

# FEDERAL TRADE COMMISSION



**FISCAL YEAR 2012  
CONGRESSIONAL BUDGET  
JUSTIFICATION SUMMARY**



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# Federal Trade Commission Fiscal Year 2012 Overview Statement

The Federal Trade Commission (FTC) is the only federal agency with jurisdiction to protect consumers and maintain 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 both in the United States and around the world.

## Highlights of FY 2010 Accomplishments

In fiscal year (FY) 2010, 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

This fiscal year, the FTC has emphasized protecting consumers in the financial services marketplace, halting scams targeting consumers affected by the economic downturn, protecting consumer privacy, data and computer security, and prosecuting false or deceptive health and environmental claims.

In FY 2010, the FTC filed 57 new complaints in federal district court and obtained 102 court orders requiring defendants to pay nearly \$560 million in consumer redress or disgorgement of ill-gotten gains, as well as a civil contempt order of \$11.4 million. In addition, cases referred to DOJ

resulted in 11 court judgments for civil penalties of almost \$21 million. Furthermore, the FTC filed 9 new administrative actions and obtained 16 administrative orders.

Further, the Commission completed 3 rulemakings, issued 13 reports, released 87 new consumer and business education publications, released 13 consumer and business education videos, and launched 6 consumer and business education websites and microsites.

## **Financial Services and Scams Targeting Consumers Affected by the Economic Downturn**

As more consumers face financial challenges, fraud operators have seized upon new schemes to take advantage of those most affected by the economic downturn. This fiscal year the Commission has worked aggressively to protect consumers in this troubled economy, partnering with other federal and state authorities to maximize its efforts to halt such fraudulent practices. The FTC has conducted rulemakings and brought more than 25 actions, including the following examples:

The FTC moved in September 2010 to further strengthen its longstanding enforcement program aimed at preventing deceptive mortgage advertising, proposing a rule that would ban misrepresentations for all mortgages and would allow the FTC and the states to seek civil penalties against those who violate the rule.

Two Countrywide mortgage servicing companies in May 2010 agreed to pay \$108 million to settle FTC charges that they collected excessive fees from cash-strapped borrowers who were struggling to keep their homes, as well as mismanaged the loans of consumers in bankruptcy. The \$108 million represents one of the largest judgments imposed in a case brought by the FTC.

In November 2009, the FTC announced “Operation Stolen Hope,” a federal-state coordinated law enforcement sweep against bogus mortgage relief operations led by the FTC, involving 118 actions by 26 federal and state agencies.

### **Mortgage Advertising**

### **Mortgage Servicing**

### **Foreclosure “Rescue” and Loan Modification**

Between March and July 2010, the FTC obtained 4 settlement orders against 30 marketers of mortgage foreclosure “rescue” services who claimed they could obtain mortgage modifications that would make consumers’ monthly mortgage payments substantially more affordable. The orders require the defendants to collectively turn over approximately \$24 million in cash, plus jewelry and cars in one case. Most of these operators are now barred from selling mortgage modifications or foreclosure relief services.

In September 2010, as part of another series of law enforcement actions against mortgage relief operations charged with deceiving distressed homeowners, a federal court halted the operations of U.S. Homeowners Relief and froze the defendants’ assets at the FTC’s request.

The FTC also conducted a rulemaking that addresses the practices of foreclosure rescue and loan modification services. In November 2010, the Commission issued a final rule, including a ban on advance fees, as well as new disclosure requirements.

In October 2009, the FTC produced a video, “Real People, Real Stories,” in English and Spanish, featuring the stories of people who saved their homes from foreclosure. The FTC mailed copies of the video to nearly 5,000 community groups and consumer protection organizations.

## Credit “Repair” Services

Many credit repair companies falsely claim they can improve consumers’ credit scores by removing negative information from their credit reports, even if it is current and accurate. In stipulated orders against Advantage Credit Repair LLC, (in January 2010) and Credit Restoration Brokers, LLC (in March 2010), the defendants were prohibited from making false claims when marketing credit repair services and from charging fees before services are performed. In February 2010, in *United Credit Adjusters*, a federal court, at the FTC’s request, banned eight companies and their principals from selling credit repair and mortgage relief services, and ordered them to pay more than \$7.5 million. In September 2010, in *Clean Credit Report Services, Inc.*, another operation agreed to stop making false claims and stop charging up-front fees under a settlement with the Commission.

In February 2010, the FTC announced “Operation Bottom Dollar,” a multi-agency effort to target con artists that prey on unemployed Americans through bogus job-placement, work-at-home, and other money-making schemes. The sweep resulted in 7 FTC cases, 43 criminal actions by the Department of Justice (DOJ), an action by the Postal Inspection Service, and 18 actions by state attorneys general.

## **Work-at-Home and Get-Rich-Quick Schemes**

In August 2010, the FTC and state attorneys general announced a crackdown on bogus “medical discount” plans peddled to the uninsured, uninsurable, and unemployed. In “Operation Healthcare Hustle,” the Commission and law enforcers in 24 states filed a total of 54 lawsuits and regulatory actions to stop the deceptive practices.

## **“Medical Discount Plans”**

At the request of the FTC, a federal judge in September 2010 halted American Tax Relief LLC, a national operation that allegedly bilked consumers out of more than \$60 million by falsely claiming it can reduce people’s tax debts.

## **Tax Relief**

Credit Bureau Collection Services (CBCS) and two of its officers agreed in March 2010 to settle Commission charges of unlawful debt collection practices. According to the FTC’s complaint, even after receiving information that a debt was paid off or did not belong to the consumer, the company continued to assert that the consumer owed the debt, without a reasonable basis and without trying to confirm or dispute the consumer’s information. CBCS paid a civil penalty of \$1,095,000.

## **Debt Collection**

The FTC in July 2010 issued a report, “Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration,” recommending significant litigation and arbitration reforms to improve efficiency and fairness to consumers.

The Commission entered a modified order in January 2010 against Gateway Funding Diversified Mortgage Services, L.P. and Gateway Funding, Inc., a lender that previously settled FTC allegations that it had violated the Equal Credit Opportunity Act by charging African-American and Hispanic consumers discriminatory higher prices for mortgage loans. Gateway allegedly failed to create the fair lending monitoring program required by the earlier settlement; the modified order requires it to hire an outside consultant

## **Fair Lending**

to help ensure compliance. Mortgage lender Golden Empire Mortgage, Inc. and its owner agreed in September 2010 to pay \$1.5 million to settle FTC charges that they illegally discriminated against Hispanic borrowers.

### Payday Lending

In October 2009, an international Internet payday lending operation, comprised of Cash Today, Ltd. and other entities, settled FTC and state of Nevada charges that it failed to provide U.S. consumers with key loan terms in writing before consummating their loans. The settlement order requires the defendants to pay \$970,125 to the FTC and \$29,875 to Nevada, and it bars future violations. In August 2010, Mark S. Lofgren, one of the owners of a payday loan and debt collection operation, agreed to settle Commission charges for his role in a scheme that illegally tried to garnish borrowers' wages and used other illegal debt-collection practices. In September 2010, Jason Strober, the technology officer of a marketing company for payday lenders, agreed to pay \$850,000 to settle FTC charges for his role in an allegedly deceptive and unfair scheme that debited the bank accounts of hundreds of thousands of cash-strapped consumers.

### Debt Relief and Interest-Rate Reduction

This fiscal year, the FTC brought seven enforcement actions against debt relief services that falsely promised they could lower consumers' credit card interest rates or settle their debt for a fraction of the full amount owed. For example, the FTC charged three telemarketers in December 2009 with violating the Do Not Call Rule and other laws by using robocalls to sell allegedly worthless credit card interest-rate reduction programs for hefty up-front fees of as much as \$1,495. The court issued an order temporarily halting the robocalls pending trial. At the FTC's request, a federal judge in May 2010 put a stop to three companies' allegedly deceptive telemarketing calls, including robocalls, that promised to reduce consumers' credit card interest rates; froze their assets; and appointed a receiver to take control of the businesses.

In July 2010, the FTC issued a final rule to protect consumers in credit card debt. The amendments to the FTC's Telemarketing Sales Rule prohibit companies that sell debt relief services over the telephone from collecting advance fees before they settle or reduce a customer's credit card or other unsecured debt. The new Rule also requires telemarketers of for-profit debt relief services (including credit

counseling, debt settlement, and debt negotiation services) to make specific disclosures to consumers, and prohibits misrepresentations.

In December 2010, in *Low Pay, Inc.*, the FTC stopped an operation that allegedly deceived consumers into paying for bogus credit cards and charged them illegal fees. The marketers behind the operation agreed to a settlement that will provide an estimated \$700,000 to \$750,000 for consumer redress.

In February 2010, the FTC completed amendments to the Free Credit Report Rule to prevent deceptive marketing of “free credit reports,” pursuant to the Credit CARD Act of 2009. The amended rule requires prominent disclosures for “free credit report” advertising in order to prevent consumers from confusing these so-called “free” offers with the federally mandated free annual credit reports. In July 2010, the FTC sent letters to 18 websites offering free credit reports warning that they must clearly disclose that a free report is available under federal law.

Direct Marketing Associates, Corp. agreed in March 2010 to settle FTC charges of deceptive marketing to consumers and obtaining consumer report information from a credit reporting agency without a permissible purpose. The defendant will pay a civil penalty of \$157,000.

## “Credit Card” Marketing

## “Free” Credit Reports

## Credit Reporting

## Privacy and Data Security

Consumer privacy and data security have become a central focus of the Commission’s consumer protection program, as advances in computer and Internet technology allow detailed information about people to be compiled and shared easily and inexpensively.

In December 2009, January 2010, and March 2010, the FTC convened public roundtables to explore how best to protect consumers’ privacy without curtailing technological innovation and beneficial uses of information. Participants discussed social networking, cloud computing, online behavioral advertising, mobile marketing, and the collection and use of information by data brokers and other businesses.

## Privacy

Six companies agreed in January 2010 to settle FTC charges that they deceived consumers by falsely claiming they held current certifications to the EU/U.S. Safe Harbor framework and complied with a defined set of privacy principles.

In April 2010, the FTC, joined by seven other federal regulatory agencies, released a model privacy notice form that financial institutions can opt to use for their privacy notices to consumers required by the Gramm-Leach-Bliley (GLB) Act. The Center for Plain Language, which gives awards for the best and worst uses of language in the government, business, and nonprofit sectors, awarded the FTC, as coordinator of the interagency group, the “Best Original Public Document” award for the form.

US Search, an online data broker that charged consumers based on the promise that it could “lock their records” so others could not see or buy them, agreed in September 2010 to settle FTC charges that its claims were deceptive. The settlement requires that the operation refund the fees it charged to nearly 5,000 consumers and bars misrepresentations about the effectiveness of any service that purports to remove information about consumers from the broker’s website.

## Social Networking

In June 2010, social networking service Twitter agreed to settle FTC charges that it deceived consumers and put their privacy at risk by failing to safeguard their personal information, marking the agency’s first such case against a social networking service.

## Data Security

In October 2009, the FTC obtained a stipulated modified order against Choicepoint, Inc. after charging that the company failed to implement a comprehensive information security program to protect consumers’ sensitive information, as required by a 2006 federal court order. In February 2010, the Commission sent warning letters to nearly 100 public and private entities notifying them that personal information, including sensitive data about customers and/or employees, had been shared from the organizations’ computer networks and is available on peer-to-peer (P2P) file-sharing networks. Dave & Busters, Inc. agreed in March 2010 to settle Commission charges that it failed to employ reasonable and appropriate security measures to protect customer credit card and debit card information.

## Identity Theft

Working with 35 state attorneys general, the FTC entered into a settlement in March 2010 with LifeLock, Inc. resolving claims that the company deceptively advertised its identity theft prevention service. The settlement requires LifeLock to pay \$11 million in consumer redress and \$1 million to the state attorneys general. Also, in March 2010, at the FTC's request, a federal court halted an elaborate international scheme that used identity theft to place more than \$10 million in bogus charges on consumers' credit and debit cards, pending a trial.

## Computer Security

In February 2010, a court entered default judgments in the amount of \$163,167,539 against three of the defendants in an international syndicate responsible for the marketing and sale of thousands of "scareware" computer security products, including WinFixer, WinAntivirus, and XP Antivirus. The FTC complaint alleged that the defendants disseminated more than one billion deceptive online advertisements featuring bogus computer scans that falsely claimed to detect spyware and viruses on consumers' computers.

In April 2010, a district court judge, at the FTC's request, permanently shut down 3FN, a rogue Internet Service Provider that recruited, knowingly hosted, and actively participated in the distribution of spam, child pornography, and other harmful electronic content. The operation has been ordered to turn over \$1.08 million in ill-gotten gains. Also in April 2010, the FTC put the brakes on the business practices of Cyberspy Software, LLC, an operation that was selling a remote keylogger program and showing customers how to remotely install it on other people's computers without their knowledge or consent.

## Telephone Services and Scams

On the FTC's behalf, the DOJ, together with the Attorneys General of California, Illinois, Ohio, and North Carolina, filed suit in March 2010 in federal district court charging that satellite television provider Dish Network, directly and through its authorized dealers, called numerous consumers whose numbers are on the National Do Not Call Registry.

## Do Not Call

## Robocalls

This year, the FTC brought two actions against deceptive robocall operations, including one that allegedly blasted millions of pre-recorded telemarketing messages to fraudulently pitch “extended auto warranties” to U.S. consumers. One such telemarketer, Damian Kohlfeld and his two firms, agreed to pay more than \$2.3 million and was barred from telemarketing under an August 2010 settlement with the Commission.

Women’s clothing retailer Talbots and its marketing company, SmartReply, Inc., agreed in April 2010 to pay penalties totaling \$161,000 to settle FTC charges that they illegally delivered prerecorded robocalls that failed to give consumers proper notice of their right to opt out of receiving telemarketing calls.

## “Cramming”

A U.S. district court in September 2010 permanently shut down Inc21.com Corporation and its affiliated companies, which were charged with “cramming” unauthorized charges onto the telephone bills of thousands of consumers and small businesses for services they never agreed to buy. The defendants were ordered to refund almost \$38 million in unauthorized charges placed on consumers’ phone bills.

## Health Claims

Protecting consumers from false or deceptive health claims remains a high priority for the Commission, as consumers are victimized by false or unsupported claims that dietary supplements and other products can prevent, treat, or cure various ailments, including serious diseases.

## Weight Loss Supplements

In December 2009, in an action initiated by the FTC, a federal district court judge ordered Bronson Partners, LLC and its owner Martin Howard to pay more than \$1.9 million in refunds to consumers who bought defendants’ Chinese Diet Tea and Bio-Slim Patch based on deceptive claims that these products could cause significant weight loss without diet or exercise. The FTC announced in July 2010 that Iovate Health Sciences U.S.A. and two affiliated Canadian companies will pay \$5.5 million to settle charges that they falsely advertised that their supplements could help consumers lose weight and treat or prevent colds and other illnesses. In August 2010, at the request of the FTC, a federal district court judge

ordered Central Coast Nutraceuticals and others who marketed acai berry supplements, “colon cleansers,” and other products on the Internet, to stop a sales scheme that allegedly scammed consumers out of \$30 million or more in 2009 alone through deceptive advertising and unfair billing practices.

In December 2009, the Commission upheld an Administrative Law Judge’s ruling that Daniel Chapter One and its principal James Feijo made unsubstantiated claims that four dietary supplements could prevent, treat, or cure cancer. The Commission entered an order that prohibits Daniel Chapter One and Feijo from making false or unsubstantiated health claims and requires them to send a letter notifying purchasers of their products of the FTC’s action. Respondents have filed an appeal. In December 2010, an appeals court affirmed the Commission’s order. In September 2010, the Commission issued an administrative complaint charging the makers of POM Wonderful 100% Pomegranate Juice and POMx supplements with making false and unsubstantiated claims that their products will prevent or treat heart disease, prostate cancer, and erectile dysfunction.

After settling charges in 2008 that Airborne Health, Inc. disseminated false and unsubstantiated claims that Airborne effervescent tablets prevent and treat colds and flu, the FTC turned its attention to Airborne “copycat” products – settling similar charges against CVS Pharmacy, Inc., Rite Aid Corp., and, in March 2010, Walgreen Co., each of which marketed its own store-brand cold and flu product by promoting the product’s similarity to Airborne at a lower cost. Walgreen Co. agreed to a permanent injunction, as well as payment of nearly \$6 million for consumer redress.

In November 2009, the FTC sent warning letters to 20 website operators who made questionable claims that their products – including dietary supplements, homeopathic remedies, air filtration devices, and cleaning agents – can prevent, treat, or cure the H1N1 virus. These warnings resulted from an Internet sweep conducted by members of the International Consumer Protection Enforcement Network.

## **Disease Remedies:**

## **Cold and Flu Products**

## **H1N1 Flu Virus Products**

## Alcohol Energy Drinks

In October 2009, the Commission settled charges that Constellation Brands, Inc., a major alcohol marketer, deceptively advertised that its caffeinated alcohol drink, Wide Eye Schnapps, would keep consumers alert. The administrative consent order bars Constellation from making untruthful claims that any alcohol beverage containing caffeine or any other stimulant will keep consumers awake, or that any ingredient in an alcohol product will counteract the effects of consuming alcohol.

## Indoor Tanning

Based on studies showing that indoor tanning is associated with an increased risk of melanoma and non-melanoma skin cancers, the FTC charged the Indoor Tanning Association (ITA) with making false health and safety claims for indoor tanning. The consent order entered against ITA in May 2010 bars these claims and requires that future ads about the safety or health benefits of indoor tanning disclose, clearly and conspicuously, that exposure to ultraviolet radiation may increase the likelihood of skin cancer.

## Children's Health Claims

Leading cereal maker Kellogg Company agreed in May 2010 to new advertising restrictions to resolve an FTC investigation into questionable immunity-related claims for Rice Krispies cereal. A subsidiary of Nestlé S.A., the world's largest food and nutrition company, agreed in July 2010 to drop allegedly deceptive advertising claims about the health benefits of its children's drink BOOST Kid Essentials, as part of a settlement resolving the FTC's first case challenging advertising for probiotics.

## Endorsements and Testimonials

The FTC adopted updated "Guides Concerning the Use of Endorsements and Testimonials in Advertising" effective December 1, 2009. The revised Guides advise that when ads using consumer testimonials convey that the endorser's experience is representative of what consumers generally will achieve, the advertiser should clearly and conspicuously disclose the results consumers actually can expect to achieve, rather than simply inserting a disclaimer of typicality, such as "results not typical."

In August 2010, Reverb Communications, a public relations agency hired by video game developers, agreed to settle FTC charges that it engaged in deceptive advertising by having employees pose as ordinary consumers and post game

reviews at the online iTunes store, without disclosing that the reviews came from paid employees working on behalf of the developers.

## **“Green” Marketing**

Consumers are increasingly making purchasing decisions based on the environmental impact of products. As a result, marketers are making “green” claims about their products. The FTC continues to bring enforcement actions to weed out deceptive “green” claims.

In December 2009, Dyna-E International agreed to an order that bars deceptive “biodegradable” product claims and requires competent and reliable scientific evidence to support environmental product claims. The FTC complaint charged the company with making false claims that Lightload brand compressed dry towels are biodegradable.

The FTC settled charges that four sellers of clothing and other textiles violated both the FTC Act and the Textile Fiber Products Identification Act by deceptively labeling and advertising their products as made of bamboo fiber, when they are in fact rayon. The Commission further alleged that some of the companies made false and unsubstantiated claims that their products are manufactured using an environmentally friendly process, that they retain the natural antimicrobial properties of the bamboo plant, and that they are biodegradable. In February 2010, the Commission sent warning letters to 78 retailers, including Wal-Mart, Target, and Kmart, that appeared to market rayon products as being made of bamboo fiber.

In the latest action the FTC has taken to ensure consumers get accurate information to help them save energy and lower their utility bills, Working Chemical Solutions, the manufacturer of a home insulation chemical additive, and the firm’s president agreed in June 2010 to stop exaggerating the capabilities of their product as part of a settlement with the FTC.

In June 2010, the FTC announced a final rule that will require new labels on light bulb packages. For the first time, the label will emphasize bulbs’ brightness in lumens, rather

## **Biodegradability Claims**

## **“Bamboo”**

## **Insulation Claims**

## **Light Bulb Packaging**

than energy consumption measured in watts. The new front-of-package labels also will include the estimated yearly energy cost for the particular type of bulb. The new labels will enable consumers to save money by selecting the most efficient bulbs that best fit their lighting needs.

## Children's Issues

### Children's Online Privacy and Security

In November 2009, Iconix Brand Group, Inc. agreed to pay a \$250,000 civil penalty to settle FTC charges that it collected and stored personal information from approximately 1,000 children without first notifying their parents or obtaining parental consent.

The FTC also hosted a public roundtable, "Protecting Kids' Privacy Online: Reviewing the COPPA Rule," in June 2010 to explore whether to update the Children's Online Privacy Protection Act (COPPA) Rule.

In October 2009, the FTC released "Net Cetera," a new guide to help parents talk to their children about Internet safety. The guide is designed to help parents address three areas related to their children's online activities: inappropriate conduct, inappropriate contact, and inappropriate content. Since its publication, through the third quarter of FY 2010, the Commission has distributed nearly 4 million copies to consumers, school districts and other organizations.

### Food Marketing and Childhood Obesity

The FTC held a public forum, "Sizing Up Food Marketing and Childhood Obesity," in December 2009. Panels presented new research on the impact of food advertising on children's food choices; discussed the legal ramifications of possible restrictions on food advertising to children; and assessed food industry self-regulatory efforts to impose nutritional standards on their advertising to children.

### Advertising Literacy

With American youth exposed to more advertising than ever before, the FTC kicked off a new advertising literacy campaign in April 2010 to help older children understand the ads they see and become smarter consumers. The campaign is targeted to "tweens" aged 8 to 12, and includes a

game-based website at Admongo.gov, a curriculum tied to national standards of learning in language arts and social studies that teachers can use to “ad-ucate” students.

Also in December 2009, the Commission issued its sixth follow-up report to Congress on the marketing of violent entertainment to children, including the results of undercover shopping excursions by underage shoppers. The report makes recommendations for increased enforcement of age restrictions, tighter restrictions for online and viral marketing of these products, limitations on the marketing of PG-13 movies to young children, and improved display of rating information in advertising and on packaging.

## **Violent Entertainment Marketing**

### **Ticket Sales**

The Commission in February 2010 settled charges that Ticketmaster L.L.C. and its ticket reseller affiliate, TicketsNow.com, Inc., used deceptive bait-and-switch tactics to sell popular event tickets to consumers. Ticketmaster agreed to pay refunds to consumers who bought tickets for 14 Bruce Springsteen concerts in 2009 through its ticket resale website TicketsNow.

### **Payment Systems**

In October 2009, MoneyGram International, Inc., the second-largest money transfer service in the United States, agreed to pay \$18 million to settle FTC charges that it helped fraudulent telemarketers and other con artists trick U.S. consumers into wiring money for fake lotteries, secret shopper scams, or bogus guaranteed loans. The settlement resulted in 34,000 redress checks sent to consumers. Under the settlement, MoneyGram also is required to implement a comprehensive anti-fraud and agent-monitoring program.

## Prepaid Phone Cards

The FTC reached a settlement in May 2010 that requires Diamond Phone Card, Inc. and its principals to pay \$500,000. It also bars them from misleading consumers about the talk time that their calling cards provide, and requires them to clearly disclose all fees associated with their cards.

## FTC Order Enforcement

The FTC continues to place a priority on aggressively enforcing its orders against repeat offenders. In November 2009, the FTC brought a contempt action against BlueHippo and its owner, charging that they violated a 2008 federal court order by falsely informing credit challenged consumers that BlueHippo is in the business of financing computers, and by failing to disclose material terms of the company's refund policy. Also in November 2009, the FTC brought a contempt action involving violations of a 2009 federal court order through their operation of Neovi, Inc. and Qchex.com, an Internet check creation and delivery service. The defendants allegedly issued e-checks without taking steps required by the order to verify the identity of users and their authority to draw funds on designated financial accounts.

In March 2010, Civic Development Group and its principals, operators of a telemarketing scheme, agreed to pay a record \$18.8 million civil penalty and leave the charitable donation business to settle charges that they violated an FTC order by misleading consumers to believe that they were donating directly to legitimate charities serving police, firefighters, and veterans, when in fact only a small slice of the donations actually went to these charities.

## **Aid to Criminal Law Enforcement**

The FTC continues to refer particularly egregious violators to criminal law enforcement agencies for prosecution. In fiscal year 2010, federal and state criminal authorities charged 65 FTC defendants and their associates with crimes arising from acts investigated or prosecuted by the Commission. During this period, 42 such defendants and their associates were convicted or pled guilty, and 32 defendants were sentenced, with sentences ranging from probation to 21 years.

## **International Consumer Protection**

In FY 2010, the FTC's Office of International Affairs (OIA) supported the FTC's consumer protection mission by assisting FTC investigators and litigators with investigations, litigation matters, and enforcement-related projects. OIA also continued to develop strong bilateral relationships with foreign consumer, privacy, and law enforcement authorities around the globe, and represented the agency in international organizations on a range of complex global consumer policy and enforcement issues, including spam, spyware, Internet and telemarketing fraud, identity theft, data security, and privacy.

In FY 2010, the FTC continued to use its authority under the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders (U.S. SAFE WEB) Act of 2006 to share information with foreign agencies investigating cross-border consumer scams, many of them targeting Americans. As the agency indicated in a December 2009 report to Congress, in the first three years under the Act, the FTC shared information in response to 38 requests from 14 foreign law enforcement agencies, resulting in over 17 enforcement actions by U.S. and foreign authorities, and issued 23 civil investigative demands on behalf of 6 foreign agencies in 11 investigations. The FTC also helped launch two international privacy enforcement networks, and hosted more than 40 foreign agencies in a meeting of the International Consumer Protection and Enforcement Network.

The FTC played a lead role in international organizations such as the Organization for Economic Cooperation and Development (OECD) and the Asia Pacific Economic Cooperation (APEC) forum. Of particular note, in December 2009 the FTC hosted an international OECD conference on consumer e-commerce issues at its headquarters in Washington, DC. In July 2010 the FTC hosted the launch of an OECD “consumer policy toolkit” addressing economic analysis for policymakers. By the end of the fiscal year, the FTC also will have conducted 24 technical assistance missions, of which ten were funded by the FTC and the remainder by the U.S. Agency for International Development, for consumer protection agencies around the world, including regional seminars in Central America, the Caribbean, Africa, and southeast Asia.

The FTC also continued to develop its 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 2010, fellows from Canada, Colombia, the United Kingdom, and Peru worked with FTC staff on a variety of consumer protection or privacy matters.

## Law Enforcement Tools

### Consumer Response Center

In fiscal year 2010, the CRC handled nearly 40,000 inquiries and complaints from consumers and businesses each week.

### Consumer Sentinel Network

In fiscal year 2010, the FTC added nearly 3.1 million fraud, identity theft, financial, and DNC complaints and inquiries to the Consumer Sentinel Network’s (CSN’s) database. CSN is currently accessible to more than 1,900 law enforcement partner agencies worldwide. In May 2010, the FTC significantly enhanced CSN by adding its spam database. FTC staff and law enforcement partners now have the ability to search 300 million spam records collected by the FTC via [spam@uce.gov](mailto:spam@uce.gov).

The Registry has continued to protect consumers from receiving unwanted commercial telemarketing calls. In FY 2010, telephone numbers on the Registry exceeded 200 million.

## National Do Not Call Registry

The FTC and its partners have continued to provide state and local law enforcement officers with practical tools to assist victims of identity theft, investigate the crime, and work with local prosecutors. To date, the FTC and its partners have conducted 41 seminars, training more than 5,400 law enforcement officers from more than 1,770 agencies.

## Identity Theft Tools

### MAINTAIN COMPETITION

The FTC actively enforces the antitrust laws in a range of industries of critical importance to American consumers, including health care, energy, consumer goods and services, technology, and manufacturing. FY 2010 was yet another very active year in the agency's mission to maintain competition, with the agency pursuing 24 new competition law enforcement actions and undertaking several important workshops, reports, and advocacy opportunities to promote competition and educate its stakeholders about the importance of competition to consumers. The FTC also continued to vigorously monitor and enforce compliance with consent orders as well as with reporting obligations under the Hart-Scott-Rodino (HSR) Act.

The FTC pursued 17 merger enforcement challenges, resulting in 14 consent agreements, two transactions abandoned or restructured after second requests were issued, and one Part 3 administrative complaint. 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 2010 merger actions spanned several markets, including pharmaceuticals, specialized medical instruments, consumer goods and services, chemicals, computer technology, information technology services, and energy. In addition to these new enforcement actions, the FTC continued to pursue litigation begun in previous fiscal years (*Polypore International/Daramic LLC*, *Carilion Clinic/Center for Advanced Imaging*, and *Ovation Pharmaceuticals, Inc.*).

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.

As part of its efforts against anticompetitive practices, the FTC brought seven major nonmerger enforcement actions in FY 2010. These cases, which included two filed complaints and five consent orders, covered a broad range of industries. The FTC challenged agreements and attempted agreements among competitors to fix prices or otherwise limit competition in health care services, consumer goods, the truck rental industry, and the market for computer microchips. Notably, the FTC obtained a proposed settlement with Intel Corp. that resolved charges the company illegally stifled competition in the market for computer chips. The settlement will restore competition that was lost as a result of Intel's alleged anticompetitive actions. The FTC also continued to litigate two cases involving the pharmaceutical industry.

## 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 by generic drug producers. One of the specific areas where the FTC has engaged in vigorous enforcement relates to collusive "pay-for-delay" settlements in the pharmaceutical industry, in which 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, including the government, which pays almost one-third of the nation's prescription drug costs. Indeed, an FTC study released in FY 2010 estimates these deals cost consumers \$3.5 billion per year.

During FY 2010, the FTC continued its challenge in federal court of a "pay-for-delay" agreement between Solvay Pharmaceuticals, Inc., maker of AndroGel, and two generic drug manufacturers to abandon their patent challenges and delay for nine years the marketing of a generic formulation

of a testosterone replacement drug. The FTC also continued to press its federal court case against Cephalon, Inc. to block its “exclusion payment” agreement with four generic rivals.

The FTC continued to pursue its federal court action 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. Following the decision by the federal district court denying the agency’s request for an injunction, the Commission filed an appeal with the 8<sup>th</sup> Circuit seeking that the case be remanded to the district court.

During FY 2010, the FTC reviewed numerous proposed and consummated acquisitions in the pharmaceutical and medical device industries and took action to preserve competition that otherwise would have been lost due to several proposed mergers in the pharmaceutical industry.

In FY 2010, the FTC successfully challenged acquisitions relating to commonly used generic medications, including drugs used in the treatment of Parkinson’s disease and the side effects of chemotherapy. In another matter, the FTC’s review of Schering-Plough’s \$41.1 billion acquisition of Merck resulted in significant divestitures to resolve concerns that the merger would have reduced competition in several animal health care markets and in the market for drugs used to treat nausea and vomiting in surgical and chemotherapy patients.

In a merger matter relating to medical instruments, the FTC successfully challenged Danaher Corporation’s and MDS Analytical Technologies’ proposed merger, contending that the combination of Danaher and MDS would have led to increased prices and decreased innovation in the market for laser microdissection devices.

On the nonmerger side, the agency 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 and Garfield Counties in Colorado and in southwestern Minnesota.

In another nonmerger matter, the FTC charged the state dental board in North Carolina with harming competition by blocking non-dentists from providing teeth-whitening services in the state. In its administrative complaint, the FTC alleged that the North Carolina Board of Dental Examiners had impermissibly ordered non-dentists to stop providing teeth-whitening services, which has made it harder and more expensive for North Carolina consumers to obtain these services.

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 2010, representatives of the FTC continued to provide 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.

On this same issue, in FY 2010, the agency released a study, entitled “Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions,” that summarizes the savings lost to U.S. consumers during the past six years through such pay-for-delay deals in the drug industry. The study found that the number of agreements with payment and delay provisions has increased from zero in 2004 to a record 19 agreements in FY 2009.

In May 2010, the FTC filed an amicus brief in the U.S. Court of Appeals for the Second Circuit, recommending that the court hold a rehearing before all the judges (“en banc”) of the Ciprofloxacin (Cipro) “pay-for-delay” case, which concerns payments made by Bayer AG, the branded manufacturer of Cipro, to potential generic competitors.

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

## Technology and Manufacturing

In December 2009, the Commission charged chip manufacturer Intel Corporation with illegally using its position to stifle competition, strengthen its monopoly, and raise prices to consumers in violation of the FTC Act. In its complaint, the FTC alleged that Intel carried out an anticompetitive campaign using threats and rewards aimed at the world's largest original equipment manufacturers to coerce them not to buy rival CPUs, and used exclusive or restrictive dealing to prevent OEMs from marketing machines containing rival CPUs, among other charges. In August 2010, the Commission approved a proposed settlement in which Intel agreed to provisions that will open the door to renewed competition and prevent Intel from suppressing competition in the future while at the same time enabling the company to continue to innovate and offer competitive pricing.

In addition to the Intel matter, during FY 2010 the FTC successfully challenged a merger that threatened to reduce competition in the market for databases used by abstractors, title insurers, title insurance agents, and others in connection with underwriting and issuance of title insurance policies; the FTC obtained a settlement to restore competition. In another matter, the FTC issued an administrative complaint challenging The Dun & Bradstreet Corporation's February 2009 acquisition of Quality Education Data and alleging that the deal harmed consumers by eliminating nearly all competition in the market for kindergarten through twelfth-grade educational marketing databases.

The Commission also monitors business relationships between firms with competing technology products. Section 8 of the Clayton Act prohibits, with certain exceptions, the same person from serving as a director or officer of two competing corporations. After an FTC investigation raised concerns about two individuals serving on the boards of both Apple and Google, these individuals each stepped down from one of the boards in order to resolve the FTC's concerns without the need for litigation.

During 2009 and through 2010, the FTC completed a series of hearings to explore the competitive dynamics of evolving markets for intellectual property and the implications for promoting innovation and competition.

## Energy

Energy is another important industry to which the FTC devotes significant resources. In addition to reviewing proposed acquisitions involving energy products under the HSR Act and also monitoring the industry for transactions that were not filed under HSR, in FY 2010, the agency required Pilot Corporation, owner of the largest travel center network in the United States, to sell 26 locations as part of a settlement that will replace the competition that would have been lost because of Pilot's proposed \$1.8 billion acquisition of Flying J Inc.'s travel center network.

Pursuant to the authority provided by Congress under the Energy Independence and Security Act of 2007 (EISA), the FTC issued the Petroleum Market Manipulation Rule, which prohibits fraud or deceit in wholesale petroleum markets. The rule became effective on November 4, 2009, and the FTC has made available a compliance guide for businesses that provides examples of the type of actions that would violate the rule.

In FY 2010, the FTC issued its fifth annual "Federal Trade Commission Report on Ethanol Market Concentration" on the state of ethanol production in the United States, as well as semi-annual reports on oil and gas activities.

In FY 2010, the agency also released six advisory comments on energy-related issues.

## Consumer Goods and Services

The FTC continues to work to protect competition in markets for consumer goods and services and in FY 2010 took enforcement actions involving a variety of products, including soft drinks, portable batteries, and funeral and cemetery services. On the nonmerger side, after administrative litigation the FTC issued a unanimous opinion finding

that Realcomp II, Ltd., a real estate Multiple Listing Service in Michigan, violated the law by prohibiting non-traditional and discount brokers from listing on popular real estate websites, thus impeding competition from them. The FTC also settled charges that the leading manufacturer of treatments that darken eyeglass lenses exposed to sunlight was using exclusionary contracts to maintain its monopoly in the market for photochromic lenses.

## **Industrial Sectors**

In FY 2010 the FTC took action in several mergers between chemical companies that threatened to increase costs to manufacturers, state and local governments, and farmers, and that ultimately might increase costs to end users. The FTC also successfully challenged two industrial products mergers — one involving an essential input for the manufacture and processing of aluminum, and the other involving high-performance scientific measurement instruments. FTC staff also litigated a challenge against Polypore International Inc.'s acquisition of Microporous Products, securing an administrative order requiring complete divestiture of acquired assets in order to restore competition in the manufacture of battery separators, a key component in car batteries, batteries for uninterruptible power supplies, and other flooded lead-acid batteries. The Commission unanimously upheld this order in November 2010.

## **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, dur-

ing FY 2010, the FTC filed an amicus brief with the Federal Circuit to address the applicability of antitrust analysis in a patent misuse case. The FTC's brief states that, to the extent the court draws on antitrust law to resolve "patent misuse" claims, it should recognize that pro-competitive efficiencies may justify some competitive restraints, but only if they are reasonably necessary to facilitate a productive collaboration between companies, such as a joint venture to invent, develop, and commercialize new technologies.

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 the agency develop effective policy research and development tools. During FY 2010, in addition to the hearings on intellectual property policy and competition policy referred to above, the agency continued joint FTC and DOJ public workshops to explore the possibility of updating the Horizontal Merger Guidelines that are used by both agencies to evaluate the potential competitive effects of mergers and acquisitions. In April 2010, the FTC released for public comment a proposed revision of the Horizontal Merger Guidelines that reflects the current state of merger analysis at the FTC and DOJ, and that will help make the process more transparent to American businesses and courts. The Guidelines were made final and published on August 19, 2010. In September 2010, the FTC issued draft rules giving the HSR form its most extensive overhaul since its creation. Also, starting in December 2009, the FTC held a series of workshops entitled "How Will Journalism Survive the Internet Age?" analyzing how the expansion of electronic commerce and media is challenging traditional news organizations, and the implications for competition among media outlets and for consumer welfare.

In an effort to provide practitioners, researchers, and other interested stakeholders with tools and guides that are easy to access and understand, the Commission continues to maintain and develop its online resources, including the FTC Guides and Fact Sheets on the Antitrust Laws and the enforcement database, which catalogs the FTC's competition enforcement actions and allows users 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 2010, the FTC further developed cooperative relationships with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies. The FTC engaged in effective coordination of reviews of multijurisdictional mergers, and continued to work with its international counterparts to achieve consistent outcomes in cases of suspected unilateral anticompetitive conduct. The agency cooperated with international counterpart agencies on numerous cases of mutual concern, including *Nufarm/A.H. Marks*, *Agilent/Varian*, *Panasonic/Sanyo*, and *Intel*. The FTC also held meetings with top officials from our key counterpart agencies in Europe, Asia, and the Americas. In November of 2009, the FTC and the DOJ entered into a Memorandum of Understanding (MOU) with the Russian Federal Antimonopoly Service to promote greater cooperation and consultation and further develop the relationship between the U.S. and Russian antitrust agencies. The FTC also took the lead in establishing the Inter-American Competition Alliance, an enforcement network of antitrust agencies in the Americas.

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 of the ICN, a co-chair of the Unilateral Conduct Working Group, which seeks to increase convergence on approaches to issues of monopolization and dominance, and the chair of the subgroup on Merger Notification and Review Procedures. The FTC also originated and leads a new ICN project to create a comprehensive curriculum of training materials to serve as a virtual university on competition law and practice.

The FTC works with new agencies in China and India on implementation of their competition laws, and participates

in the U.S.-China Strategic and Economic Dialogue. The most significant technical assistance opportunities and challenges involve those countries. 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. A joint FTC/DOJ program was held in September 2010 to provide training for the staff of the Competition Commission of India.

With recent growth in the number of jurisdictions with competition laws, the FTC has expanded its program of technical assistance to help agencies apply their laws in ways that support free markets. The FTC's technical assistance program this year funded programs in the Caribbean Community, Hungary, India, Indonesia, Mexico, Peru, Singapore, and Tanzania, in addition to programs supported by the United States Agency for International Development (USAID). The FTC deepened its assistance program in FY 2010 by placing resident advisors in South Africa and Vietnam. The FTC conducted 30 short-term missions, of which half were funded by the FTC and half were funded by USAID, the World Bank, and the U.S. Trade and Development Agency.

As discussed above in connection with the consumer protection mission, the FTC International Fellows and Interns program enables 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 Canada, Egypt, France, Kazakhstan, Korea, South Africa, Switzerland, the United Kingdom, and Vietnam worked with FTC staff on competition matters.

Using its U.S. SAFE WEB Act authority, the FTC also sends staff members to work in 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, the EC's Directorate General for Competition, and the Canadian Competition Bureau.

## Planned Activities in FY 2011 and Beyond

### PROTECT CONSUMERS

Through its consumer protection goal, the FTC focuses its efforts on fighting consumer fraud, deception, and unfair practices, and protecting consumer data and privacy.

Agency law enforcement actions will continue to target deceptive and other illegal practices involving mortgage lending, debt collection, and other financial services. These practices can have severe consequences for consumers, including unanticipated high-cost mortgages, ruined credit histories, and loss of their homes. The FTC will work to combat unfair and deceptive practices involving mortgage foreclosure scams, mortgage servicing, subprime lending in the mortgage and credit areas, certain credit and payment cards, credit repair, debt collection, and debt settlement. Furthermore, the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act preserves the Commission's law enforcement authority over financial entities subject to FTC's jurisdiction, and it also expands the Commission's authority in certain areas – for example, with regard to motor vehicle dealers. The FTC will continue to use the tools and authorities available to it to protect consumers in the financial services marketplace.

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 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 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 online practices through workshops, testimony, reports, and consumer and business education. In December 2010, FTC staff issued a preliminary report titled "Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers," which includes a number of preliminary recommendations, questions, and issues related to the pro-

### Protecting Consumers in the Financial Services Marketplace

### Protecting Consumer Privacy

posed framework. We will consider comments submitted by interested parties as we further develop and refine the privacy framework for our final report.

### **Stopping Abuses of Technology and New Media**

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 protected, 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 study technological developments and 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 mobile marketing, electronic payment systems, and social networking.

### **Improving Data Security and Combating Identity Theft**

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; 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.

### **Protecting Consumers From Do Not Call Violations**

The National Do Not Call (DNC) Registry puts consumers in charge of the telemarketing calls they receive at home. The FTC 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 “robocalls” that deliver prerecorded telemarketing messages, by vigorously enforcing the DNC Rule.

### **Stopping Health Fraud**

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 fraudu-

lent health marketing when they are desperate for help. The FTC will continue to challenge deceptive marketing of health products, particularly claims about serious diseases and weight loss, and work to close information gaps in this area.

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. In October 2010, the FTC proposed revisions to update and simplify the Green Guides. In 2011, the FTC will consider public comments on the proposed changes and decide whether to make them final. The agency will also develop a consumer and business education campaign and pursue appropriate enforcement action involving deceptive claims in this area.

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.

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, foreclosure “rescue,” and business opportunity scams, continue to adversely affect the public. With an aging population, the economic downturn and related unemployment, and spiraling health care costs, the FTC will address traditional and new methods of fraud targeting people in need.

To combat childhood obesity, underage drinking, and the marketing of violent entertainment to children, the FTC will continue to engage in research, policy, and law enforcement work pertaining to marketing of food, alcohol, and movies, music, and video games. The FTC will also continue to monitor self-regulatory efforts in these industries. In 2010,

### **Evaluating “Green” Marketing Claims**

### **Serving Hispanic and African-American Populations**

### **Protecting Vulnerable Americans from Fraud**

### **Addressing Issues Related to Marketing to Children**

the Commission initiated a follow-up study to its 2008 report “Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation.” The follow-up 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 the FDA, CDC, and USDA to develop voluntary nutrition standards for food marketing to children.

### **Ensuring Compliance with FTC Orders**

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.

### **Globalization and Cross- Border Enforcement**

The FTC will continue enforcement against cross-border fraud and 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. As the FTC develops new initiatives relating to cross-border fraud, the agency will report on those activities.

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 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 new ideas and innovative products and services to develop. 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.

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 also will 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.

In the fall of 2010, the FTC began a policy project on health care reform and competition policy. The Patient Protection and Affordable Care Act, the health care reform law, establishes new programs for Medicare (and some Medicaid beneficiaries) called "accountable care organizations," or ACOs. The purpose of ACOs is to foster higher quality and more efficient provision of health care services through, among other things, coordination of care among providers. The FTC is focusing on how ACOs could affect competition in commercial health care markets. To support this project, the FTC, in conjunction with the Centers for Medicare &

### Promoting Competition in Health Care and Pharmaceuticals

## Aggressively Challenging Anticompetitive Mergers

Medicaid Services and the Office of the Inspector General of the Department of Health and Human Services, hosted a workshop in October 2010. The workshop was designed to obtain information from industry stakeholders who have an interest in, or experience with, the development and operation of clinically or financially integrated health care groups.

Identifying anticompetitive mergers remains one of the top priorities of the Maintaining Competition goal. The premerger notification requirements of the 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. In FY 2010 there was a significant resurgence in merger filings following a decline in FY 2009 due to the downturn in the economy; thus, 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 2012 and the years ahead.

The FTC is constantly refining its analytical approach to mergers in light of current marketplace realities. Signaling that refinement, in August 2010 the FTC and the DOJ Antitrust Division published a revision of the Horizontal Merger Guidelines that reflects the current state of merger analysis at the FTC and DOJ and will help make the process more transparent to American businesses, the bar, and courts. In 2011, the FTC expects to issue final rules giving the HSR notification form its most extensive overhaul since its creation. The proposed form changes will provide the agencies with some additional information that will be useful in making an initial evaluation of whether a transaction may raise competitive issues warranting further investigation, while at the same time eliminating the need for businesses to provide certain information that the agencies have found not as helpful as originally anticipated.

## **Increasing Emphasis on High Technology**

The growing importance of technology is placing increasing demands on the FTC's antitrust enforcement mission in both the merger and nonmerger segments. FTC antitrust investigations 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 2011 and beyond, the FTC expects to expend significant and specialized resources to 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, which became effective in November 2009, prohibiting 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 staff detect any such changes, they will promptly investigate the cause. Finally, the FTC will continue to update and enhance its Oil and Gas Industry Initiatives website, which provides consumers with important information on the FTC's oversight of the petroleum industry.

## **Preventing Anticompetitive Activity in Energy Industries**

## **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 webpages like those for health care, oil and gas, and real estate, the FTC will look for opportunities to improve content on its website 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 that request review of proposed conduct. These letters provide a detailed antitrust analysis of the particular conduct that the requester may wish to pursue.

## **Promoting Global Competition**

The FTC will continue to develop its cooperative relations with key partners, and look to update and develop additional cooperation tools, as needed. 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, the European Union, and Canada; and through enhancements to our existing technical assistance program.

## **Ongoing Administrative and Federal Litigation**

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 litigation, including travel, stenographic reporting, and particularly the hiring of expert witnesses, which is key to successfully

litigating these matters, are increasing. 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 but require the 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 for administrative proceedings to continue to examine the rules and make bi-annual recommendations for changes.

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.

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.

### **Advocating for Competition Before the Courts and Other Government Agencies**

### **Enforcing FTC Orders**

## **Needed Resources For FY 2012**

The FTC is a productive and efficient small agency with a large mission. Indeed, in recent years, the agency has faced growing challenges and a host of new Congressionally-imposed responsibilities. The FTC's mission to promote

competition and protect consumers is critical to the short and long-term health and vibrancy of the marketplace and the national economy. To continue its high level of performance, the FTC is requesting \$326,000,000 and 1,201 FTE. This is an increase of \$34,300,000 and 25 FTE over the FTC's FY 2011 current level and consists of:

Mandatory Contract and Space Expenses [\$23,100,000]:

- Contract and other non-pay inflation [\$1,100,000]
- Upward grade classifications pursuant to 5 C.F.R. 531.401 et seq. [\$1,800,000]
- The costs associated with replacing the 601 New Jersey Avenue building in 2012, including increased rent and security costs, IT and audio/visual equipment for conference, workshop, and training spaces, IT storage and equipment for litigation support labs; telecommunications and network connectivity, the acquisition and installation of furniture, and the relocation of staff [\$20,200,000]

25 Needed FTE [\$3,800,000]

Includes 15 FTE to Protect Consumers:

- 10 FTE to staff high priority initiatives to protect consumers in the areas of the mortgage and financial marketplace; emerging technology and privacy; frauds in the health care industry and those targeting older Americans; and to provide consumer outreach and litigation support.
  - o 2 FTE to adequately protect consumers in the financial services marketplace through increased enforcement. The FTC will continue to have jurisdiction over a substantial portion of the mortgage and financial services market, which continues to evolve, and requires staff to investigate and enforce mortgage and financial fraud.
  - o 2 FTE to adequately protect consumers in connection with emerging technology. As consumers adopt new technology, fraud migrates to

new platforms, and mobile marketing, new electronic payment systems, and social media are just a few areas that must be addressed in the coming years.

- o 2 FTE for research and enforcement of emerging privacy issues. New technologies provide enormous benefits to consumers, but pose new threats to sensitive consumer data and the security of personal computers and e-mail. New staff is needed to address the increasingly complex privacy and data security issues, particularly those associated with online behavioral advertising and other media. Enforcement will continue 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 data.
- o 2 FTE to protect consumers from fraud in the health care industry and those targeting older Americans. With an aging population, the economic downturn, and the new federal health care reform legislation, traditional and novel forms of fraud targeting people in need are expected to increase.
- o 1 FTE for advancing consumer outreach. The FTC intends to hire a consumer education specialist to publicize our messages and information protecting consumers from fraud and deception, modify existing consumer education messages to fit different technology, and interact with consumers in new and efficient ways.
- o 1 FTE for litigation support. With the growth in litigation, additional litigation support, including data analysis and forensic accounting, is required to effectively investigate targets, marshal evidence, and provide other consultation for litigation.

- 1 FTE to increase economic support for the agency's initiatives in consumer protection. Online consumer protection is becoming increasingly important and we need added economic expertise as the agency's involvement in on-line issues increases in scope and depth. Likewise, the amount of empirical data work in financial and Do Not Call enforcement and rulemakings has increased tremendously and the agency is being asked to do many more data intensive reports.
- 3 FTE in the Office of the Executive Director to support the internal control environment, information technology, and electronic records management, which are essential to support the program staff at an appropriate level.
- 1 FTE for the Office of General Counsel for litigation and legal counsel to cover the rapidly increasing workload on privacy and information security issues.

Includes 10 FTE to Maintain Competition:

- 6 FTE to meet the anticipated increased workload generated by strong activity in the health care, pharmaceutical, and high-technology sectors, including more FTE to review, investigate, and litigate merger cases that raise competitive concerns.
- 1 FTE to increase economic support for the agency's mission to maintain competition. The use of economic experts and the growing amount of data submitted in investigations and litigation proceedings requires that we have additional FTE to adequately support antitrust enforcement. Also, additional support is needed to work on empirical reports, such as in the pharmaceutical and energy sectors.
- 2 FTE in the Office of the Executive Director to support acquisition management and facilities management, all of which are essential to support the program staff at an appropriate level.
- 1 FTE for the Office of Policy Planning to research and articulate issues that affect competition policy.

#### Protect Consumers [\$500,000]

- \$500,000 to support increased consumer demand of the Consumer Response Systems and Services, which includes the National Do Not Call Registry, the FTC's Consumer Response Center, and the Consumer Sentinel Network (including the spam database).

#### Maintain Competition [\$800,000]

- \$500,000 for increased expert witness services, advisory consultants, stenographic services, travel costs, and employee training as the FTC must enhance its ability to investigate and litigate complex matters, for example, cases involving high-tech segments of the economy.
- \$300,000 to maintain up-to-date pharmaceutical data for agency cases and reports.

#### Agency-wide Streamlining Efforts [\$6,100,000]

- \$3,100,000 for critical information technology modernization efforts including transitioning critical applications to an externally hosted data center as part of the FTC's Disaster Recovery Solution to ensure the recovery and continuity of the FTC's mission critical systems in the event of a disaster and providing electronic litigation support toolkits that will allow the FTC to stay competitive with private sector entities in its investigations and cases.
- \$1,200,000 to continue the multi-year implementation of the electronic document management system (EDMS). In this phase of the rollout plan for the EDMS, the FTC will purchase, install, and implement new software, migrate users from shared files to the EDMS, integrate the EDMS with e-mail, and provide training to ensure our staff can efficiently and effectively utilize the application.
- \$1,000,000 for the first phase of an initiative to develop a new, web-based matter management system as the current system is reaching the end of its lifecycle. This new system will provide more robust

### Non-FTE Budget Increases

case management functionality and seamless integration with other agency applications, such as the EDMS and the financial management system.

- \$500,000 to support FTC compliance with e-discovery amendments to the Federal Rules of Civil Procedure. This would include acquiring an additional hardware appliance for network crawling, indexing, and culling and associated support and training costs.
- \$300,000 for the OMB-directed conversion of official personnel files to an electronic format by October 2012.

## 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 2012 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 2012. The FTC assumes the \$197,000,000 difference between offsetting collections and the \$326,000,000 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 2012. 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 2012 budget request is based on the FTC's GPRA Strategic Plan for FYs 2009 to 2014 and supported by the FY 2011 and FY 2012 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)

	Fiscal Year 2011		Fiscal Year 2012		Change	
	FTE	Dollars	FTE	Dollars	FTE	Dollars
Budget by Goal:						
Protect Consumers	640	\$166,443	655	\$185,862	15	\$19,419
Maintain Competition	536	125,257	546	140,138	10	14,881
<b>Total</b>	<b>1,176</b>	<b>\$291,700</b>	<b>1,201</b>	<b>\$326,000</b>	<b>25</b>	<b>\$34,300</b>
Budget by Funding Source:						
Offsetting Collections						
HSR Filing Fees		\$110,000		\$110,000		\$0
Do Not Call Fees		19,000		19,000		0
Subtotal Offsetting Collections		\$129,000		\$129,000		\$0
General Fund		162,700		197,000		34,300
<b>Total</b>		<b>\$291,700</b>		<b>\$326,000</b>		<b>\$34,300</b>

**Summary of Changes**  
(\$ in thousands)

	FY 2011	FY 2012	Change
Budget Authority	\$291,700	\$326,000	\$34,300
Full-time Equivalents	1,176	1,201	25

<b>Explanation of Change:</b>	<b>FTE</b>	<b>Dollars</b>
<b>A. Mandatory Expenses</b>		
Contract and other non-pay inflation.	---	+\$1,100
Upward grade classifications pursuant to 5 C.F.R. 531.401 et seq.	---	+\$1,800
Costs associated with replacement of the 601 New Jersey building in 2012.	---	+\$20,200
<b>Subtotal</b>	---	<b>+\$23,100</b>
 <b>B. FTE Increases</b>		
Protect Consumers	+15	+\$2,300
Maintain Competition	+10	+\$1,500
<b>Subtotal</b>	<b>+25</b>	<b>+\$3,800</b>
 <b>C. Non-FTE Program Needs:</b>		
Protect Consumers: Increased consumer demand of the Consumer Response Systems and Services, which includes the National Do Not Call Registry, the FTC's Consumer Response Center, and the Consumer Sentinel Network.	---	+\$500
Maintain Competition: Increased expert witness services, advisory consultants, and litigation support, and maintain up-to-date pharmaceutical data for cases and reports.	---	+\$800
Agency-wide Streamlining Efforts: Critical information technology modernization, multi-year implementation of the electronic document management system, replacement of the case management system, compliance with the e-discovery amendments to the Federal Rules of Civil Procedure, and electronic conversion of official personnel files.	---	+\$6,100
<b>Total Change</b>	<b>+ 25</b>	<b>+\$34,300</b>

## Budgeted Resources by Objective (\$ in thousands)

### Protect Consumers

Strategic Goal 1: Prevent fraud, deception, and unfair business practices in the marketplace	FY 2011 FTE	FY 2011 Amount	FY 2012 FTE	FY 2012 Amount
Objective 1.1: Identify fraud, deception, and unfair practices that cause the greatest consumer injury	91	\$22,548	93	\$27,502
Objective 1.2: Stop fraud, deception, unfairness and other unlawful practices through law enforcement	448	\$113,824	458	\$127,191
Objective 1.3: Prevent consumer injury through education	50	\$16,063	51	\$14,628
Objective 1.4: Enhance consumer welfare through research, reports, rulemaking, and advocacy	44	\$11,049	46	\$13,000
Objective 1.5: 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	7	\$2,959	7	\$3,541
<b>Total</b>	640	\$166,443	655	\$185,862

### Maintain Competition

Strategic Goal 2: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace	FY 2011 FTE	FY 2011 Amount	FY 2012 FTE	FY 2012 Amount
Objective 2.1: Take actions against anticompetitive mergers and practices that may cause significant consumer injury	460	\$106,277	469	\$118,825
Objective 2.2: Prevent consumer injury through education	45	\$10,059	45	\$11,032
Objective 2.3: Enhance consumer welfare through research, reports, and advocacy	19	\$4,385	20	\$4,981
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	\$4,536	12	\$5,300
<b>Total</b>	536	\$125,257	546	\$140,138

## Annual Performance Measures: Fiscal Years 2010 to 2012

	FY 2010 Actual	FY 2011 Target	FY 2012 Target
<b>Strategic Goal 1 - Protect Consumers: Prevent fraud, deception, and unfair business practices in the marketplace.</b>			
<b>Objective 1.1-Identify fraud, deception, and unfair practices that cause the greatest consumer injury:</b>			
Measure 1.1.1: Complaints collected and entered into the Consumer Sentinel Network database.	3.1 million	2.6 million	2.7 million
Key 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.	95.9%	65%	
Measure 1.1.3: The rate of customer satisfaction with the FTC's Consumer Response Center.	(a) For the website, exceeded average citizen satisfaction rate as published in the American Customer Satisfaction Index E-Government Satisfaction Index  (b) For the call center, met standards for call centers developed by the Citizen Service Levels Interagency Committee	(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	
<b>Objective 1.2-Stop fraud, deception, unfairness, and other unlawful practices through law enforcement:</b>			
Key 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.	99.2%	75-85%	
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.	96% of cases	90% of cases	

## Annual Performance Measures: Fiscal Years 2010 to 2012

	FY 2010 Actual	FY 2011 Target	FY 2012 Target
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.	39	30	
<b>Objective 1.3-Prevent consumer injury through education:</b>			
Measure 1.3.1: Consumer protection messages accessed online or in print.	43.9 million	50 million	
Key Measure 1.3.2: Customer satisfaction rate with an FTC consumer education website or microsite.	Exceeded average citizen satisfaction rate as published in the American Customer Satisfaction Index E-Government Satisfaction Index	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.	15,372	11,300	11,600
<b>Objective 1.4-Enhance consumer welfare through research, reports, rulemaking, and advocacy</b>			
Measure 1.4.1: Workshops and conferences convened or cosponsored that address consumer protection problems.	11	8	
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	6	
Measure 1.4.3: The percentage of respondents finding the FTC's advocacy comments and amicus briefs "useful."	100%	50%	
Key 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.	100%	75%	
<b>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</b>			
Key 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.	64	40	
Measure 1.5.2: Technical assistance to foreign consumer protection and privacy authorities.	23	8	

## Annual Performance Measures: Fiscal Years 2010 to 2012

	FY 2010 Actual	FY 2011 Target	FY 2012 Target
<b>Strategic Goal 2 - Maintain Competition: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.</b>			
<b>Objective 2.1-Take action against anticompetitive mergers and practices that may cause significant consumer injury</b>			
Key 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.	39%	40-60%	
Measure 2.1.2: Consumer savings of at least \$500 million through merger actions to maintain competition.	\$586 million	\$500 million	
Measure 2.1.3: Actions against mergers likely to harm competition in markets with at least \$25 billion in sales.	\$22.5 billion	\$25 billion	
Measure 2.1.4: Consumer savings of at least six times the amount of FTC resources allocated to merger program.	1,670%	600%	
Measure 2.1.5: Consumer savings of at least \$80 million through nonmerger actions taken to maintain competition.	\$508 million	\$80 million	
Measure 2.1.6: Actions against anticompetitive conduct in markets with a total of at least \$8 billion in annual sales.	\$11.7 billion	\$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.	2,418%	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.	100%	90%	

## Annual Performance Measures: Fiscal Years 2010 to 2012

	FY 2010 Actual	FY 2011 Target	FY 2012 Target
<b>Objective 2.2-Prevent consumer injury through education:</b>			
Key Measure 2.2.1: Competition resources accessed via the FTC's website.	21.5 million	10 million	
<b>Objective 2.3-Enhance consumer through research, reports, and advocacy:</b>			
Key Measure 2.3.1: Workshops, seminars, conferences, and hearings convened or cosponsored that involve significant competition-related issues.	6	4	
Key Measure 2.3.2: Reports and studies issues on key competition related topics.	9	8	
Key Measure 2.3.3: Advocacy comments and amicus briefs on competition issues filed with entities including federal and state legislatures, agencies or courts.	17	6	
Measure 2.3.4: The percentage of respondents finding the FTC's advocacy comments and amicus briefs "useful."	100%	50%	
Measure 2.3.5: The volume of traffic on www.ftc.gov relating to competition research, reports, and advocacy.	2.2 million	1.7 million	
<b>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</b>			
Key Measure 2.4.1: Policy advice provided to foreign competition agencies, directly and through international organizations, through substantive consultations, written submissions, or comments.	76	40	
Measure 2.4.2: Technical assistance provided to foreign competition authorities.	60	10	

## Annual Performance Measures: Fiscal Years 2010 to 2012

	FY 2010 Actual	FY 2011 Target	FY 2012 Target
<b>Strategic Goal 3 - Advance Performance: Advance the FTC's performance through organizational, individual, and management excellence.</b>			
<b>Objective 3.1-Provide effective human resources management</b>			
Measure 3.1.1: The extent employees believe their organizational culture promotes improvements in processes, products and services, and organizational outcomes.	Exceeded the government-wide results on the Federal Human Capital Survey's Results-Oriented Performance Culture Index	Exceed the government-wide results on the Federal Human Capital Survey's Results-Oriented Performance Culture Index	Exceed the government-wide results on the Federal Human Capital Survey's Results-Oriented Performance Culture Index
Key Measure 3.1.2: The extent employees think the organization has the talent necessary to achieve organizational goals.	Exceeded the government-wide results on the Federal Human Capital Survey's Talent Management Index	Exceed the government-wide results on the Federal Human Capital Survey's Talent Management Index	Exceed the government-wide results on the Federal Human Capital Survey's Talent Management Index
<b>Objective 3.2-Provide effective infrastructure and security management</b>			
Key Measure 3.2.1: A favorable Continuity of Operations (COOP) rating.	85%	75%	75%
Key Measure 3.2.2: Availability of information technology systems.	99.86%	98.50%	99.00%
<b>Objective 3.3-Provide effective information resource management:</b>			
Key Measure 3.3.1: The percentage of Commission-approved documents in ongoing and newly initiated public FTC proceedings available via the Internet within 15 days of becoming part of the public record.	93.8%	75%	80%
<b>Objective 3.4-Provide effective financial and acquisition management</b>			
Measure 3.4.1: Independent auditor's financial statement audit results.	Unqualified	Unqualified	Unqualified
Key Measure 3.4.2: The percentage of Bureau/Offices that establish and maintain an effective, risk-based internal control environment.	100%	100%	100%
Measure 3.4.3: Performance against the Small Business Administration's government-wide small business procurement goals.	58.9%	23%	23%

## Proposed Appropriations Language

### SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefore, 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, [~~\$314,000,000~~] \$326,000,000, 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 \$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 \$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 [~~2011~~] 2012, so as to result in a final fiscal year [~~2011~~] 2012 appropriation from the general fund estimated at not more than [~~\$185,000,000~~] \$197,000,000: *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).