail distribution agreement, and the anti-competitive information sharing policies of a national trade association.

Health Care and Pharmaceuticals

The health care and pharmaceutical industries were again a priority area for competition enforcement as prices continued to escalate. In general, the agency works to promote competition in health care by preventing anticompetitive health care mergers, stopping harmful joint conduct by health care providers, and eliminating impediments to entry of generic drug producers. One of the specific areas where the FTC has pushed its enforcement program relates to collusive “pay-for-delay” settlements in the pharmaceutical industry, where a brand name drug company pays a generic drug company to delay its entry into the market. These deals cost billions of dollars to consumers and the government, which pays almost one-third of the nation’s prescription drug costs.

The FTC challenged such an agreement between Solvay Pharmaceuticals, Inc., maker of AndroGel, and two generic drug manufacturers to abandon their patent challenges and delay marketing a generic formulation of a testosterone replacement drug for nine years, until 2015. The agency charged that, by agreeing to the delay in exchange for payment, Watson Pharmaceuticals, Inc. and Par Pharmaceutical Companies, Inc. were cooperating with Solvay on the sale of AndroGel, sharing the monopoly profits rather than competing. The FTC also continued to press its federal court case against Cephalon, Inc. to block its exclusion payment agreement with four generic rivals.

During FY 2009, the FTC reviewed numerous proposed and consummated acquisitions in the pharmaceutical and medi-

cal device industries and took action to preserve competition that would otherwise be lost in the proposed merger or to restore competition in the case of a merger that has already taken place.

For example, the FTC filed suit seeking a permanent injunction to remedy harmful effects from Ovation Pharmaceuticals' 2006 acquisition of the rights to sell a drug for the treatment of congenital heart defects in premature babies. The agency's complaint seeks divestiture of assets related to one of two treatments and disgorgement of all unlawfully obtained profits.

With regard to the review of proposed merger transactions actions in the pharmaceutical industry, during FY 2009, the FTC successfully challenged acquisitions relating to commonly used generic medications, including drugs used in the treatment of cancer, bacterial infections, diabetes, acid reflux, and depression, as well as several varieties of oral contraceptives, oral long-acting opioids, and plasma-derivative protein therapies. In another matter, the FTC filed a lawsuit challenging that, if consummated, the proposed combination of CSL and Talecris Biotherapeutics would have increased the likelihood of collusion in various critical markets for plasma-derivative protein therapies used to treat patients suffering from illnesses such as primary immunodeficiency diseases, which would have led to higher healthcare costs and reduced innovation. Following the filing of the lawsuit, CSL announced that it would not proceed with its acquisition of Talecris.

In the market for over-the-counter medicinal products, the FTC obtained a consent eliminating the restraint on future competition allegedly created when Inverness Medical Innovations purchased assets related to the development of a consumer pregnancy test from ACON Laboratories. In a final merger matter relating to medical devices, the FTC successfully challenged Getinge AB's proposed acquisition of rival Datascope Corporation, alleging that the merger would give the combined company a near-monopoly share of the U.S. market for endoscopic vessel harvesting (EVH) devices used in coronary bypass surgeries, by requiring that Datascope divest its EVH assets.

On the nonmerger side, the agency also settled three matters relating to joint price-setting behavior by physicians' organizations, ordering these groups to stop collective activities aimed at keeping reimbursements rates high without offering the benefits of integrated health care delivery. These cases restored competition among physicians in Boulder Valley, Colorado; Modesto, California; and Berkeley and Oakland, California.

To support its enforcement work and promote competitive outcomes in health care markets, the FTC used a wide variety of policy tools, such as research and reports, workshops, advocacy filings, amicus briefs, speeches, and testimony before Congress.

During FY 2009, representatives of the FTC provided congressional testimony and gave speeches analyzing the competitive impact of "pay-for-delay" settlements between brand and generic pharmaceutical firms. The FTC highlighted how stopping this type of collusive behavior, which is one of the FTC's highest priorities, would save consumers \$3.5 billion a year and also reap significant savings for the federal government, which pays approximately one-third of all prescription drug costs.

In FY 2009, the agency held two roundtables on emerging health care competition and consumer issues and also published a series of studies addressing critical health care issues. Some of the issues addressed included whether the price of biologics might be reduced by competition if there were a statutory process to encourage "follow-on biologics" to enter and compete with pioneer biologics once a pioneer drug's patents have expired (Follow-on Biologic Drug Competition), an interim report which presents an analysis of short-term and long-term effects of "authorized generics" on competition in the prescription drug marketplace, and three retrospectives on hospital mergers that analyze the effects on competition and prices of consummated hospital mergers in three geographic areas.

In addition to these policy-related activities, FTC staff issued four advocacy comments and one advisory opinion addressing health care related issues.

Energy

Energy is another important industry to which the FTC devotes significant resources. In FY 2009, the agency issued an administrative complaint to block the proposed acquisition of Newpark Environmental Services by CCS Corporation, a subsidiary of Red Sky Holdings LP. The FTC charged that the proposed consolidation of two of the leading providers of offshore exploration and production waste disposal services to major oil and gas companies in the Gulf Coast Region was anticompetitive and would lead to higher prices and decreased service levels. The FTC successfully blocked the transaction when CCS abandoned the merger following the issuance of the complaint.

Exercising the authority provided by Congress under the Energy Independence and Security Act of 2007 (EISA), the FTC completed a rulemaking process and issued a final rule that prohibits market manipulation in wholesale petroleum markets. The final Market Manipulation Rule became effective on November 4, 2009.

In November 2008, the FTC issued its fourth annual “Federal Trade Commission Report on Ethanol Market Concentration” on the state of ethanol production in the United States. The report noted that current levels of market concentration would not support a presumption that a single firm, or a small group of firms, could wield sufficient market power to set or coordinate price or output levels.

During FY 2009, the FTC also released three advisory comments on energy related issues.

Real Estate

In another industry of importance to consumers, the FTC continues to challenge realtor board rules that restrain competition and hinder consumer choice in markets throughout the country. Following on its successful law enforcement sweep of the real estate industry in FY 2007, in FY 2009 the agency challenged the conduct of West Penn Multi-List,

operator of the only Multiple Listing Service (MLS) for the Pittsburgh metropolitan area, alleging that the restrictions on access to its MLS were anticompetitive. The Commission also recently issued its Opinion in Realcomp II, a matter appealed after an Initial Decision by an Administrative Law Judge; the Commission found that the Michigan-based realtors' group violated federal law by restricting the ability of member real estate agents to offer consumers lower-priced alternatives to traditional real estate services. The Commission opinion is under appeal.

Technology and Manufacturing

In March of 2009, the U.S. District Court for the District of Columbia issued a preliminary injunction blocking the proposed \$1.4 billion merger of CCC Information Services Inc. and Mitchell International Inc., two of the three U.S. providers of "estimatics," a software system used by auto insurers and repair shops to estimate costs of repairs, and total loss valuation systems, used to value passenger vehicles that have been totaled. After a nine-day evidentiary hearing, the court found that the FTC had raised serious and substantial questions that the proposed merger may substantially lessen competition in these two markets. Following the court's decision, the parties notified the FTC of their plan to abandon the merger.

The FTC also issued an administrative complaint to challenge Oldcastle Architectural's proposed acquisition of Pavestone Companies, claiming the acquisition was likely to have anticompetitive effects in markets for drycast concrete hardscape products sold to home center retailers. The FTC successfully blocked the transaction when the companies abandoned their merger plans after the complaint was filed.

In addition to these two matters, during FY 2009, the FTC successfully challenged four proposed mergers that threatened to reduce competition in several markets for the manufacturing of industrial chemicals, chemicals used to make paints, adhesives, and coated paper products, super-absorbent polymers used in personal care and hygiene products, specialty epoxy resins, and high performance pigments.

Agency staff continued to litigate an ongoing matter before the Commission's Administrative Law Judge. The matter was initiated in FY 2008, when the FTC issued an administrative complaint challenging Polypore's consummated acquisition of Microporous Products in the global market for battery separators.

Retail

In FY 2009 the FTC brought to a successful close its challenge to Whole Foods Market, Inc.'s 2007 acquisition of Wild Oats Markets, Inc., through a consent order that will substantially restore competition among premium natural and organic supermarkets in 17 geographic markets impacted by the merger.

The FTC also issued a consent order to settle concerns that Golf Galaxy, a subsidiary of Dick's Sporting Goods Inc., entered into an illegal agreement with Golf Canada to allocate the market for golf merchandise in the United States and Canada.

Competition Advocacy, Reports, Workshops, and Outreach

Providing policymakers with a framework to analyze competition issues is an important component of the FTC's mission to promote competition for the benefit of consumers. Government-imposed impediments can be among the most durable and effective restraints on competition. Therefore, in response to requests, the FTC advises state and federal entities on the potential competitive implications of pending governmental actions that may have a major impact on consumers. In addition to the various advocacy comments described in the health care and energy sections above, during FY 2009, FTC staff released two additional comments. In one case, the comments discussed how new entry into the Denver taxicab market likely would affect the public interest, and in the second case, how a proposed rule concerning the practice of law could unduly restrict the activities of non-lawyers in Hawaii.

The FTC continues to address antitrust issues of national importance by conducting research and issuing reports. In the past year, FTC staff worked on a number of projects relating to health care (described in the Health Care section above), as well as staff working papers on evolving legal standards for single-firm conduct.

The FTC also organizes public hearings, workshops, and conferences to gain a deeper understanding of the complex economic and legal issues surrounding various antitrust issues and to help it develop effective policy research and development tools. During FY 2009, the agency held a series of hearings and workshops to explore the evolving market for intellectual property (IP) aimed at examining changes in IP law, patent-related business models, and new learning about the operation of the IP marketplace. Also, in recognition of the 30th Anniversary of the implementation of the HSR Antitrust Improvements Act in FY 2009, the FTC held a workshop covering such topics as how to determine whether premerger notification is required and how to prepare an HSR filing. Experts on HSR Rules provided answers to common questions and discussed hypothetical transactions to illustrate common filing scenarios. In October of 2008, the FTC held a public workshop to explore the full scope of the prohibition against unfair methods of competition outlined in Section 5 of the FTC Act. The workshop focused on the history of Section 5, FTC enforcement and the reaction of various courts, and the range of possible interpretations of Section 5, as well as examples of business conduct that may be unfair methods of competition under Section 5.

In an increased effort to disseminate the message of why competition matters to a broad audience of consumers and businesses, and to provide practitioners and interested stakeholders with tools and guides that are easy to access and understand, in spring 2009 the Commission issued production guidelines and launched a Web-based enforcement database. The Bureau of Competition Production Guidelines are intended to improve the quality of information and the efficiency with which the agency can perform its analysis, explain what the agency generally requires when parties respond to a formal request, such as a Request for

Additional Information or a Civil Investigative Demand, and suggest formats that should be used and ways to organize data. The online enforcement database is a resource that catalogs the FTC's competition enforcement actions by the type of violation, action (consent order, injunction, or administrative complaint), industrial sector, and date. This online database allows navigators to view short descriptions of each action, with click-through access to related documents, such as press releases and case filings.

International Antitrust

In FY 2009, the FTC continued to build cooperative relationships with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies. Notably, the FTC sought to produce more effective, coordinated reviews of multijurisdictional mergers, and is working with its international counterparts to achieve consistent outcomes in cases of suspected unilateral anticompetitive conduct. We cooperated with counterpart agencies on cases of mutual concern, such as *Pfizer/Wyeth* and *Panasonic/Sanyo*.

Participation in multilateral competition organizations provides valuable opportunities to promote international cooperation and convergence and for competition officials to share insights on law enforcement and policy initiatives. The FTC has further strengthened the roles that it plays in the International Competition Network (ICN), and the competition groups of the OECD, the United Nations Conference on Trade and Development (UNCTAD), and APEC fora. The FTC serves on the ICN's steering group, and FTC officials serve as a vice chair and co-chair of the Unilateral Conduct Working Group, which seeks to increase convergence on approaches to issues of monopolization and dominance, and chairs the subgroup on Merger Notification and Review Procedures. The FTC also works with officials in China and India on implementation of their new competition laws, and participates in the U.S.-China Strategic and Economic Dialogue.

With recent growth in the number of jurisdictions with competition laws, the FTC has expanded its program of technical assistance to help young agencies apply their laws in ways that support free markets. The FTC operates its own technical assistance program, this year funding programs to Colombia, Central America, Brazil, and Turkey, in addition to programs supported by the United States Agency for International Development (USAID). The FTC deepened its assistance program in FY 2009 by placing resident advisors in Latin America, one of whom divided her time between Peru and Colombia and the other of whom worked with four new competition agencies in Central America, South Africa, and Vietnam. In addition, the FTC conducted 47 short-term missions.

The most significant technical assistance opportunities and challenges involve China. The FTC's engagement with China includes joint FTC/DOJ participation in an extensive public/private sector program for the three Chinese antitrust enforcement agencies as well as direct cooperative activities, such as an FTC/DOJ training program for Chinese judges.

As discussed above in connection with the consumer protection mission, the FTC International Fellows and Interns program allows staff from its counterpart agencies to work directly with FTC staff on investigations and cases, subject to appropriate confidentiality protections. During the year, Fellows and Interns from Argentina, Austria, Brazil, the European Commission, Egypt, Israel, Mexico Poland, Singapore, Switzerland, and Turkey worked with FTC staff on competition matters.

Using its U.S. SAFE WEB Act authority, the FTC also is sending technical assistance advisors abroad, and is sending select staff members to work directly for foreign counterpart agencies for three to six months. In the agency's first exchanges, FTC staff members have spent time in the United Kingdom's Office of Fair Trading, the UK Competition Commission, and the EC's Directorate General for Competition.

Planned Activities in FY 2010 and Beyond

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

PROTECT CONSUMERS

Through its consumer protection goal, the FTC focuses broad efforts to fight consumer fraud, deception, and unfair practices, and to protect consumer data and privacy.

Protecting Consumers in the Financial Services Marketplace

Agency law enforcement actions will continue to target deceptive and other illegal practices involving mortgage lending and other financial services, with a focus on the subprime market. These practices can have severe consequences for consumers, including unanticipated high-cost mortgages, ruined credit histories, loss of their homes, and unwarranted fears of arrest and incarceration for failure to pay debts on time. The FTC will work to combat unfair and deceptive practices involving mortgage foreclosure scams, mortgage servicing, subprime lending in the mortgage and credit areas, credit and payment cards, credit repair, debt collection, and debt settlement.

Protecting Consumer Privacy

The FTC will continue to take a leading role in efforts to protect consumers from unfair, deceptive, or other illegal practices related to their privacy. The agency will continue to bring law enforcement actions against companies that have misrepresented their policies about the use of personal information they collect from consumers or failed to take appropriate steps to protect the security of sensitive personal information. In addition to its enforcement efforts, the FTC will address the complex privacy and security issues that may be associated with the use of behavioral advertising and other media through workshops, testimony, reports, and consumer and business education.

Stopping Technology and New Media Abuses

Technology provides countless benefits to consumers, including choice, convenience, and increased access to goods, services, and information. It also enables, however, new vehicles for fraudulent, deceptive, and unfair practices in the marketplace. If consumers are not adequately pro-

tected, not only can they suffer economic injury, but they can lose confidence in these new technologies and e-commerce. For this reason, the FTC will continue to bring cases against those who abuse technology. As new media open new avenues for companies to communicate with consumers, the FTC will focus on the privacy, security, and other risks of consumer harm associated with these technologies, including contactless payment, mobile marketing, peer-to-peer filesharing, and social networking.

Identity theft exacts a heavy financial and emotional toll from its victims, and the FTC will continue to assist the millions of Americans who are victimized each year. The agency will combat identity theft by bringing law enforcement actions against companies that fail to maintain reasonable safeguards to protect consumer information from identity theft; educating local law enforcement officers on how to recognize, investigate, and prepare identity theft cases; and educating consumers on how to avoid and recover from identity theft.

The National Do Not Call (DNC) Registry puts consumers in charge of the telemarketing calls they receive at home. The federal government created the DNC Registry to make it easier and more efficient for consumers to stop unwanted telemarketing calls. Though most entities covered by the DNC Rule comply, the FTC has received millions of complaints alleging DNC violations. The FTC will continue to work to protect consumers who register their numbers from receiving unwanted telemarketing calls, particularly “robo-calls” that deliver prerecorded telemarketing messages when consumers answer their phones, by vigorously enforcing the DNC Rule.

Consumers are being bombarded with unprecedented levels of advertising for products to prevent and treat diseases and improve health, and the range of products being offered has increased dramatically. Consumers can fall prey to fraudulent health marketing when they are desperate for help. The FTC will continue to challenge deceptive marketing of health products, particularly claims about serious diseases or weight loss, and work to close information gaps in this area.

Improving Data Security and Combating Identity Theft

Protecting Consumers From Do Not Call Violations

Stopping Health Fraud

Evaluating “Green” Marketing Claims

New “green” claims, such as claims for carbon reduction, landfill reduction, and sustainable materials and packaging, recently have increased in popularity. These claims can be extremely useful for consumers; however, the complexity of the issues involved creates the potential for confusing, misleading, and fraudulent claims. Given this potential, the FTC will continue to evaluate whether the “FTC Guides for the Use of Environmental Marketing Claims,” commonly known as the Green Guides, remain current and useful. The agency will also develop a consumer and business education campaign and pursue appropriate enforcement action involving deceptive claims in this area.

Serving Hispanic and African-American Populations

The FTC has conducted fraud surveys showing that Hispanic and African-American consumers are more likely to be victims of fraud than other demographic groups. The FTC will aggressively combat consumer fraud against Hispanics through its Hispanic Outreach and Enforcement Initiative, and plans additional outreach to African-American consumers.

Protecting Vulnerable Americans from Fraud

A staple of the FTC’s consumer protection goal is protecting consumers from frauds. Frauds causing severe economic injury, including financial related frauds such as advance fee credit card scams and foreclosure business opportunity scams, continue to adversely affect the public. With an aging population, the economic downturn and related unemployment, and spiraling healthcare costs, the FTC will address traditional and new methods of fraud targeting people in need.

Addressing Issues Related to Marketing to Children

To combat childhood obesity, underage drinking, and other problems, the FTC will continue to engage in research, policy, and law enforcement work pertaining to marketing of food, alcohol, and violent entertainment to children. The FTC will also continue to monitor self-regulation in the food, alcohol, movie, video game, and music recording industries. During the next year, the Commission will prepare a follow-up report to its 2008 report “Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation.” The report will show any changes in industry practices and report on industry adoption and implementation of the FTC’s 2008 recommendations. In addition, in response to a Congressional directive, the FTC is coordinating a working group with

FDA, CDC, and USDA to develop nutrition standards for food marketing to children. Further, in FY 2010, the FTC will launch its advertising literacy initiative aimed at preadolescents and their parents and teachers with a significant marketing effort. The goal of the initiative, which will include an interactive Web site, in-school curricula, and other features, is to help kids become smarter consumers.

Also in FY 2010, the FTC submitted a report to Congress discussing the types of content on virtual reality sites and the steps these sites should take to reduce the risk of youth exposure to explicit content.

Order enforcement is an integral part of the FTC's consumer protection goal. The agency will continue to place a high priority on enforcing orders against repeat offenders, as well as those who act with them. The FTC will continue to monitor and improve the agency's enforcement database and bring more enforcement actions.

The FTC will continue its law enforcement against cross-border fraud and its policy development efforts in the international arena. Using the tools provided by the U.S. SAFE WEB Act, the FTC will continue to create and sustain international partnerships and networks to pursue matters involving foreign defendants, evidence, and assets. For example, the FTC intends to use the authority conferred by the U.S. SAFE WEB Act to work towards concluding formal international agreements, under the State Department's oversight, with Canada and the European Union. As the FTC develops new initiatives relating to cross-border fraud, the agency will report on its activities in this area.

The FTC also will continue to promote international development of market-oriented consumer protection policies that effectively address consumer harm. To that end, the FTC will continue to highlight the importance of enforcement as a key component of privacy protection (including data security, spam, and malware) in the OECD, the APEC, the London Action Plan (LAP), and other multilateral organizations. The FTC also will continue to participate actively in several OECD committees, in the International Consumer Protection Enforcement Network (ICPEN), and in APEC's Electronic Commerce Steering Group. Through cooperation with foreign consumer protection agencies and participation

Ensuring Compliance with FTC Orders

Globalization and Cross-Border Enforcement

in international organizations, the FTC can engage in cooperative foreign law enforcement actions and develop policies that promote effective consumer choice in the international marketplace.

MAINTAIN COMPETITION

The FTC's competition work is critical to protect and strengthen the free and open markets that are the cornerstones of a vibrant economy. Robust competition promotes lower prices, higher quality products and services, and greater innovation, all of which benefit consumers. A vigorous marketplace provides the incentive and opportunity for the development of new ideas and innovative products and services. Open and competitive markets, however, require clear rules fairly applied. The FTC is dedicated to that task, and uses a variety of tools to maintain competition and protect consumers from anticompetitive mergers as well as anticompetitive business conduct such as illegal agreements among competitors, misuse of government processes to hamper rivals, and illegal attempts to monopolize or maintain a monopoly.

Promoting Competition in Health Care and Pharmaceuticals

The rapidly rising cost of health care is a matter of concern for consumers, employers, insurers, and the nation as a whole. Health-related products and services now account for a significant percentage of gross domestic product, and that share continues to grow each year. Preventing anticompetitive pharmaceutical mergers will continue to be an important priority for the FTC and a vital way to protect consumers from rising drug prices. The FTC will also continue to advance its enforcement program to attack collusive "pay-for-delay" settlements in the pharmaceutical industry, which, as described above, delay the introduction of generic drugs and cost billions of dollars to consumers and governments. In addition, the FTC will continue to stop anticompetitive agreements among health care providers and to challenge hospital, medical device manufacturer, or other mergers that are likely to raise the costs of health care.

The FTC held a series of workshops on healthcare issues in the past year and will continue to review these issues and prepare reports as warranted. These issues include the competitive significance of health care quality information,

competition that could be provided by developing an abbreviated regulatory approval pathway for follow-on generic biologic drugs, clinical integration in health care, and innovations and trends in health care delivery.

Identifying anticompetitive mergers remains one of the top priorities of the Maintaining Competition goal. The pre-merger notification requirements of the Hart-Scott-Rodino (HSR) Act provide the FTC with an effective starting point for identifying anticompetitive mergers before they are consummated. Additionally, since 2001, when amendments to the HSR Act increased the threshold for which mergers must be reported under the Act, the FTC has devoted more attention to the identification of unreported, usually consummated, mergers that could harm consumers. Despite a significant decline in HSR filings due to the downturn in the economy, the FTC's merger enforcement program remains very active. Antitrust merger litigation is highly resource-intensive because the issues litigated are increasingly complex and involve sophisticated economic theories. Necessarily, over time the size of litigation teams as well as expenses incurred has grown. Litigating the agency's current filed merger cases and any new actions to their ultimate conclusion will require significant resources in FY 2011 and the years ahead. Moreover, the FTC is constantly refining its analytical approach to mergers in light of current marketplace realities. In that context, the FTC, in conjunction with the DOJ's Antitrust Division, is considering whether to revise the Merger Guidelines.

The growing importance of technology is placing increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments. FTC antitrust investigations more and more often involve high-technology sectors of the economy, such as computer hardware and software. The FTC is particularly vigilant where a firm may be illegally using a dominant market position to stifle competition and strengthen an existing monopoly. Furthermore, issues in antitrust matters increasingly intersect with intellectual property concerns, raising difficult questions about how these two bodies of law can best work together to further their common goal of promoting innovation. As these trends continue, the FTC requires more and more specialized technical knowledge and expertise. In FY 2010 and

Aggressively Challenging Anticompetitive Mergers

Increasing Emphasis on High Technology

**Preventing
Anticompetitive
Activity in Energy
Industries**

beyond, the FTC expects to expend significant and specialized resources to pursue its litigation against Intel for alleged monopolization and anticompetitive conduct. The agency will enhance its ability to investigate and litigate complex matters involving high-tech segments of the economy by increasing both its in-house knowledge and use of independent experts and consultants.

The price of gasoline continues to be a concern for consumers, and is therefore a high priority for the FTC. The FTC continues to focus closely on gasoline markets and will move quickly to address any anticompetitive activity, whether merger or nonmerger activity. Exercising the authority provided by Congress under the Energy Independence and Security Act of 2007, in August 2009 the FTC issued a Final Rule that prohibits market manipulation in the wholesale petroleum industry. The FTC will vigorously enforce the Rule, which prohibits fraud or deceit in wholesale petroleum markets, and omissions of material information that are likely to distort petroleum markets.

Under its Gasoline and Diesel Price Monitoring Project, the FTC continues to track retail gasoline and diesel fuel prices in 360 cities nationwide and wholesale prices in 20 major urban centers to identify unusual changes in gasoline prices; if we detect any such changes, FTC staff will promptly investigate the cause. Finally, the FTC will continue to update and enhance its Oil and Gas Industry Initiatives Web site, which provides consumers with important information on the FTC's oversight of the petroleum industry.

**Increasing
Consumer and
Business Outreach**

The FTC will continue its efforts to educate consumers and businesses on the important role of competition in providing them the most valuable mix of price, choice, and innovation. In addition to having developed specialized Web pages like those for health care, oil and gas, and real estate, the FTC will look for opportunities to improve content on its Web site and create new content in response to frequently asked questions and issues of importance to consumers and business. The FTC also reaches out to businesses subject to antitrust laws. The FTC's Premerger Notification Office responds to thousands of calls each year about premerger filing requirements. The FTC and its staff also provide advisory opinions to businesses on proposed conduct. These

letters provide a detailed antitrust analysis of the particular conduct that the requester may wish to pursue. In FY 2011, the agency will focus on ensuring that our stakeholders are informed and educated on the HSR program.

In November 2009, the FTC, with the Department of Justice, entered into a Memorandum of Understanding with the Russian Federal Antimonopoly Service. The FTC will continue to work with competition agencies worldwide to promote best practices and to minimize procedural and policy divergences. The FTC plays a lead role in pursuing convergence toward best practices through participation in international bodies, such as the ICN and OECD. The FTC is substantially strengthening its international competition outreach efforts in order to build cooperative relationships with our counterpart agencies through its International Fellows and Interns program, which allows foreign antitrust agency staff to spend time at the FTC, an international exchange program, in which the FTC has sent its own staff to work in foreign agencies in the United Kingdom and European Union, and through enhancements to our existing technical assistance program.

Administrative and federal litigation provides an opportunity for the FTC to apply its institutional expertise to the development of antitrust jurisprudence. Currently, the FTC has a number of competition matters in various stages of administrative and federal litigation. The FTC expects this litigation workload to continue at high levels, particularly in the merger area. Antitrust litigation, whether in an administrative proceeding or in federal court, is highly complex and requires significant agency resources. The costs of expert witnesses, travel, and stenographic reporting are increasing, particularly in the hiring of expert witnesses which is key to successfully litigating these matters. The FTC's recent amendments to its administrative litigation rules require that cases proceed at a fast pace. These amendments help the FTC serve consumers more effectively and require the

Promoting Global Competition

Ongoing Administrative and Federal Litigation

agency to devote an intense amount of resources during the faster-paced proceeding. The FTC has established an internal standing committee on the Part 3 rules to continue to examine the rules and make bi-annual recommendations for changes.

Advocating for Competition Before the Courts and Other Government Agencies

The FTC works to eliminate government-imposed impediments to a competitive marketplace by advising other government policy-makers to apply sound competition principles as they make decisions affecting consumer welfare. Among its activities, the FTC will continue to file comments on proposed government action (legislation, regulation, and other rules) affecting competition across many industries, including the provision of legal services, real estate brokerage, the direct shipment of wine to consumers, and contractual relationships between product suppliers and distributors. FTC staff also will continue to examine issues addressed in the FTC's reports on competition policy in the real estate industry and broadband connectivity. In addition to these activities, FTC staff will continue to provide guidance on important competition policy issues, through issuing reports and filing amicus briefs to help courts resolve important competition issues.

Enforcing FTC Orders

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

Needed Resources FY 2011

The FTC's FY 2011 budget request for \$314,000,000 supports 1,207 FTE. This is an increase of \$22,300,000 and 40 FTE over the FTC's FY 2010 enacted level and consists of:

Mandatory Salary and Contract Expenses [\$11,962,000]:

- The annualized three-month cost of the January 2010 pay increase and the nine-month cost of a January 2011 pay raise [\$8,818,000]
- Contract and other non-pay inflation [\$3,144,000]

40 Needed FTE [\$6,164,000]

Includes 23 FTE to Protect Consumers:

- 13 FTE to staff high priority matters in the areas of financial practices, fraud targeting vulnerable Americans, privacy and data security, health fraud advertising, mobile marketing and new media, data analysis, forensic accounting services, outreach, and research.
 - 2 FTE to respond to growing law enforcement challenges in the financial services arena, including unfair, deceptive, or otherwise unlawful mortgage lending and credit offers; unlawful practices in servicing mortgages; foreclosure "rescue" and loan modification scams; bogus debt relief and credit "repair" services; and unlawful debt collection.
 - 2 FTE to protect vulnerable Americans, such as those affected by the economic downturn, from traditional and novel forms of fraud.
 - 2 FTE for data security enforcement and rulemakings related to data security, breach notice and consumer access to information in certain databases, and other opportunities to provide greater clarity regarding data security principles.

- 2 FTE to increase regulatory efficiency in the health fraud area to address weaknesses in the regulatory framework for dietary supplements claiming to prevent and treat diseases and improve health.
- 2 FTE to protect consumers in the mobile marketplace and new media by addressing the privacy, security, and other risks of consumer harms associated with these new technologies.
- 3 FTE for data analysis and forensic accounting to effectively provide litigation support services in the areas of data acquisition, computer forensics, document management, financial document analysis, and training in forensic accounting and analysis.
- 3 FTE for the FTC Regional Offices to respond to growing law enforcement challenges in fraud targeting vulnerable Americans and financial services fraud, and provide outreach to close information gaps in the areas of new media, privacy, and health, including 1 FTE for Spanish-speakers to combat illegal practices targeting Hispanic consumers.
- 2 FTE for economic analysis and support of the Consumer Protection area, including the FACTA study, advertising to children, and consumer financial services.
- 3 FTE in the Office of the Executive Director to support agency-wide financial management, information technology, facilities planning, equal employment opportunities, and records management, all of which are essential to support the program staff at an appropriate level.
- 1 FTE for General Counsel for litigation and legal counsel to cover the rapidly increasing workload on privacy and information security issues.

- 1 FTE for the Office of International Affairs for international consumer protection outreach and to promote international cooperation and provide technical assistance to developing countries.

Includes 17 FTE to Maintain Competition

- 9 FTE to meet the increased workload generated by the growing complexity of merger transactions and an active merger enforcement agenda, with a continued focus on anticompetitive mergers and practices in the pharmaceutical, health care, energy, and technology markets and protecting consumers from anticompetitive price increases.
 - 4 FTE to support increased merger and nonmerger enforcement in energy markets, with an emphasis on petroleum market price manipulation.
 - 4 FTE to specialize in increasingly complex merger and nonmerger enforcement actions in the pharmaceutical and technology sectors.
 - 1 FTE to provide litigation support, including paralegals and technology specialists to assure compliance with new rules governing the storage of electronic documents and e-discovery.
- 3 FTE to conduct economic analysis of anticompetitive practices and mergers, with an emphasis on energy markets.
- 3 FTE in the Office of the Executive Director to support agency-wide financial management, information technology, facilities planning, equal employment opportunities, and records management, all of which are essential to support the program staff at an appropriate level.
- 1 FTE for the Commissioners' Policy Planning Task Force to research and articulate the issues that affect competition policy.

- 1 FTE for the Office of the Secretary for the transcription and management of vital Commission documents.

Space Requirements [\$4,174,000]

The expiration of the agency's lease of the FTC satellite building, 601 New Jersey building, in 2012 means we will require new space. Funds are needed over several years to cover the costs of acquiring and outfitting a new building to replace the 601 New Jersey Avenue building, as well as interim space to house anticipated increased staff.

Appropriations Language Provisions

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

The requested appropriations language for FY 2011 continues the revised spending restriction, reflecting legislation enacted in October 2006, which maintains an appropriately narrow role for the FTC under section 151. This role enables the FTC to continue to enforce the provisions requiring non-federally-insured depository institutions to disclose that they do not have federal insurance and that the federal government does not guarantee the depositor will get back his or her money, and retains the implementation ban with respect to "look-alike" provisions.

Other Provisions: The requested appropriations language continues in effect provisions in prior-year appropriation acts that (1) allow for the purchase of uniforms and hire of motor vehicles; (2) allow services as authorized by 5 U.S.C. 3109; (3) limit to \$300,000 the amount available for contracts

for collection services in accordance with 31 U.S.C. 3718; (4) allow up to \$2,000 for official reception and representation expenses; (5) allow for the collection of offsetting fees; (6) allow for the gross sum appropriated to be reduced as offsetting fees are collected; and (7) allow all funding to be available until expended.

Offsetting Fee Collections

This submission assumes that total offsetting collections from HSR filing fees and Do Not Call fees will provide the FTC \$129,000,000 in FY 2011. The FTC assumes the \$185,000,000 difference between offsetting collections and the \$314,000,000 request will be funded through a direct appropriation.

HSR Premerger Filing Fees. This submission assumes offsetting HSR fee collections will provide the FTC \$110,000,000 in FY 2011. These fees are authorized by section 605 of Public Law 101-162, as amended effective February 1, 2001, in the FY 2001 Commerce-Justice-State Appropriations Act (Section 630, Public Law 106-553).

Do Not Call Fees. This submission assumes offsetting collections of \$19,000,000 from Do Not Call fees. These fees, first collected in FY 2003, will be used to maintain and enforce a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers and to carry out other Telemarketing Sales Rule activities.

Government Performance And Results Act (GPRA)

The FY 2011 budget request is based on the FTC's GPRA Strategic Plan for FYs 2009 to 2014 and supported by the FY 2010 and FY 2011 Performance Plans included in this submission. In FY 2009, the FTC updated and revised its Strategic Plan and sought input from Congress, the Office of Management and Budget, and its stakeholders to ensure that its strategic goals, objectives, and measures continue to provide relevant information that reflects the FTC's performance.

Budget Request Summary (\$ in thousands)

Budget by Goal:	Fiscal Year 2010		Fiscal Year 2011		Change	
	FTE	Dollars	FTE	Dollars	FTE	Dollars
Protect Consumers	634	\$166,585	657	\$178,951	23	\$12,366
Maintain Competition	533	125,115	550	135,049	17	9,934
Total	1,167	\$291,700	1,207	\$314,000	40	\$22,300

Budget by Funding Source:

Offsetting Collections						
HSR Filing Fees		\$102,000		\$110,000		\$8,000
Do Not Call Fees		21,000		19,000		-2,000
Subtotal Offsetting Collections		\$123,000		\$129,000		\$6,000
General Fund		168,700		185,000		16,300
Total		\$291,700		\$314,000		\$22,300

Summary of Changes
(\$ in thousands)

	FY 2010	FY 2011	Change
Budget Authority	\$291,700	\$314,000	\$22,300
Full-time Equivalents	1,167	1,207	40

Explanation of Change:	FTE	Dollars
A. Mandatory Salary and Contract Expenses		
Annualized three-month cost of January 2010 pay increase, and nine-month cost of the January 2011 pay increase.	---	+\$8,818
Contract and other non-pay inflation	---	+\$3,144
Subtotal	---	+\$11,962
 B. FTE Increases		
Protect Consumers	+23	+\$3,544
Maintain Competition	+17	+\$2,620
Subtotal	+40	+\$6,164
 C. Space Requirements		
Costs associated with replacement of the 601 New Jersey Avenue building	---	+\$4,174
Subtotal	---	+\$4,174
Total Change	+ 40	+\$22,300

Budgeted Resources by Objective
(\$ in thousands)

Protect Consumers

Strategic Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace.	FY 2010 FTE	FY 2010 Amount	FY 2011 FTE	FY 2011 Amount
Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury.	94	\$21,950	97	\$23,408
Objective 1.2: Stop fraud, deception, unfairness and other unlawful practices through law enforcement.	443	\$113,271	456	\$121,054
Objective 1.3: Prevent consumer injury through education.	50	\$18,147	52	\$19,439
Objective 1.4: Enhance consumer welfare through research, reports, rulemaking, and advocacy.	40	\$10,317	44	\$11,564
Objective 1.5: Protect American consumers in the global marketplace by providing sound policy recommendations and technical advice to foreign governments and international organizaions to promote sound competition policy.	7	\$2,900	8	\$3,486
Total	634	\$166,585	657	\$178,951

Budgeted Resources by Objective
(\$ in thousands)

Maintain Competition

Strategic Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.	FY 2010 FTE	FY 2010 Amount	FY 2011 FTE	FY 2011 Amount
Objective 2.1: Take actions against anticompetitive mergers and practices that may cause significant consumer injury.	460	\$106,763	473	\$114,905
Objective 2.2: Prevent consumer injury through education.	42	\$9,430	46	\$10,800
Objective 2.3: Enhance consumer welfare through research, reports, and advocacy.	19	\$4,428	19	\$4,627
Objective 2.4: Protect American consumers in the global marketplace by providing sound policy recommendations and technical advice to foreign governments and international organizations to promote sound competition policy.	12	\$4,494	12	\$4,717
Total	533	\$125,115	550	\$135,049

Annual Performance Measures:
Fiscal Years 2010 to 2011

	FY 2010 Target	FY 2011 Target
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.		
Measure 1.1.1: Complaints and inquiries collected and entered into the Consumer Sentinel Network database.	2.5 million complaints and inquiries	2.6 million complaints and inquiries
Measure 1.1.2: The percentage of the FTC's consumer protection law enforcement actions that are the subject of consumer complaints to the FTC.	65% of actions	
Measure 1.1.3: The rate of customer satisfaction with the FTC's Consumer Response Center.	a) For the website, exceed average citizen satisfaction rate as published in the American Customer Satisfaction Index E-Government Satisfaction Index b) For the call center, meet or exceed standards for call centers developed by the Citizen Service Levels Interagency Committee	
Objective 1.2: Stop fraud, deception, unfairness, and other unlawful practices through law enforcement.		
Measure 1.2.1: The percentage of all cases filed by the FTC that were successfully resolved through litigation, a settlement, or issuance of a default judgment.	75-85% of cases	
Measure 1.2.2: The FTC's effectiveness in stopping prohibited business practices in three high priority areas over the next five years.	Statistically significant decrease in the prevalence of the practice	
Measure 1.2.3: The percentage of redress cases in which the FTC distributes redress dollars designated for distribution to consumers within 6 months.	90% of cases	
Measure 1.2.4: Investigations or cases in which the FTC obtains foreign-based evidence or engaged in mutual assistance that contributes to FTC law enforcement actions or in which we cooperate with foreign agencies and/or multilateral organizations.	30 investigations or cases	

Annual Performance Measures:
Fiscal Years 2010 to 2011

	FY 2010 Target	FY 2011 Target
Objective 1.3: Prevent consumer injury through education.		
Measure 1.3.1: Consumer protection messages accessed online or in print.	50 million messages	
Measure 1.3.2: Customer satisfaction rate with an FTC consumer education website or microsite.	Exceed average citizen satisfaction rate as published in the American Customer Satisfaction Index E-Government Satisfaction Index	
Measure 1.3.3: Organizations requesting consumer education publications.	11,000 organizations	11,300 organizations
Objective 1.4: Enhance consumer welfare through research, reports, rulemaking, and advocacy.		
Measure 1.4.1: Workshops and conferences convened or cosponsored that address consumer protection problems.	6 workshops and conferences	
Measure 1.4.2: Advocacy comments and amicus briefs on consumer protection issues filed with entities including federal and state legislatures, agencies, or courts.	6 comments and briefs	
Measure 1.4.3: The percentage of respondents finding the FTC's advocacy comments and amicus briefs useful.	50% of respondents	
Measure 1.4.4: The percentage of proposed Administrative Procedure Act (APA) rulemakings, conducted solely by the FTC, completed in 9 months of receipt of final comments in the Final Notice of Proposed Rulemaking.	75% of rulemakings	
Objective 1.5: Protect American consumers in the global marketplace by providing sound policy and technical input to foreign governments and international organizations to promote sound consumer policy.		
Measure 1.5.1: Policy advice provided to foreign consumer protection and privacy agencies, directly and through international organizations, through substantive consultations, written submissions, or comments.	40 policy inputs	
Measure 1.5.2: Technical assistance to foreign consumer protection and privacy authorities.	8 technical assistance missions or international Fellows hosted	

Annual Performance Measures:
Fiscal Years 2010 to 2011

	FY 2010 Target	FY 2011 Target
Strategic Goal 2: Maintain Competition		
Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.		
Objective 2.1: Take action against anticompetitive mergers and practices that may cause significant consumer injury.		
Measure 2.1.1: Actions to maintain competition, including litigated victories, consent orders, abandoned transaction remedies, restructured transactions remedies, or fix-it-first transactions remedies in a significant percentage of substantial merger and nonmerger investigations.	40-60% of substantial investigations	
Measure 2.1.2: Consumer savings of at least \$500 million through merger actions to maintain competition.	\$500 million	
Measure 2.1.3: Actions against mergers likely to harm competition in markets with at least \$25 billion in sales.	\$25 billion	
Measure 2.1.4: Consumer savings of at least six times the amount of FTC resources allocated to merger program.	600%	
Measure 2.1.5: Consumer savings of at least \$80 million through nonmerger actions taken to maintain competition.	\$80 million	
Measure 2.1.6: Actions against anticompetitive conduct in markets with a total of at least \$8 billion in annual sales.	\$8 billion	
Measure 2.1.7: Consumer savings of at least four times the amount of FTC resources allocated to nonmerger program over a five-year period.	400%	
Measure 2.1.8: The percentage of cases in which the FTC had at least one substantive contact with a foreign antitrust authority in which the agencies followed consistent analytical approaches and reached compatible outcomes.	90%	
Objective 2.2: Prevent consumer injury through education.		
Measure 2.2.1: Competition resources accessed via the FTC's website.	10 million hits	

Annual Performance Measures:
Fiscal Years 2010 to 2011

	FY 2010 Target	FY 2011 Target
Objective 2.3: Enhance consumer through research, reports, and advocacy.		
Measure 2.3.1: Workshops, seminars, conferences, and hearings convened or cosponsored that involve significant competition-related issues.	4 workshops, seminars, conferences, and hearings	
Measure 2.3.2: Reports and studies issues on key competition related topics.	8 reports and studies	
Measure 2.3.3: Advocacy comments amicus briefs on competition issues filed with entities including federal and state legislatures, agencies or courts.	6 comments and briefs	
Measure 2.3.4: The percentage of respondents finding the FTC's advocacy comments and amicus briefs useful.	50% of respondents	
Measure 2.3.5: The volume of traffic on www.ftc.gov relating to competition research, reports, and advocacy.	1.7 million hits	
Objective 2.4: Protect American consumers in the global marketplace by providing sound policy recommendations and technical advice to foreign governments and international organizations to promote sound competition policy.		
Measure 2.4.1: Policy advice provided to foreign competition agencies, directly and through international organizations, through substantive consultations, written submissions, or comments.	40 policy inputs	
Measure 2.4.2: Technical assistance provided to foreign competition authorities.	10 technical assistance missions or international Fellows hosted	

Annual Performance Measures:
Fiscal Years 2010 to 2011

	FY 2010 Target	FY 2011 Target
Strategic Goal 3: Advance Performance		
Advance the FTC's performance through organizational, individual, and management excellence.		
Objective 3.1: Provide effective human resources management.		
Measure 3.1.1: The extent employees believe their organizational culture promotes improvements in processes, products and services, and organizational outcomes.	Exceed the government-wide results on the Federal Human Capital Survey's Results-Oriented Performance Culture Index	
Measure 3.1.2: The extent employees think the organization has the talent necessary to achieve organizational goals.	Exceed the government-wide results on the Federal Human Capital Survey's Talent Management Index	
Objective 3.2: Provide effective infrastructure and security management.		
Measure 3.2.1: A favorable Continuity of Operations (COOP) rating.	75%	
Measure 3.2.2: Availability of information technology systems.	98.0% system availability	98.5% system availability
Objective 3.3: Provide effective information resource management.		
Measure 3.3.1: The percentage of public Commission documents in ongoing and newly initiated public FTC proceedings available via the Internet within 15 days of becoming part of the public record.	75%	
Objective 3.4: Provide effective financial and acquisition management.		
Measure 3.4.1: Independent auditor's financial statement audit results.	Unqualified opinion on the financial statements	
Measure 3.4.2: The percentage of Bureau/Offices that establish and maintain an effective, risk-based internal control environment.	100%	
Measure 3.4.3: Performance against the Small Business Administration's government-wide small business procurement goals.	23%	

Proposed Appropriations Language

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed \$2,000 for official reception and representation expenses, [\$291,700,000] \$314,000,000, to remain available until expended: *Provided*, That not to exceed \$300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further*, That, notwithstanding any other provision of law, not to exceed [\$102,000,000] \$110,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That, notwithstanding any other provision of law, not to exceed [\$21,000,000] \$19,000,000 in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telemarketing and 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 [2010] 2011, so as to result in a final fiscal year [2010] 2011 appropriation from the general fund estimated at not more than [\$168,700,000] \$185,000,000: *Provided further*, That none of the funds made available to the Federal Trade Commission may be used to implement subsection (e)(2)(B) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).