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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR 2003

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES

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NOTE: Under Committee Rules, Mr. Young, as Chairman of the Full Committee, and Mr. Obey, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

MIKE RINGLER, CHRISTINE KOJAC, LESLIE ALBRIGHT, and JOHN F. MARTENS
Subcommittee Staff

PART 8

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR 2003

THURSDAY, MARCH 7, 2002.

JUDICIAL CONFERENCE OF THE UNITED STATES

WITNESSES

JUDGE JOHN G. HEYBURN II, CHAIRMAN, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
MAGISTRATE JUDGE THOMAS B. McCOUN III, MEMBER, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
LEONIDAS RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, MEMBER, EXECUTIVE COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
JUDGE FERN M. SMITH, DIRECTOR, FEDERAL JUDICIAL CENTER

OPENING REMARKS

Mr. WOLF. Good morning. The committee will come to order. I want to thank Judge Heyburn, Judge McCoun, Director Mecham and Judge Smith for appearing before the committee this morning to discuss the Federal Judiciary's fiscal year 2003 budget request.

An independent judiciary that all of our citizens trust and respect and can resolve criminal, civil and bankruptcy disputes in a fair and expeditious manner is a fundamental tenet in our Nation. We will try to ensure the courts have the resources needed to accomplish their important mission.

In fiscal year 2002, I believe the subcommittee was very successful in addressing many of the court's most pressing needs, including an increase in the hourly rates paid to private panel attorneys representing defendants who were unable to afford counsel to $90 per hour, maintaining the courts' base funding, and addressing the courts' security needs in the wake of the terrorist and anthrax attacks. However, the budget for fiscal year 2003 is really going to be tight. You have been reading every State seems to be broke, and as they are all broke, they seem to be coming to Washington as if we have some source that they do not know about, and now we are having the same problem.

Now the numbers are getting a little bit better if you believe the latest newspaper stories, but the budget this year will be extremely tight, and it all obviously is based on what took place on 9/11. It obviously has put a greater stress on all of you, and on so many others. We have military in Afghanistan as we speak in that Operation Anaconda, and we lost a number of people. So there are a

whole series of things that are coming in. So we will attempt to be fair and do what we can, but I think this year may be a little more difficult than we thought perhaps before 9/11.

With that, let me just recognize Congressman Serrano, the ranking member.

Mr. Serrano?

Mr. SERRANO. Thank you, Mr. Chairman.

I welcome the witnesses. I saw you on C–SPAN yesterday Judge Heyburn. I noticed you did not say anything nice about the chairman or myself, but——

[Laughter.]

Judge HEYBURN. They cut me off before I could.

Mr. SERRANO. That happens to me all of the time when I am speaking about judges. I never get to say anything nice. [Laughter.]

No, really, as one who comes from the city that took a major physical hit and that then became the symbol of our country coming together, I know that the strain put on the courts, which will continue to be placed on the courts as we sort this whole thing out and, on all of us is tremendous.

I echo Chairman Wolf's words. These are difficult times, but on the other hand, we work very well together on both sides, when it comes to folk like yourselves, understanding well the need to be supportive. I take this opportunity to say that all branches of our Government have come together and not only wished New York are but assisted in so many ways. As you know, the city has been hurting for a while, but New Yorkers are tough people, and we know how to come together, and we have. So has this country, and so we will do the best we can to continue to help you folks.

Thank you.

Mr. WOLF. All of your statements will appear in the record as if read. You can proceed however you see fit.

Judge HEYBURN. Yes, Congressman Wolf. If it is all right with you, I would just like to make a few brief introductory comments, and then I look forward to answering your questions and explaining, in whatever detail you would like, our appropriations request.

It is my pleasure to appear before this committee now for the sixth time. It always is a tremendous experience because I feel as though I am acting out a part of our Constitution here, two of the independent branches of Government are cooperating with each other and dealing with each other in a manner that our forefathers envisioned.

I would completely concur with your statements about the need for an independent judiciary, and I really appreciate your understanding of that. We are here to protect the rights of all of our citizens to enforce the laws that you, in fact, enact and to mediate disputes between our fellow citizens, between the citizens and States, and with our national Government. I am appearing before you today to ask for the funds that we believe are necessary to do exactly that job.

Appearing with me are Magistrate Judge Tom McCoun, from Florida; Judge Fern Smith, who is the Director of the Federal Judicial Center; and Ralph Mecham, who is the Director of the Administrative Office, and we will all be glad to answer your questions.

I do want to echo also what you said in thanks for what you did for us last year. In every single one of the areas you mentioned, you absolutely did help us. And specifically the $90 an hour pay rate for panel attorneys, that is going to come into effect in May. We think it is going to have a tremendous impact. We hope it will, and a lot of people around the country thank you, and Congressman Serrano, and the rest of the committee for doing that. I would also thank you for retaining our base funding and meeting our unusual security need. As the Congressman knows, it was not too far from the tragedy that there were Federal courthouses, and we received some of the after-blast. Employees were traumatized, fortunately, not to the extent of many other New Yorkers, but we had our own issues, in a minor sort of way, I must say, compared to others in the aftermath of that tragedy. And, of course, the judiciary is gearing up to play its role in the aftermath which is, as yet, unknown.

A couple of things I would like to mention and want to emphasize just about our fundamental commitments.

First of all, we have a commitment to explaining to you exactly why we think we need the appropriation we are asking for. We are asking for an additional $500 million. Even in Washington, whether you are from Kentucky or California, we know that is a lot of money, and we would like to explain to you exactly why we need that.

We believe it is necessary to help us take care of the growing, and largely uncontrollable, workload of the judiciary, whether it is the additional persons who are being supervised by probation officers, whether it is that now 85 percent of the people who were indicted in Federal Court are indigent and require the assistance of counsel, or our new security needs. All of those things we would like to address.

Every year it seems there are things that come up that we do not even take into account in our request. Of course, last year we dealt with the southwest border, and we really appreciate your attention to that issue. We have not even taken into account of what the impact may be of things like the Enron or Global Crossing bankruptcies. Those are both filed in New York, as a matter of fact, Congressman Serrano. The AO has already devoted additional resources to the Bankruptcy Court there to make sure they can efficiently take care of those huge cases.

Second, I want to emphasize our continuing commitment to you to be good stewards of the funds that you give us. We try to do that by developing objective staffing and operating expense formulas, to quantify for ourselves and for you the needs that we have. We try to do that by encouraging teleconferencing among our employees and innovative ways of dealing with court hearings that require less personnel and less travel. We try to do that by reallocating our resources to the places that really need the help, and we have done that in recent years, totally revising our staffing formulas so that there are fewer persons who are directed to the Bankruptcy Courts because they take so much advantage of automation advances and more to the probation area, where they are less able to do that. Of course, there has been a huge increase in the number of persons who are on probation.

So we are constantly looking for ways to improve the efficiency and effectiveness of the way we use the resources you give us. We really believe it is a cooperative effort. Many of the things that we have pursued in recent years were matters that former Chairman Rogers or others on the committee encouraged us to do, and we tried to follow that direction.

We know the budget is tight. We hope you believe, as we believe, we are good stewards of the funds you give us. In fact, I think we are one of the few agencies that actually gives money back. We have already identified to your staff $100 million that we believe will be carried over into fiscal year 2003. It is not money that we have in hand, so it is somewhat risky to identify it, but we believe that is going to be a carryover. And, of course, that is $100 million that you don't have to appropriate to us for that fiscal year.

We are looking forward to working with you in the same cooperative attitude we have had in the past. We really appreciate the way your staff identifies the questions and problems they have, and we are able to answer those in advance. And we believe and appreciate the fact that you understand that in many respects it is an independent judiciary that sets our country apart from so many other places in the world.

As an institution, we really are a conservative lot, although we may have many different ideologies. We do not create the cases; we do not reach out to make the law. We wait for the cases to come to us, and the way we do justice is ruling on those cases, one case at a time, as fairly as we possibly can, and the mosaic of those cases is the justice that we create.

We do it, and I have come to believe this now in my tenth year as a judge, by watching the dedicated employees and judges. We do that by enforcing the laws, whether we happen to believe they are good or bad laws, whether the people before us are rich or poor, whatever color they are. We do that by talking to the jurors and reinforcing with them the idea that they are performing a public service and how valuable that is, that ordinary citizens tell people what justice is.

We do that by sentencing criminals who are a danger to society, getting them out of society so society can be safe. We do that also by working with probation officers to give people maybe who have committed a crime, but we believe deserve a second chance, and can have a second chance to lead a law-abiding life, and we do that all of the time.

We help safeguard our freedom of religion, our freedom of speech. We enforce laws against discrimination, and we preserve our equal rights, and we just want to work with you to have the funds to do all of those things. It is a complex and difficult job, probably not as complex and as difficult as the job that you have, but we look forward to working with you and answering your questions.

[The information follows:]

STATEMENT OF HONORABLE JOHN G. HEYBURN II
CHAIRMAN, COMMITTEE ON THE BUDGET
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND
RELATED AGENCIES OF THE COMMITTEE ON
APPROPRIATIONS OF THE UNITED STATES HOUSE OF
REPRESENTATIVES

MARCH 7, 2002

INTRODUCTION

Chairman Wolf, Mr. Serrano, and Members of the Subcommittee, thank you for giving me the opportunity to testify on the judiciary's fiscal year 2003 budget request. With me today are Judge Thomas B. McCoun III, Magistrate Judge of the Middle District of Florida; Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, who is also the Secretary of the Judicial Conference and a member of its Executive Committee; and Judge Fern Smith, Director of the Federal Judicial Center.

Before addressing our fiscal year 2003 budget request, on behalf of the entire judiciary I want to express our sincere appreciation for the generous funding levels provided to the judiciary for fiscal year 2002. Faced with responding to both the need for additional resources due to the terrorist and anthrax attacks and continuing fiscal pressure, the Congress was able to provide significant resources for several of the judiciary's highest priorities. While we did not receive funding for all the new probation and pretrial services positions and clerks' office positions, you provided funding for a significant increase in the hourly rates paid to private panel attorneys representing defendants who cannot afford to pay for their representation; the judiciary's highest priority security needs; the first installment on the renovation of the Supreme Court building; and a COLA for judges. Although we did not get all the funding we requested, we are very grateful that you and your dedicated staff worked with us to fund our most pressing needs.

BUDGET OVERVIEW

The judiciary's fiscal year 2003 request totals $5.2 billion, a 10.7 percent or $507 million increase over available fiscal year 2002 appropriations, including the

emergency counterterrorism supplemental funding. Three quarters of this requested increase ($375 million) is required to continue current operations such as pay and benefit adjustments, inflationary adjustments, increases in GSA space rental costs, an increase in filled Article III judgeships, and continuation of the enhanced security measures taken since the terrorist and anthrax attacks. The remainder ($132 million) is requested for programmatic and workload related needs such as: additional bankruptcy court staff to process an all time high number of bankruptcy filings; additional probation staff to supervise a record number of offenders released from prisons and living in our communities; and an increase in district court staff to handle the projected growth in criminal filings as the number of Department of Justice prosecutors continues to grow.

In addition to the funds requested, the judiciary has identified $129.8 million required to implement the Administration's proposed legislation to shift the full cost for selected retirement benefits for current employees from the Office of Personnel Management to each individual agency. If this legislation is enacted, the judiciary would require a total appropriation of $5.4 billion dollars. A detailed explanation of our fiscal year 2003 request is included as an Appendix to this statement.

IMPACT OF THE SEPTEMBER 11TH ATTACKS

An independent judiciary that all citizens trust and respect, which can fairly and expeditiously dispense justice and resolve citizens' disputes, is a fundamental tenet of our nation. The events of September 11th, and the anthrax incidents that followed, tested the judiciary's ability to maintain the high quality of justice our country deserves. I am pleased to report that the men and women of the Third Branch came together in a remarkable show of pride, teamwork, and patriotism to make certain that the work of the judiciary continued unabated.

In New York City, the 2nd Circuit Court of Appeals, the Court of International Trade, and the district and bankruptcy courts, probation and pretrial services offices, and federal public defender offices for the Southern District of New York are all located within a few blocks of the World Trade Center. The judiciary thankfully suffered no casualties as a direct result of the attacks. The attacks resulted in some facility damage, a disruption in court operations, ongoing air quality issues and exerted untold emotional stress on court employees.

However, with the assistance of judiciary staff across the country, especially those in the Eastern and Northern Districts of New York, the District of New Jersey, and the Eastern District of Pennsylvania, these courts were able to continue to function. For example:

- Pretrial services officers from New York Eastern and New Jersey provided office space and telephones. They assisted in home confinement/electronic monitoring by following up on alerts for 86 defendants. In many cases, because streets were closed to vehicles and the subway was not operational, officers walked to appointments with defendants.

- The bankruptcy court, which was using the judiciary's new case management/electronic filing system, was up and running within hours after court executives contacted the Administrative Office to receive electronic backups.

- The 2nd Circuit Court of Appeals heard oral arguments at the Association of the Bar of the City of New York while awaiting permission to move back into its courthouse.

- District Court Clerks offices' staff in the Eastern District of Pennsylvania, the District of New Jersey, and the Northern District of New York volunteered to travel to the Southern District of New York to assist with various processing functions that were delayed due to the attacks.

IMPACT OF THE ANTHRAX ATTACKS

The anthrax attacks also had a significant impact on the judiciary. The most dramatic was the evacuation and temporary closing of the Supreme Court building. The Court continued to hear arguments at the ceremonial courtroom in the District of Columbia E. Barrett Prettyman United States Courthouse. Examples of other impacts on the judiciary include: finding alterative ways to receive time sensitive case materials from prosecutors, defendants, and civil litigants without utilizing the U.S. mail; receiving juror qualification questionnaires without relying on the U.S. mail to ensure that adequate numbers of jurors were available to continue trials; significantly scaling back on the Administrative Office's use of the U.S. mail to communicate with the courts and

relying almost exclusively on electronic communications via the judiciary's nationwide Data Communications Network; and responding to anthrax hoaxes to ensure the safety of court facilities.

LONG-TERM IMPLICATIONS

In response to the terrorist attacks, the judiciary is taking steps to protect against future incidents that could disrupt the operations of the judiciary. These steps include heightened security, the development of a nationwide continuity-of-operations plan, studying the feasibility of establishing a court operations center located outside of Washington, D.C., and the continued use of technology to decrease the courts' reliance on mail to perform routine business (i.e., the electronic filing of documents, electronic noticing, and processing juror questionnaires).

Also in the long-term, the workload of the judiciary is expected to increase. As additional resources are provided to the various law enforcement agencies of the Department of Justice and additional Assistant U.S. Attorneys are hired to combat terrorism, the result will be continued growth in the workload of the judiciary. Any number of high profile trials could result from prosecutions already known or probable. These cases will cause increased security and defense expenditures. Our budget request does not specifically take into account these potential trials. However, we will monitor the costs of these proceedings so that Congress and the public can be kept informed.

HEIGHTENED SECURITY

Since the September 11th attacks, the judiciary has significantly enhanced security at judiciary facilities. The additional resources appropriated by Congress in the fiscal year 2002 emergency supplemental will enable the judiciary to maintain the level of court security officer (CSO) coverage recommended by the U.S. Marshals Service, procure upgraded X-ray machines for courthouse loading docks and mailrooms, create 106 new deputy marshal positions to coordinate security in each circuit and district, begin to address the mail handling and screening needs of the courts, and provide increased protection both for CSOs and court facilities, especially those with high-profile terrorist cases.

The judiciary's budget request for Court Security totals $298 million and will continue the current higher level of security in the courts for fiscal year 2003. The request is $1.4 million below our fiscal year 2002 spending plan and takes into account non-recurring funding for security systems provided in the emergency supplemental. Working with the U.S. Marshals Service, the judiciary will continue to evaluate its security needs and will keep the Committee informed of our requirements.

While not part of the judiciary's budget request, the Marshals Service is responsible for the security of courthouses, judges, criminal proceedings, and the transportation and security of prisoners. The impact of the war on terrorism and the growing number of criminal cases has had a dramatic impact on the resource needs of the Marshals Service. The dedication and professionalism which the men and women of the Marshals Service have displayed since the September 11th attacks has been immeasurable. The judiciary appreciates that you were able to provide the Marshals Service with significant funding increases in fiscal year 2002.

We hope that in fiscal year 2003 the Committee will be able to continue to provide the Marshals Service with additional staff for protection of the judicial process. In districts such as the Southern District of Florida and those along the southwest border, the number of defendants detained by the Marshals Service has grown dramatically in recent years, and additional deputy marshals are desperately needed to secure these potentially dangerous defendants. Additional deputy marshals are also needed for counterterrorism efforts associated with the terrorist-related cases the courts are currently hearing and additional cases that may be heard in the future. We encourage you to provide the Marshals Service the necessary resources to support their judicial protection responsibilities.

IMPACT OF ADDITIONAL ASSISTANT U.S. ATTORNEYS (AUSAs)

Over the past few years, additional resources have been provided to the U.S. Attorneys to increase gun prosecutions, promote school safety, combat cyber crime, and establish joint terrorism task forces. As the number of AUSAs continues to grow to address the priorities of Congress and the Administration, workload in the judiciary will continue to grow. The potential growth in criminal filings that could result from additional AUSAs has a far-reaching impact on the

judiciary. Additional criminal cases brought to federal courts require additional judges to hear cases, court staff to administer them, pretrial services officers to supervise defendants released in our communities while awaiting trial, court-appointed counsel to represent additional defendants, and more probation officers to prepare presentence reports and supervise offenders released from prison serving their mandatory terms of supervised release.

COURT SUPPORT STAFF

The work of the judiciary is largely uncontrollable. The courts must handle whatever number of civil, criminal, or bankruptcy cases are filed, fairly and expeditiously. The judiciary cannot control the number and length of trials, the resulting number of jurors, and the number of defendants requiring representation. The courts also are unable to control the number of offenders serving a term of supervised release or defendants awaiting trial who require supervision. In order to ensure resources are deployed to match workload demands, the judiciary has developed scientifically-derived staffing formulas that are used to construct the budget request and allocate funding to court clerks' offices and probation and pretrial services offices. Each court program (courts of appeals, bankruptcy courts, district courts, and probation and pretrial services) has its own formula which takes into account the individual workload drivers for the functions performed by these offices.

The staffing formulas were updated in the summer of 2000 after completion of an extensive series of analytical studies of the work performed in clerks' offices and probation and pretrial services offices. The formulas are used to determine the level of resources needed to allow the judiciary to provide a consistent level of service to the bench, bar, and the public, taking into consideration upward and downward changes in workload. As filings and other workload drivers fluctuate from year to year, the application of the formulas to individual court units allows for a corresponding increase or decrease in funding allocations. This allows the judiciary to ensure that resources are allocated equitably to all court units based on their individual workloads.

Although the courts' workload continues to increase in fiscal year 2002 the judiciary was unable, due to funding constraints, to fund fully its staffing formulas. The judiciary was able to provide some additional law enforcement resources only to probation and pretrial services offices where workload is

increasing the most.

In FY 2003, the budget requests funding for 1,297 additional FTEs to fund fully the courts' fiscal year 2002 and 2003 workload requirements (461 FTEs for probation and pretrial services and 836 FTEs for clerks' offices). Without sufficient staff, judicial processes are short-changed, civil and bankruptcy cases are delayed, support provided to judges and the public deteriorates, and offenders and defendants living in our communities are not adequately supervised.

PROBATION AND PRETRIAL SERVICES

Federal probation and pretrial services officers protect the public through the investigation and supervision of defendants and released offenders within the federal criminal justice system. A pretrial services officer supervises defendants awaiting trial who are released into our communities and provides a source of information upon which the court can determine conditions of release or detention while criminal cases are pending adjudication. To support sentence determinations, which require both uniformity and attention to individual circumstances, probation officers provide the court with reliable information concerning the offender, the victim, and the offense committed, as well as an impartial application of the sentencing guidelines. Probation officers supervise offenders coming out of federal prison who are required to serve a term of supervised release. Many of those under supervised release have substance abuse and mental health conditions.

In order to highlight the vital role played by these dedicated officers, I would like to offer an example of an incident where a probation officer went the extra mile in preparing a presentence report for the judge.

> In March of 2001, a probation officer from the Northern District of California was assigned a presentence report of a case where the defendant pled guilty to Conspiracy to Bring Aliens Into the United States Illegally, Transportation of Minors in Foreign Commerce for Illegal Sexual Activity, and Subscribing to False Tax Returns. The case came to the attention of authorities when a minor female died of carbon monoxide poisoning in one of the defendant's apartment complexes. Further investigation revealed that this female and other minor females were illegal aliens who had been

smuggled into the United States with fraudulent visas. The defendant began having sexual relations with many of the victims when they were as young as 11 years old.

The probation officer left no stone unturned in preparation of the presentence report. She interviewed each agency involved, including the city attorney's office, the Immigration and Naturalization Service, the American Civil Liberties Union - Immigration Rights Project, the victims' civil attorney, the Internal Revenue Service, and the mental health professionals who were working with the victims. It was through these interviews that the probation officer determined the extent of the psychological injuries to the victims.

The probation officer's presentence report to the Court recommended that the Court depart upward due to the extreme psychological injury to the victims. This upward departure was not part of the plea agreement, and became a point of contention at the sentencing hearing. The judge believed there was evidence to support this factor and agreed that an upward departure of two levels was warranted on that basis. The attorneys agreed to revise the plea agreement to include the upward departure. The defendant was ultimately sentenced in accordance with all of the factors that were presented and supported through the probation officer's extraordinary investigation.

The mission of our probation and pretrial services officers is not only to protect the public by supervising the activities of offenders and providing information to the court but it is to help offenders and defendants get back on their feet and integrate back into our communities. For example:

In the Western District of Kentucky, an offender recently released from prison entered the probation office and experienced an emotional breakdown because his proposed housing had fallen through. With the help of a probation officer, the offender was admitted to a Crisis Invention Unit where the offender lived and received emotional counseling for several months. While the offender was admitted, the probation officer helped the offender apply for Social Security benefits and food stamps. The officer also helped the offender secure an apartment, which he was able to pay for

using his Social Security benefits. The offender is now living on his own, receiving bi-monthly counseling sessions, and is in total compliance with the terms of his release.

These are only two examples of the dedication and commitment that each employee of the Third Branch brings to the job.

In fiscal year 2001, probation and pretrial services officers supervised a record number of offenders and defendants (139,797) living in our communities. This is above the federal prisoner population and is projected to continue to grow in FY 2002 and FY 2003 as the number of offenders released from federal prisons continues to increase.

The FY 2003 budget requests 461 additional probation and pretrial services FTEs to provide the additional staff required to manage this growing workload. Without the additional resources needed to manage their growing workloads, probation and pretrial services officers will be unable to maintain their high level of service to the community. Without adequate staffing, officers will focus most of their efforts supervising those persons they believe to be the most dangerous felons released from federal prison, while reducing the level of supervision over other released offenders who appear to be less dangerous, but may still pose a threat to the community. In addition, the officers would be unable to devote sufficient time to prepare sentencing recommendations to the court and helping struggling offenders in need of assistance.

CLERKS' OFFICE STAFF

The FY 2003 budget also requests 836 FTEs to support the operations of the courts. This includes 494 FTEs for bankruptcy courts to handle the explosive growth in bankruptcy filings. In FY 2001, bankruptcy filings were a record 1,437,354 and they are projected to continue to increase. The long term impact of insufficient staffing in bankruptcy clerks' offices will be seen in longer disposition times, more case management errors, and reduced level of service to the judges and the bar. Ultimately this will negatively affect both debtors and creditors.

The request also includes 289 FTEs for district courts where the number of criminal defendants is projected to increase by 9 percent in FY 2002 over FY

2001. This anticipated growth in criminal workload reflects the projected increases in the number of cases the U.S. Attorneys offices will be able to prosecute given their recent increases in funding. Without additional staff to process this extra work, we can expect delays in civil filings and decreased service to the bench, bar, and public.

Finally, the request includes 53 FTE to support circuit courts of appeals where between FY 2000 and FY 2001, appeals increased by 5 percent.

DEFENDER SERVICES

The Sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." In enacting the Criminal Justice Act of 1964, Congress charged the federal judiciary with responsibility for providing counsel in connection with *federal* criminal prosecutions and related matters and authorized a separate Judiciary account – the Defender Services appropriation – to pay for these appointed counsel services.

As is true of the Judiciary's workload generally, the demand for appointed counsel services is not within the Judiciary's control. Both the number and complexity of cases in which counsel must be appointed are a function of both decisions made by the Department of Justice and the criminal laws and related statutes enacted by the Congress.

The substantial rate increase you provided for fiscal year 2002 will go a long way toward ensuring that competent counsel are available to meet the demands. I not only want to reiterate and re-emphasize how much this milestone is appreciated by those of us in the Judiciary responsible for managing the appointed counsel process, but also to let you know that panel attorneys from around the country have asked that we convey to you directly their appreciation for what you have done. At a time when the world's attention is likely to be focused on our federal criminal justice system, we believe that this increase will have a meaningful, positive impact on how well that system operates.

Excluding funding for panel attorney rate increases, we are seeking only a modest increase for Defender Services in FY 2003 to cover workload growth and

inflationary increases. Defender Services obligations are projected to grow by just 7.6% in FY 2003. Half of this growth is associated with the need to provide representation in the greater number of criminal matters that are expected to be filed in FY 2003 than in FY 2002. The remainder is needed to fund inflationary increases and mandatory pay and benefit adjustments.

COST CONTAINMENT AND THE JUDICIARY'S BUDGET PROCESS

The Constitution created the judiciary as a separate and independent branch of government. One of the by-products of the distinction as a separate branch, is the judiciary's authority to submit its budget request to Congress through the President "without change" by the executive branch. 31 U.S.C. §1105(b).

The judiciary takes this authority seriously. The Judicial Conference of the United States recognizes that the responsibility for budgetary oversight requires stewardship and fiscal responsibility in both providing for the judiciary's requirements while considering the needs of the nation. The Judicial Conference established a Committee on the Budget, of which I am the Chairman, to assemble and present to Congress the budget for the judicial branch. In response to a request from the Congress, the Judicial Conference determined that the Budget Committee's jurisdiction should be expanded to include an Economy Subcommittee responsible primarily for: (1) coordinating efforts of the judiciary to achieve fiscal responsibility, accountability, and efficiency; (2) advising the Budget Committee on development of fiscally responsible budget estimates; and (3) coordinating the development of reliable long-range budget estimates. The Budget Committee continues to meet each of these objectives.

With the assistance of the professional staff at the Administrative Office who support the committees of the Judicial Conference, the Economy Subcommittee and the Budget Committee analyze and debate the budget requests of the various program committees of the Judicial Conference. After intensive review, the Budget Committee recommends a budget request to the Judicial Conference that balances both the judiciary's responsibility to request sufficient funding to effectively operate the courts and the judiciary's duty as stewards of the public's funding.

In addition to the annual review of the budget request by the Budget

Committee, the judiciary on a regular basis retains outside consultants to evaluate independently our financial and operational requirements and identify areas for improvements and efficiencies. While these studies are sometimes undertaken at Congress' behest, more often the judiciary itself initiates these reviews. Over the past few years, under the leadership of the Administrative Office, independent consultants have evaluated the courts' space and facilities program, the information technology program, the library services program, and the court security program. Currently, the judiciary is conducting a comprehensive assessment of the probation and pretrial services system. Upon completion of these independent program studies, the Administrative Office and the applicable committees of the Judicial Conference review the results and implement program changes to improve the level of service provided by the courts and make the courts more efficient.

While the judiciary is working at the national level to review budget requests and conduct independent program reviews, we, with the assistance of the Administrative Office, also are working at the local level to ensure that the funding you provide us is spent efficiently. Chief judges and unit executives receive training on the financial responsibilities of operating their court; local court unit financial analysts are trained in budget and accounting; and Administrative Office staff conduct court audits and program assessments that help court managers improve the management of their resources. These efforts are done to ensure that every court -- from the large urban courts to the small rural courts -- is effectively managing the funding provided to the judiciary.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

As I discussed earlier, the Administrative Office plays a pivotal role in the budgeting and management of the funding you provide the judiciary. It not only performs important administrative functions such as personnel, payroll, procurement, space management and planning, and accounting, but also provides a broad range of legal, financial, management, program, and information technology services to the courts. The Administrative Office, under the direction of the Judicial Conference, is the manager of change in the judiciary. This change includes: implementing throughout the courts modern automated systems, such as personnel, accounting, library services, jury management, and case management; and expanding the use of technologies to assist in the supervision of offenders and

defendants.

The Administrative Office was also instrumental in providing direct support to the courts to restore operations, upgrade security and facilitate new mail handling procedures, after the events of September 11. The exemplary performance was commended in a letter I read from the Chief Judge of the Southern District of New York. He recognized the Administrative Office for the resource and personnel help that enabled the court to carry on its business while bearing the burdens of September 11.

I urge the Committee to fund fully the Administrative Office's budget request including its modest request for eight additional FTEs. The Administrative Office is integral to the judiciary's ability to perform its work. Without the Administrative Office's support, the judiciary could not continue to improve its efficiency. The increase in funding will ensure that the Administrative Office continues to provide program leadership, policy guidance, and administrative support to the courts, and to lead the efforts for them to operate efficiently.

CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the federal judiciary's education, training, and research arm. With Judge Smith, I thank you for last year's programmatic increase, the first such increase in over ten years, and only the second full current services increase in the same period. We are grateful.

The Center is vital to our work as judges, and a main element of its modest 8.7 percent increase this year involves education for judges. I want also to recognize the Center's education for the employees in our clerks, probation, and pretrial offices in these troubled times of employee unease and uncertainty. Center management training, almost all of it offered by satellite and on the web, has never been more important and highlights the need for the three educational technology positions the Center requests.

Center education is also vital to our work as judges. The Center seeks an increase of $500,000 to allow it to restore its basic judicial continuing education programs to an annual basis. Since 1999, the Center's reduced appropriation has

meant that district, magistrate, bankruptcy, and appellate judges may attend one of these seminars no more than once every eighteen months. This cutback has been a matter of great concern to judges over the country. The Board of the Center took the unusual step of adding its own statement to supplement Judge Smith's justification for this increase.

These programs provide updates on caselaw trends, on innovations in managing cases, and on such specialized topics as admissibility of scientific evidence. Furthermore, we can share notes with colleagues from other courts as well as with the excellent faculty that the Center assembles. I believe the Center's request deserves the committee's support and urge favorable action on the full amount.

JUDICIAL COMPENSATION

Before closing, I would like to express our appreciation for Congress' approval of a fiscal year 2002 Employment Cost Index (ECI) adjustment for federal judges, members of Congress and top officials in the executive branch. The Judicial Conference strongly encourages Congress to authorize an ECI adjustment for fiscal year 2003, which will require a provision to waive section 140 of Public Law 97-92. While the law provides for a 3.1% increase, the President's Budget reduces this adjustment to a maximum 2.6% increase. We urge that Congress take action this year to avoid further salary erosion.

CONCLUSION

Chairman Wolf and members of the subcommittee, this concludes my statement. I look forward to working with you and I would be pleased to respond to any questions you may have.

SUMMARY

The fiscal year 2003 appropriation request for the *Courts of Appeals, District Courts and Other Judicial Services* totals $4,961,693,000, an increase of $507,705,000 over the fiscal year 2002 available appropriations which included $82,221,000 in emergency supplemental funding. In addition to appropriated funds, the judiciary utilizes other funding sources to supplement its appropriations. Included in these sources of funding are fee collections, carry forward of fee balances from a prior year, and the use of no-year funds.

Of the $507,705,000 increase in appropriations, 75 percent ($382,134,000) is for adjustments to the fiscal year 2002 base associated with standard pay and other inflationary increases as well as other adjustments that will allow the courts to maintain current services in fiscal year 2003. The remaining 25 percent ($125,571,000) is needed to respond to continued increases in the courts' workload, as well as increased requirements for security, magistrate judges, and federal defender offices. The request for the principal programs are summarized below.

Salaries and Expenses

The salaries and expenses of circuit, district, and bankruptcy courts and probation and pretrial services offices account for most of the judiciary's request. A total of $4,304,243,000 is required for this activity. Funding totaling $287,352,000 is expected to be available from other sources including fee collections and carryforward balances to fund requirements. This leaves a direct appropriation need of $4,016,891,000, $409,603,000 above the fiscal year 2002 available appropriation which included $5,000,000 in emergency supplemental funding.

Nearly 72 percent of the $409,603,000 increase ($294,157,000) is needed to fund adjustments to the fiscal year 2002 base for pay and benefits increases for courts support staff ($115,100,000), pay and benefits increases for judges ($9,881,000), the filling of vacant judgeships and increases in senior judges ($13,887,000), additional space rental costs ($80,784,000), additional information technology costs ($23,143,000), financing adjustments necessary to maintain current services ($39,655,000), and inflationary increases in other operational costs ($11,707,000).

The remaining increases ($115,446,000) will fund 7 additional magistrate judges and their staff ($2,163,000) to provide an effective, yet less costly, way of providing help to Article III judges to handle the growing volume of civil and criminal cases facing the courts; additional court support staff ($102,727,000) to allow the courts to keep pace with increases in its largely uncontrollable workload; enhanced mail handling facilities and services ($10,000,000) to improve security in mail room operations; medical examinations for probation and pretrial services officers ($200,000); and distance learning and web-based training initiatives ($356,000).

Defender Services

A total of $588,741,000 in appropriations is required for the Defender Services program to provide representation for indigent criminal defendants in fiscal year 2003. This represents an increase of $88,070,000 over the fiscal year 2002 enacted appropriation of $500,671,000.

Most of the increase ($87,470,000) is needed for adjustments to the fiscal year 2002 base for inflationary and workload increases. Included in these adjustments is $18,087,000 for costs associated with maintaining the base level of representations; $30,066,000 to annualize the fiscal year 2002 non-capital private panel attorney rate increase to $90 per hour; $17,142,000 to increase private panel attorney rates to $113 per hour in all districts beginning April 1, 2003; and a $22,175,000 net increase associated with 6,300 additional representations projected in fiscal year 2003.

The remaining increase ($600,000) will fund the start up costs of two new federal defender organizations. The Congress and the Judicial Conference have urged us to establish more federal defender organizations as an alternative to using panel attorneys in districts where this would be appropriate.

Fees of Jurors and Commissioners

For the Fees of Jurors program, an appropriation of $57,826,000 is required, an increase of $9,695,000 from the fiscal year 2002 enacted appropriation of $48,131,000. This increase funds inflationary adjustments ($450,000); a net decrease in projected juror days (-$878,000); and financing adjustment required to avoid a cessation of civil jury trials ($10,123,000).

Court Security

For the Court Security program, an appropriation of $298,235,000 is required. This is a $337,000 increase over the fiscal year 2002 available appropriation of $297,898,000 which included $77,221,000 in emergency supplemental funding.

Adjustments to base include increases of $33,412,000 including standard pay, benefit, and contractual services increases ($13,273,000); funding to annualize the costs for new deputy U.S. Marshals funded through the emergency supplemental ($9,800,000); funding to annualize 24 new court security officers (CSOs) expected to be brought on in fiscal year 2002 ($584,000); funding for increases associated with new and existing space including 10 new CSOs and security systems and equipment ($2,266,000); and funding for the cyclical replacement of existing security systems and equipment ($7,489,000). These increases are offset by a decrease of $42,600,000 for non-recurring costs that were funded with emergency supplemental appropriations in fiscal year 2002. This results in an overall net reduction in funding for base adjustments of $9,188,000.

The remaining increase (9,525,000) is for program increases. These include $8,656,000 for security systems and equipment enhancements, $550,000 for CSO and contracting officer technical representative training programs, and $319,000 (4 FTE) for additional judiciary-funded positions at the U.S. Marshals Service to improve the management of the Judicial Facility Security Program.

Mr. WOLF. I thank you.

Do any of the other panelists have——

Mr. MECHAM. I have a brief comment, if I may.

It was 50 years ago today that I came to work in the United States Congress.

Mr. WOLF. How old were you then?

Mr. MECHAM. I was 12. [Laughter.]

Mr. SERRANO. You do not want to get a judge lying, do you? [Laughter.]

Mr. MECHAM. I hesitate to bring it up because it was in the other body that I went to work. There was no Hart Building or Dirksen Building or Rayburn Building when I came on board then, but I do have great veneration for this body and the Congress, and I have been associated with working for Congress ever since, and I particularly appreciate your leadership.

The tendency in Congress and elsewhere, is to forget there is a third branch, but I noted with great pleasure and advised all of the judiciary of the fact that the two of you, last September, had called an informal meeting in this very room to talk about security. You asked us what our needs were, what our concerns were. You were the only people who did so, and we really appreciate that. It gave us a chance to weigh in because we were confronting some real security problems, and we felt like we had been given an audience, and somebody out there cared for the third branch of Government.

So we thank you for that and for kind of rescuing the Administrative Office in conference last year. Though inadvertent and unintentional, an earmark on the Senate side faced us with the possibility that I was going to have to RIF 160 to 180 of my 900-member staff, which would have decimated us. But through your good efforts and their good efforts in conference, thank you for rescuing us from that.

I really thought that since the CBO and others said we were going to have a surplus, you were just going to write out a check today, Mr. Chairman. I am disappointed that you say it is going to be tough. So we will try to do our best to justify our request.

You might be interested in some of the response we made in the AO to the terrorist attack. We had set up in 1992 a disaster response group after Hurricane Andrew hit, and fortunately that group was in place. And so after the airplanes crashed into the World Trade Center, we were ready and reasonably able, even though communications were disrupted, computers were down, phones were out, to make contact with the District Court, the Circuit Court, the Bankruptcy Court, the public defenders, and probation and pretrial services offices in the lower part of Manhattan, and extend all of the help that we possibly could.

We, also, worked with some of the local courts who volunteered. They deserve a commendation, I think. The court in New Jersey and Newark, the Northern and Eastern Districts of New York, for example, and then later the Eastern District of Pennsylvania all sent volunteers. My people immediately visited the area and offered help. We got the Bankruptcy Court going almost immediately, in part, because of the support you have given us over the years in computer and network technology, but it was really tough

for them up there. They improvised and just did a terrific job, and we were happy to work with them.

The local courts were inspired in their own right for what they did in New York City. The chief judges, the judges and the court employees really rose to the occasion, and I think they deserve the designation of heroes, along with some of the other people who very correctly receive that.

I received a letter just a couple of days ago, February 14th, from Chief Judge Michael Mukasey of the Southern District of New York, and just one sentence, if I may, "The administration of security burdens thrust upon us by the ghastly events of that day, namely, 9/11, are still with us, but the help you provided, both in resources and personnel, have enabled us to carry on the court's business even while bearing these burdens. We were only able to do that because you were able to provide us with the resources which enabled us to do that, and we thank you very much."

We also coordinated the evacuation of the United States Supreme Court. The Judicial Conference of the United States was meeting that day. Judge Heyburn was there, as was Judge Smith. We convened at 8:30 for a breakfast. At 9:30, we convened the meeting. As I was about to speak, we were told that an explosion had occurred at the Pentagon. Later we found it was a lot more than an explosion.

But the Chief Justice was going to keep right on going, and the Marshal came in and said, "You must evacuate this building immediately. There is a plane on the way down here." You remember there was a plane that crashed, but we did not know whether, nor did you, it was going to hit the White House or the Capitol. If it had hit the Capitol, it could have knocked out the Supreme Court as well.

So, hastily, we evacuated. We were able to coordinate that effort. We did not have a good evacuation plan, but I can tell you we do now. We have learned a few lessons along the way, and we did the same with respect to the anthrax scare. We hired a contractor and made him available to all of the courts for testing. Twenty-five courts have been tested, including most recently the Federal Circuit Court of Appeals here, which had a couple of problems.

We hired a consultant, Dr. Barbara Johnson, who is an expert on anthrax and other infectious problems, and we made this available to the courts. We had to set up a testing facility for Supreme Court employees to come over and be examined after they had to evacuate, following their anthrax situation. We provided space for some of the Justices for a few days. We provided space for some of the Supreme Court staff. My people had to squeeze down, double up, but they were pleased and honored to be able to accommodate the Supreme Court staff, at least part of their activities, in our building.

As for the terrorism trials, again, our emergency response group was immediately ready when the Moussaoui trial or at least the indictment was issued and the proceedings began in the Eastern District of Virginia. We got in touch with Chief Judge Hilton, with Judge Leonie Brinkema, and with Judge T.S. Ellis, and promised our full support and help. We arranged for a closed-circuit television for an overflow court so that the press and the public could

get in there when the proceedings are held. We worked with GSA to assure perimeter security there, and we think things are moving along. We have done the same thing, although not as in depth yet, in Boston for the Reid trial that is being held.

I think I have pretty well stated everything I wanted to say in my statement. I do not want to double up on you, except just to tell you that we operate a lean and mean operation at the AO. Our staffing has been basically flat for 6 years, while the court staffs have gone up 15 percent. Remember, our work goes up in direct proportion to the number of staffing that is out there in the court, but we have been able, through efficiency and hunkering down, to do the job. I think to do it with some distinction. We are requesting eight additional FTEs, and we hope that you will be able to accommodate us on that.

At that point, I will rest my case.

[The information follows:]

STATEMENT OF
LEONIDAS RALPH MECHAM, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE SUBCOMMITTEE ON
COMMERCE, JUSTICE, AND STATE, THE JUDICIARY,
AND RELATED AGENCIES OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

March 7, 2002

INTRODUCTION

Chairman Wolf, Congressman Serrano, and Members of the Subcommittee:

I am pleased to appear before you this morning to present the fiscal year 2003 budget request for the Administrative Office of the United States Courts (AO). I appreciate this opportunity and your time.

Let me first take a moment to thank you for your help in conference on the FY 2002 appropriation for the AO. Your support was critical in allowing us to maintain our current level of service to the courts, and for this I am grateful. I also want to express my appreciation for your efforts in providing the judiciary with the FY 2002 emergency supplemental security funding necessary to address some of the most pressing requirements we identified in the aftermath of September 11th and the anthrax exposures that followed. Without the assistance of this Subcommittee, we would not have received the additional resources to heighten mail and building security across the country; purchase an emergency communications backup system to ensure that judges and court administrators can maintain contact with the AO, the U.S. Marshals Service, and General Services Administration personnel during emergency situations; or improve the physical security of the Thurgood Marshall Federal Judiciary Building. Your attention to the needs of the judiciary is very much appreciated.

ROLE OF THE ADMINISTRATIVE OFFICE

Created by an Act of Congress in 1939 to eliminate the separation of powers issues raised by the Department of Justice's handling of the judiciary's administrative needs, the Administrative Office of the United States Courts serves

as the central support agency for the federal court system, with key responsibility for judicial administration, program management, and oversight.

As such, the AO is the focal point for judiciary communication, information, program leadership, and administrative reform. Our court administrators, accountants, systems engineers, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the federal courts nationwide.

RESPONSE TO 2001 TERRORISM INCIDENTS

Nowhere was the exemplary service and outstanding abilities of the Administrative Office staff more evident than in its response to the terrorist events of September 11, 2001. Calling upon the judiciary's existing disaster response group formed in 1992 after Hurricane Andrew, within hours of the World Trade Center attacks, we assembled an emergency response team to work with court staff in New York City to facilitate recovery of communications and computer systems and return the courts to normal operations as soon as possible.

The emergency response team assisted the courts in acquiring cellular phones, rerouting e-mail and computer networks, resolving procurement issues and ensuring that employees were paid accurately and on time. The team also kept court employees and the public posted on the status of operations in New York on the judiciary's Internet site.

The anthrax contaminations that followed soon after, and the ensuing mail delays, required a number of adjustments to court operations, including the relaxing of rules about the timeliness of and the means by which cases and pleadings are filed (i.e., electronic and/or fax). The mail delays also required finding creative ways of ensuring that juror questionnaires were returned in a timely manner, guaranteeing that sufficient juror pools would be available to continue trials.

In addition, the threat posed by contaminated mail required the AO to reduce significantly paper mailings to the courts and enhance the use of our nationwide Data Communications Network. The AO expanded its already widely used e-mail broadcast system and created a series of electronic mailing lists to

target particular court audiences. The use of these broadcasts went beyond simple letter communications and included the distribution of documents via the judiciary's intranet. AO employees are continuing to rely heavily upon e-mail messages, e-mail broadcasts, faxes, and postings to the judiciary's intranet for communications with court staff. Fortunately, the judiciary's investment in information technology, made possible through the support of this Subcommittee, and the establishment of a nationwide electronic infrastructure, positioned us to move more quickly toward electronic communication solutions during this crisis.

AO staff continued assistance by providing information to all courts on enhanced security, mail handling, testing for anthrax and responding to threats from anthrax and other biological and chemical agents. Information was developed and disseminated to highlight health and safety concerns such as: how to handle crisis benefit issues, including Worker's Compensation and the Employee Assistance Program; public health issues; and special information on how to deal with trauma in the work place.

AO staff also coordinated the judiciary's request for emergency supplemental funds to provide for additional court security, protective window film, upgraded x-ray machines, an emergency communications system, heightened mail screening, and other perimeter security enhancements for the courts. Working with the Office of Management and Budget (OMB) we were provided $19.7 million from funds appropriated to the President to cover the cost of increased court security officer (CSO) coverage. Then, with your leadership and assistance, the judiciary received additional emergency security funds totaling $95.4 million in the FY 2002 emergency supplemental.

Longer-Term Implications

As Chief Justice Rehnquist pointed out in his 2001 Year-End Report on the Federal Judiciary, the Administrative Office played a pivotal role in ensuring that the federal courts around the country have effective security precautions and adequate mail screening procedures in place. But, as the central support agency for the administration of the federal court system, we must now turn our attention to the long-range planning aspects of crisis response, identify and address our vulnerabilities, and determine where changes in court operations are necessary in light of these newly recognized threats.

Offsite Court Operations Support Center

One significant vulnerability is the location of our key administrative and operational support systems at the AO in Washington, D.C. With the encouragement of this Subcommittee, the AO currently is studying the feasibility of opening a court operations support center that would provide a separate location outside Washington, D.C. for the operation of systems critical to the work of the courts. The Support Center also would provide a location from which key personnel could operate in the event the Thurgood Marshall Federal Judiciary Building were forced to close for any reason. From a national perspective, the Support Center would better ensure the continuity of operations of the judiciary's information technology infrastructure that supports the day-to-day operations of the courts so that justice would continue to be served during any situation that might otherwise disrupt normal operations.

Continuity of Operations Planning

Outside of Washington, D.C., courthouses are often the most visible and potentially vulnerable federal facilities. Recognizing this threat, an emergency preparedness function was established at the AO in November 2001 to allow us to better focus on crisis response, occupant emergency planning, and continuity of operations planning. We intend to develop model continuity of operation plans for use by the courts and the AO. The objective of these plans is to ensure the capability exists to continue core business functions throughout the courts, and to achieve an orderly recovery under all emergency situations.

Acceleration of Move to E-business

Another vulnerability, discussed earlier, was how the routine business of the courts, including the filing of motions and receipt of juror questionnaires, was disrupted when mail service became unreliable. For the past several years, the judiciary has been progressing toward heavier use of electronic means of transacting business, including the move toward electronic case filings, as well as incorporating e-business into our voucher and bill payment operations. The judiciary is considering whether the move toward these systems can be accelerated.

Unique Issues Associated with High Threat Trials

The terrorist threat to our nation also means that the federal courts are likely to be the forum for many more highly publicized and security-sensitive criminal proceedings. Already we know of three such trials upcoming -- the *Zacarias Moussaoui* and *John Walker Lindh* cases in the Eastern District of Virginia and the *Richard Reid* case in Massachusetts. The courts face unprecedented and extraordinary challenges involving a wide range of issues, including security concerns, information technology, and furnishing closed-circuit broadcasts of the proceedings to victims' families. The AO is providing support and advice to the courts on all of these issues, as we did in the Oklahoma City bombing cases.

I look forward to working with you and the Members of this Subcommittee as we develop more specific plans to ensure that the federal courts are safe and readily accessible to the public, and that the business of the judiciary can and will continue without disruption in the event of a terrorist attack, chemical or biological contamination, or natural disaster.

ADMINISTRATIVE OFFICE BUDGET REQUEST

The FY 2003 budget request for the Administrative Office of the U.S. Courts is $66,912,000, representing an increase of $2,369,000, or 3.7 percent above FY 2002 available appropriations. However, when the emergency supplemental funding is excluded, the FY 2003 increase for the AO is $5,248,000, or 8.5 percent more than the FY 2002 enacted level. In addition to this amount, the AO's budget request identifies $3,947,000 required to implement the Administration's proposed legislation to shift the full cost of selected retirement benefits for current employees and health benefits for retirees from the Office of Personnel Management to each individual agency. If this legislation is enacted, the AO would require a total appropriation of $70,859,000 in FY 2003.

More than three-fourths of the requested increase for the AO, $4,055,000, is necessary to fund standard pay and benefit cost adjustments and general inflationary increases to maintain our current level of service to the courts. The remaining increase of $1,193,000, which I will describe in greater detail in a moment, is requested to strengthen our programmatic oversight role, enhance

crisis response, security and safety programs, and allow us to fund an increase in the transit subsidy benefit for AO employees.

Transit Subsidy

Pursuant to the Transportation Equity Act for the 21st Century (Public Law 105-78), the AO implemented a transit subsidy benefit for its employees within available funding in fiscal year 2000. The benefit is currently $60 per month with a participation rate of approximately 50 percent. Executive Order No. 13150 provided for an increase in the allowable benefit to $100 per month in January 2002.

The already limited parking available in and around the Thurgood Marshall Federal Judiciary Building has been reduced by the loss of parking spaces at Union Station due to security considerations. Further, the planned construction of Station Place has eliminated a commercial parking lot immediately behind the AO building where many of our employees parked. This, coupled with the continuing increase in traffic congestion in the Washington, D.C. area, has increased AO employee interest in the transit subsidy program. The requested program increase of $400,000 will allow us to increase the benefit for AO employees to the authorized level of $100 per month and cover the cost of an anticipated increase in the participation rate to 60 percent.

AO Staff Support of the Courts

An increase of $793,000 is requested to provide eight additional FTE for program oversight. Continuing to develop new programs and systems while supporting a court system whose proportional growth far outpaces that of the AO is a daunting task. The staffing level in the AO has remained approximately the same over the last six years, while court staffing has grown by 15 percent during the same time period.

To make the most efficient use of the resources provided the AO, each vacancy that occurs is evaluated and used to fulfill our highest priority needs. However, because sufficient resources must be committed to core functions such as payroll, personnel, and financial management, and to provide support to the committees of the Judicial Conference, program oversight functions are in serious

need of additional resources. The eight additional FTE we are requesting will enable the AO to perform more adequately its audit, review, and assessment responsibilities and, as I have detailed in my testimony, the tragic events of last fall highlight the need for new resources to staff adequately our crisis response, security, and safety programs in support of the courts.

RESPONSIBILITIES AND ACCOMPLISHMENTS

As I mentioned earlier, the Administrative Office has key responsibility for judicial administration, program management, and oversight. It supports the Judicial Conference in determining judiciary policies, and develops new methods, systems, and programs for conducting the business of the federal courts. The AO also assists the courts in implementing better management practices, developing and supporting innovative technologies that enhance the operations of the courts, and collecting and analyzing statistics on the business of the federal courts for planning and determining resource needs.

It assists the courts in program management, addressing areas such as case management, jury administration, defender services, court interpreting services, and court reporting. One of our major areas of support is probation and pretrial services. In fiscal year 2001, the AO assisted the probation and pretrial services offices in supervising a record number of offenders and defendants (139,797) living in our community at an average cost of $11 per day. This is above the federal prison population (120,827), which has an average inmate cost of $55 per day. The AO also provides financial management services to the judiciary including budget formulation, execution, and accounting; and personnel and payroll support for 32,000 judiciary employees. It supports the facilities and security needs of over 800 facilities housing judiciary operations, and conducts audits and reviews to ensure the continued quality and integrity of federal court operations.

Throughout 2001, the AO excelled in its day-to-day responsibilities. Let me take a moment to highlight several areas.

Financial Stewardship

Working with the courts to ensure the efficient and effective use of resources is a key AO function. We recognize that it is imperative that we do all in our power to ensure that the monies appropriated to the judiciary are utilized prudently; assets and resources are protected from loss, waste, or abuse; operations are efficient and effective; financial reports are accurate and reliable; and business practices comply with applicable laws and regulations.

In fiscal year 2001, the AO undertook an initiative to assist chief judges and court unit executives in carrying out their fiscal stewardship and management oversight responsibilities. Current delegations of authority and other financial controls were reviewed to ensure they are documented, up-to-date, and clearly defined. The AO also worked to ensure that judges and court managers are provided with tools to assist them in their oversight responsibilities. To do this, the AO convened a group of judges and court executives to develop improved management oversight and stewardship training programs and guidance. Seminars for chief district and bankruptcy judges were delivered, a *Handbook on Management Oversight and Stewardship* for chief judges and unit executives was published, and a companion educational program for court unit executives is being prepared. In addition, a task force on internal controls is working to develop a model internal control plan for the courts.

Automation

In the area of automated systems, one of our largest initiatives in recent years is the Case Management/Electronic Case Files (CM/ECF) project, which permits courts to receive documents over the Internet and maintain electronic case filings. We began national roll-out of CM/ECF in the bankruptcy courts last March and will begin implementation in the district courts this spring. More than 12,000 attorneys have already filed documents electronically and, in 2001alone, over 50,000 people signed up for PACER (Public Access to Court Electronic Records), which facilitates all electronic public access to court data, including CM/ECF. This new system will save considerable court resources while also significantly improving public access to federal court records.

Also during 2001, AO staff began delivering the Probation and Pretrial Services Automated Case Tracking System-Electronic Case Management (PACTS-ECM) system to the courts. It is a comprehensive system designed to help probation and pretrial services officers by making offender case information more easily accessible. The system electronically generates, stores, and retrieves investigation and supervision case information, and provides digital images of offenders. It also will have remote capabilities to allow officer access while in the field. The PACTS-ECM system will be an invaluable resource as the number of offenders released from Federal prison who are serving terms of supervised release escalates.

Our Bankruptcy Noticing Center had a record-setting year, producing and mailing 84 million notices. By electronically retrieving data from court case management systems, it generated paper notices at a fraction of the time and cost that it would have taken if produced by local courts. The work is performed under contract and managed by AO staff. This program has saved the judiciary almost $23 million since 1993. We are continuing to work with the bankruptcy community to move to an electronic noticing system to avoid postage costs.

And, as detailed in our *Report on the Jury System in Federal Courts*, prepared at the Subcommittee's request and delivered on February 1, 2002, the judiciary has also nearly completed implementing an electronic Jury Management System that streamlines jury administration. At the end of fiscal year 2001, 74 of the 94 district courts were using the system, with complete deployment expected by June 2002.

In addition to leading the development and installation of these automated systems, the AO has managed the installation of modern audio/visual technologies in new, renovated, and existing courtrooms across the nation. These technologies have proved to be useful tools for video evidence presentation, video conferencing for presentation of testimony, and electronic record-taking.

International Judicial Relations

The judiciary's international outreach program continues to expand. Working with the State Department and other government and non-government agencies, in 2001we held 64 briefings for international delegations representing 72

countries interested in our judiciary system. We also worked with the Committee on International Judicial Relations to assist the Library of Congress in establishing a rule-of-law component for the Library's Russian Leadership Program. In conjunction with these outreach efforts, we produced a second edition and a Russian translation of *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrations in other Countries.* International governments and judiciaries are learning and understanding what Americans have known since our country's inception – a fair, independent judiciary is the cornerstone for democracy.

Policy Guidance

The AO also provides the courts with policy guidance and direction. For example, with the enactment of the DNA Analysis Backlog Elimination Act of 2000, probation officers are required to collect DNA samples for certain federal offenders. The AO worked with the Department of Justice and the Federal Bureau of Investigation (FBI) to determine the type of samples required and the qualifying offenses. The AO then distributed procedures to all probation offices on how to determine which offenders require DNA collection, what steps to take to make the collection, and how to pay for the collection. The AO also aired an educational broadcast on the Federal Judicial Television Network on the probation officers' role in DNA collection and sent the courts instructional videos produced by the FBI. Because of the in-depth instruction on this new program, DNA collection by probation officers can be done consistently across the country to meet the goals of the Congress in collecting DNA from violent offenders.

Another example is the assistance the AO continues to provide district courts in implementing the Civil Justice Reform Act to ensure the just, speedy and inexpensive resolution of civil disputes. Working with a number of judges, the Administrative Office and the Federal Judicial Center drafted the *Civil Litigation Management Manual.* The manual, which has now been approved by the Judicial Conference and sent to all district and magistrate judges, presents a compendium of litigation management and cost and delay reduction techniques that will assist courts in achieving a high level of case management efficiency.

CONCLUSION

Mr. Chairman, Members of the Subcommittee, I hope I have provided you with a better understanding and appreciation for the wide array of responsibilities vested in the AO and the seriousness with which we undertake them. For every issue that affects the judiciary, every new piece of legislation that expands federal jurisdiction, every Administration initiative that impacts federal law enforcement, every congressional request for information, there are personnel at the AO who must quickly master the subject area and render expert advice.

I am proud of our record of accomplishment and service to the courts and the American public. And, as I stated earlier, nowhere were the capabilities of the dedicated AO staff more evident than in the hours, days, and weeks that followed the terrorist attacks of September 11, 2001. You can count on my efforts to see that this level of service not only continues but also improves through the active oversight and stewardship of the resources you have entrusted to us. I ask your support in accomplishing this by granting the modest increase the AO is seeking for FY 2003.

Thank you for giving me the opportunity to be here today. I would be pleased to answer any questions you may have.

Judge SMITH. Mr. Chairman, if I may?

Mr. WOLF. Sure.

Judge SMITH. Thank you. I would just like to make three very brief points on behalf of the Federal Judicial Center.

First, I would like to thank the committee for the funding that you have provided the Center this year. It is our first program increase and our second full current services adjustments increase in more than 10 years, so it has a huge impact. And even though we are not on C–SPAN, I would like to personally thank you, Congressman Serrano, and you, Chairman Wolf, for the support that I know you gave us. We really appreciate it very much. And that thanks comes not only from me and from the Center, but it comes from the Chief Justice and our board members, and it comes from every Federal judge in this country and the support staff who are going to benefit directly from your assistance.

Second, this year we are seeking an 8.7 percent increase overall; 5.3 percent are adjustments to base, so 3.4 for program enhancements. We are asking for additional funds to make a general judicial education program available to every Federal judge once a year, and I do understand everything you said about 9/11 and the problems that that has given the country and all of you. But 9/11 is going to affect the courts as well. We are facing new statutes. We are facing new causes of action, new kinds of indictments, a whole new category of litigants. And the judges who handle these cases are going to be faced with making tough decisions in these areas, and they need to be kept informed of what they mean, and education in these areas is going to be very important.

And so while we do understand it, we do want you to know how important we feel this particular request is, and we also would like to say that even with that request, the $500,000, we would still be spending a million dollars less in travel than we were spending in 1995. So we have not lost track at all of the need to enlarge our distance learning and to make use of it. And the extra money you gave us last year specifically for that purpose, for distance education, is going to be of great assistance in keeping our commitment to that.

Third, Judge Heyburn said that we are the stewards of the money you give us, and that is true, but we know that you are the stewards of the taxpayers' money and that you have to be very careful with what you do with it. And so my statement includes, as usual, an accounting of all of the programs that we have designed and given with the money that you have entrusted to us in this country for Federal judges. Also because I know that, in particular, you and Congressman Serrano are very, very interested in what we do to assist judiciaries of other countries, I have also tried to set forth in detail what those programs have been in assisting in that area.

In response to last year's accounting, we were pleased to make available to you and your staffs some videos and some manuals of things that illustrated what we are doing in some of our distance learning. Of course, this year we again would be more than happy to send up any of our materials, any of our videos, our manuals, anything that would help you or your staff or that might inform you in more detail about what the Center is and what it does.

Obviously, today I would be more than happy to answer any questions that I can.

Thank you for your time.

[The information follows:]

Statement of Hon. Fern M. Smith,
Director, Federal Judicial Center

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March 7, 2002

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House Committee on Appropriations

Subcommittee on State, Justice, Commerce, the Judiciary
& Related Agencies

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Honorable Frank Wolf, Chairman

Mr. Chairman, members of the subcommittee: It is an honor once again to present the Federal Judicial Center's annual request for appropriations. This is the third request I have submitted since becoming Director of the Center in 1999. I have been a U.S. district judge since 1988.

First I want to thank you for the 7.5% increase in our 2002 appropriation. It is our first program increase, and our second full current services adjustments increase, in more than ten years. The seven new positions will be of great assistance in our efforts to provide the federal courts effective distance education.

This statement summarizes our 2003 request and, like last year's, provides you a brief accounting of some of the Center's major activities, in particular:

- Helping the courts deal with the effects of September 11
- Promoting the fair and efficient disposition of litigation
- Assessing court administration practices
- Assisting the judiciaries of foreign countries
- Improving the Center workplace

2003 Request

The requested 2003 appropriation of $21,885,000 represents an 8.7% increase to provide adjustments to base and modest program enhancements: a return to a shorter cycle of recurring education and training programs for federal judges and three new automation positions.

The Center's statutory Board, which the Chief Justice chairs, unanimously approved the request before you today. The Board regards the funds for more timely education for federal judges to be sufficiently pressing that it prepared its own brief statement in support of that portion of the request (the statement is included on the next page).

Judicial education and training programs ($500,000)

Center educational programs last year reached almost 50,000 participants, the great majority of them non-judge employees who participated in satellite broadcasts and other forms of distance education. In most respects, distance education has been a great success.

For federal judges, the Center provides education in several forms, such as manuals on scientific evidence, satellite broadcasts about the USA Patriot Act, and small seminars or workshops to orient newly appointed judges to their new responsibilities or provide experienced judges assistance in specific areas, such as mediation or intellectual property law.

Periodic, general continuing education programs for circuit judges, district judges, magistrate judges, and bankruptcy judges are a fundamental element of our education for judges. These programs are our opportunity to assist judges on a variety of subjects, including updating them on the caselaw interpreting frequently litigated statutes, describing new techniques of case management, and reviewing the ethics requirements that govern judges. Moreover, these programs present opportunities for judges to learn from their colleagues as well as from the faculty we assemble and to share innovations that have proven successful and those that have not.

Until 1999, a judge could attend one of our general continuing education programs once a year. In 1999, we shifted to an 18-month cycle as our appropriation declined and because we thought that distance education could compensate for longer intervals between programs.

That decision has provoked considerable commentary from judges across the country to their colleagues on the Center Board and to the staff of the Center. Based on our analysis, we have concluded that effective third branch education requires restoring these programs to their original 12-month cycle. Below is the statement of the Board of the Center, which explains the importance it attaches to this request.

STATEMENT OF THE BOARD OF THE FEDERAL JUDICIAL CENTER

Approved February 8, 2002

At a telephone conference meeting on October 22, 2002, the Board approved the Center's 2003 appropriations request for submission to Congress. This year as every year, we scrutinized the request to be certain it is responsible and seeks no more than is necessary for the Center to do its job.

This year's request includes $500,000 to restore the Center's ability to offer each federal judge the opportunity to attend a three-day general continuing education program once a year. Typically, the Board does not burden Congress with direct communications about the Center's appropriation, relying instead on the Center director for that task. The special importance of restoring these programs to an annual basis merits an exception to that practice.

Of all the comments we receive from other judges about the Center's work, none is as frequent and widespread as the need to make these programs available on an annual basis. The Center's general continuing education programs are the core of its educational effort for judges. They are essential to helping judges meet the challenges of rapid change, increasing complexity, and growing numbers in the cases before them.

We remain committed to the use of non-travel alternatives for third branch education. The staffs of the courts receive almost all of their education through this medium. Judges, however, need the additional opportunity for reflective, interactive discussions with colleagues about common problems and often-sensitive concerns, and need that opportunity more frequently than twice every three years.

We appreciate your consideration of this special need.

The Board of the Federal Judicial Center

The Chief Justice, *Chair*

Judge Stanley Marcus, U.S. Court of Appeals for the Eleventh Circuit, Miami, Florida

Judge Pauline Newman, U.S. Court of Appeals for Federal Circuit, Washington, D.C.

Judge Robert Bryan, U.S. District Court for the Western District of Washington, Tacoma

Chief Judge Jean Hamilton, U.S. District Court for the Eastern District of Missouri, St. Louis

Judge William Yohn, U.S. District Court for the Eastern District of Pennsylvania, Philadelphia

Magistrate Judge Robert Collings, U.S. District Court, District of Massachusetts, Boston

Chief Judge Robert Hershner, U.S. Bankruptcy Court, Middle District of Georgia

Leonidas Ralph Mecham, Director, Administrative Office of the United States Courts, Washington, D.C.

As the Board statement makes clear, this request in no way signals the Center's retreat from distance education. Our travel budget, with this request, would still be more than $1,000,000 below our travel budget in 1995.

A chart we provided in last year's statement shows that 10 years ago, Center educational programs reached slightly over 10,000 participants, less than half of them through travel-based programs. Our programs now reach almost 50,000 participants a year, but the number of participants in our travel-based programs has actually decreased. We want to continue to exploit cost-effective, non-travel, asynchronous learning for the employees of the courts and for judges to the degree it is effective.

At the same time, we recognize, as do other distance learning proponents, that some face-to-face educational opportunities are essential, especially for those with responsibilities such as those of federal judges. Heavy caseloads and the isolation inherent in performing judicial duties limit opportunities for judges to meet in a detached atmosphere and discuss the nuances of changing precedents and case management techniques. The judge's job is becoming more complicated. Supreme Court decisions, for example, impose on district judges significant new obligations to evaluate the scientific merit of proposed expert testimony and to evaluate patent claims. This new judicial role requires a greater understanding of science and of how to manage such cases efficiently. These are not subjects or procedures that lend themselves to learning solely by computer or video screen.

Three additional positions to enhance the Center's use of distance education technologies ($192,000)

These three positions are needed to support the Center's long-standing and increasing reliance on distance education technologies that I described above. Last year, 90% of the roughly 50,000 participants in Center programs, and in local training events using Center services, used distance education technologies, including but not limited to the Federal Judicial Television Network, which the Center began operating in April 1998. Since fiscal 1998, the Center has been requesting 10 additional positions (video, multimedia, and automation specialists). With the funds provided in 2002, we plan to hire:

- 2 software engineers to exploit the Web to its full potential, especially as we learn more about interactive computer-based training;
- 1 automation security officer;
- 1 additional employee for system maintenance;
- 1 television assistant for the Media Production Unit;

- 1 judicial education specialist; and
- 1 assistant to our Web master.

Our present plan for the three positions we seek in 2003 is to hire two additional software engineers and one computer-training technologist to analyze user needs in the development of projects.

Center Services and Activities

Please permit me to describe, as I did last year, some of the Center's current activities, as a means of accounting to you for our stewardship of the funds you provide for the Center.

Helping the courts deal with the effects of September 11

The Center's programs for court leaders and managers continually stress the need for effective leadership. These programs became all the more timely now that all federal courts are on security alert with the rest of the country.

Court leaders and managers must be prepared to deal with safety and with the apprehensions and tensions of court employees, as well as jurors, witnesses and others who visit our courts. The Center has a variety of resources, and is developing some new ones, to assist courts. We are also producing several Federal Judicial Television Network broadcasts, including a new safety series, begun in December, for probation and pretrial services officers, and several broadcasts for court managers and court staff for leading in and coping with extraordinary circumstances. Cyber crime and cyber terrorism are the focus of the next program in our "special needs offenders" series for probation and pretrial services officers. Our conference for chief district judges next month will emphasize leadership, and we will offer another round of seminars based on President Lincoln's leadership in times of crisis. The forthcoming revised edition of our *Deskbook for Chief Judges of U.S. District Courts* has a chapter on leadership, conceived before September 11 but particularly timely now.

We are also helping the courts understand the new legal environment created in the wake of the terrorist attacks. Our two most recent national workshops for district judges included sessions titled "Domestic Courts in an Interconnected World" and last month we broadcast "Terrorism and the Law: The U.S.A. Patriot Act and Military Commissions," a balanced program of analysis by law professors, Justice Department officials, and legislative staff members about the new law and about the possible relationships between military tribunals and the work of federal courts.

We have also been sensitive to the greater anxiety and need for information of the employees in the Thurgood Marshall building and have instituted a "September 11" lecture series, presenting a program once a month on subjects ranging from "living in times of crisis" to the nature of Islam.

Promoting the fair and efficient disposition of litigation

I described last year our diverse offerings to help judges honor their responsibility to dispose of cases fairly, quickly, and inexpensively. This is the major theme of our initial orientation seminars for newly appointed judges, and we provide judges an extensive array of manuals and sourcebooks about case-management techniques. Recent additions include

- *Manual on Recurring Problems in Criminal Trials, Fifth Edition*;
- *Guide to Judicial Management of Cases in ADR*, which helps judges use alternative forms of dispute resolution in appropriate cases to provide more effective, less costly, and more timely justice—The Center for Public Resources, a leading nonprofit organization promoting the use of ADR, especially in commercial disputes, awarded the *Guide* its best book award for 2001;
- *Effective Uses of Courtroom Technology, A Judge's Guide to Pretrial and Trial*, which we produced in cooperation with the nonpartisan National Institute for Trial Advocacy, helps judges understand the new technologies that counsel use and to manage cases involving them—in fact, a federal judge, faced recently with the question of whether a civil defendant unnecessarily ran up production costs by printing out 3 million pages of paper cited our *Courtroom Technology Guide* several times for the proposition that the parties should have met and conferred on electronic discovery procedures at the outset of the case;
- *Redistricting Litigation: An Overview of Legal, Statistical, and Case-Management Issues*, which will provide judges facing the wave of litigation this year with a resource to understand the statutory and caselaw framework for redistricting litigation, the statistical evidence commonly offered in such cases, and the vagaries of managing the three-judge district courts convened to hear them; and
- the Judicial Conference's *Civil Litigation Management Manual*, produced pursuant to a legislative mandate with the assistance of Center staff in cooperation with the Administrative Office.

Assessing court administration practices

An important part of the Center's statutory mandate is "to conduct research and study of the operation" of the federal courts. Often that research leads directly to educational manuals such as those described above.

The 28 research projects we are currently conducting for Judicial Conference committees or the courts themselves include assessment of three ADR programs, the impact on litigation costs of discovery involving electronic documents, and the special needs of Native American offenders under federal court supervision. We also developed "plain language" class action notices as models for attorneys to ease confusion in litigation and help everyday citizens understand the legal documents sent to them in regard to class actions.

At the request of the chair and ranking member of the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property, we are conducting an analysis of public orders of chief circuit judges' handling of complaints filed pursuant to 28 U.S.C. § 372(c).

Assisting the judiciaries of foreign countries

Mr. Chairman, especially in light of the interest that you and Mr. Serrano expressed last year in the Center's—indeed the entire federal judiciary's—efforts to promote independent and effective dispute resolution in the courts of foreign countries, I want to give you a brief update of our work in this area. Your staff also has the supplementary material requested last year, detailing the briefings and technical assistance provided to foreign judiciaries and governments in 2000 and early 2001 by the Center and the AO.

In the last twelve months, the Center has provided briefings about the U.S. judicial system to 394 judges and legal officials from 35 countries.

We also provided more substantial assistance, in the form either of specific in-country technical assistance or seminars held here in the United States. I should emphasize, as I did last year, that our briefings as well as our more extensive projects for foreign judiciaries are not funded from the Center's appropriation. We provide this assistance at the request of either U.S. government agencies or foreign institutions, which fund the travel, lodging, and subsistence. Here is a brief update since we discussed this matter last March.

- Puerto Rico's Interamerican Center for the Administration of Justice and Public Policy has begun its programming. As discussed at last year's hearings, we have worked with faculty members of the University of Puerto Rico Law School to help establish the Interamerican Center and design its curriculum and services to teach Latin-American judges how to function under new criminal procedure codes.

- A public defender seminar and observational experiences that we developed with the law school at American University, and seven U.S. federal defender offices, provided Venezuelan chief public defenders with management skills and techniques to help ensure effective representation for defendants in the Venezuelan criminal courts.
- An exchange program in India in which an American delegation, headed by two members of the U.S. Supreme Court, met with the Indian Supreme Court, other judges, and members of the Indian bar, about alternative dispute resolution, case management, and judicial training. I was pleased to be included in the delegation and am anticipating a visit by members of the Indian courts to the United States this year.
- Assistance to the Russian Academy of Justice, the Russian Federation's counterpart to the Federal Judicial Center. Academy officials spent a week at the Center and then three Center officials traveled to Moscow to provide on-site technical assistance.
- The Center provided major assistance to the exchange program involving the Mexican Supreme Court and an American delegation headed by Chief Justice Rehnquist. The exchange occurred shortly after the September 11 attacks. I and the Center's deputy director were members of the U.S. delegation. As a follow-on, we hope to arrange a seminar in Washington on judicial education techniques requested of us by officials of Mexico's Instituto de la Judicatura Federal.
- Center staff helped Argentina's federal and provincial judiciaries improve their judicial education capabilities.
- The Center is working with the judiciary of Thailand on the development of effective case-management procedures and a court-annexed alternative dispute resolution program.

We have also provided assistance to the growing number of federal judges whose dockets include problems in transnational litigation, such as service of process, discovery in foreign countries, and disputes over choice of law or jurisdiction. Our research suggests that at least a third of federal judges face such matters on an occasional basis or more often. That proportion will surely grow. This year we published *International Insolvency*, a treatise primarily for bankruptcy judges with cases that include international parties, issues, or implications.

Improving the Center workplace

Finally, I should mention developments affecting Center employees. The Center's statute gives it somewhat greater flexibility in personnel matters than many federal agencies. For example, we adopted a broad paybanding system in

1993 and implemented a revised system last year after we concluded that our initial paybands were too broad to allow effective position classification.

We have had policies in place prior to 1990 permitting flextime for all employees and, since 1994, allowing employees to choose a compressed work schedule. All of our employees use flextime and about 46% are on compressed work schedules.

In 1997 we established a telecommuting policy applicable to all Center employees, subject to managers' discretion. I have to say in candor that the number of employees who telecommute regularly is currently only 10 employees or about 7% of our present staff. Partly that is because it is not practical to do some Center jobs—such as video production—at home. We also make telecommuting available to employees on a case-by-case basis, as the needs present themselves. We believe, however, that we may be able to do more in this regard. Last year I appointed a broad-based employee committee to review the full range of our personnel policies and make recommendations to me. The committee has reported, and we are currently reviewing the recommendations and determining how best to adjust our policies to further our ability to give the taxpayers their due while providing employees flexible workschedules and workplace options. We know that the latter often contributes to the former.

To encourage employee use of public transportation, we offer our employees a transportation subsidy and are looking into increasing the amount from $30 to $60 per month.

Our employees are also eligible to participate in a number of supplemental benefits programs, such as: pretax health insurance premium payments, flexible spending accounts to fund health care, child care, and commuter costs (beyond those covered by the subsidy noted above), and a long-term care insurance program. We are grateful to the AO for developing these innovative policies.

* * *

Mr. Chairman, I appreciate this opportunity to explain our budgetary needs for the next fiscal year and to describe some of the Center's work and its effect on the work of the courts.

I will be pleased to answer any questions you may have.

Judge MCCOUN. I just echo Judge Heyburn's sentiments that it is an honor to be here. This is my first opportunity to testify before the Committee, and I am grateful for the opportunity to be a part of the process.

Thank you.

Mr. WOLF. Thank you. Well, thank you for your comments and your testimony. There is creative tension between the Legislative and the Judicial Branch, going back to a guy named Marshall, who actually comes from, I guess I come from his district because he was there certainly before. [Laughter.]

If you ever get a chance to go to the Warrenton Courthouse, there is an original portrait of Marshall. As you know, Justice Marshall is from Warrenton, which is in my congressional district. In fact, I was surprised his house has been up for sale for quite a while, and I thought the American Bar Association or someone would have come in because it is a large portion of land—it has since, I think, been sold in the past month—to put some sort of conference or something there, but for one or another reason they did not.

But, you know, I respect what you do. It is very important, and obviously the decisions that you make are so important not only to the country, but to the individuals that come before you.

Things are rapidly changing. This war on terrorism is just beginning. It is not nearly over. I had mentioned yesterday, when Secretary Powell came before the committee, I was in Afghanistan for 2 days in January, the first week of January. This war will go on for some time. I do not know what is going to happen.

I hope the Karzai Government makes it, but there are countries all over that region in the north, that are potential future problems. If you read today's paper, four individuals were picked up in Macedonia today and have been transferred over to us. So this will be continuing. Fifteen thousand people went through the training camps, and we only have 450 of them. Some of them just took their jerseys off, others changed their jerseys, but you are going to have a tremendous burden there, and they will be particularly difficult cases because, as you know, the security requirements that you had during the 1993 World Trade Center case, with Ramsey Yusef and the others, so I understand all of that. And bankruptcies are up, unfortunately.

Frankly, I might say, with the spread of gambling in this country, both Indian gambling and non-Indian gambling, I think you are going to find bankruptcies skyrocketing 5 years from now, if the Internet is not controlled, and spreads to the degree that they want to. I just saw my colleague, Mr. Serrano, who has a Republican governor, Mr. Pataki, who I could not disagree with more, is now urging Indian gambling for the State of New York. My goodness gracious. So I think you are going to have bankruptcy cases going, up.

So we are going to try to do what we can to help you. I understand you also do not have an advocate. The OMB process. I have a question that we may or may not ask about that. And Mr. Serrano has been very, very supportive. We have not had any disagreements on these. I think it is all going to come down to the allocation we are given, and the programs that we deal with that

Mr. Serrano and I think are really important programs. How do we deal with the FBI? Mr. Mueller was up yesterday. How do we deal with the DEA? How do we deal with INS? What do we do with regard to Secretary Powell's embassy security and the Small Business Administration? Some of the cases you will have will deal with bombing in Tanzania and Nairobi.

So every time we sort of, and we really have not had differences, we have been able to work these things out. But when you are faced with it is kind of like which one of your children do you want to cut. Most of the programs in this bill, Commerce, Justice Department, and State Department, and also the independent agencies, the SEC, have tremendous needs. I mean, the Congress passed the pay parity bill last year, but the pay parity has not been funded. So we have a $76-million gap, hole, automatically with the submission of the budget.

Now, in fairness, I think they may very well correct that because as you know, the budget process takes effect all through the late summer and fall. We will attempt to be very supportive. And we also have, and we wanted to keep it on track, the Supreme Court building upgrade. Well, you know that is a large amount of money. In some respects, you are in competition a little bit with that, although that is part of you, you are sort of on the same team there, but that would be something that we want to maintain, so they can complete it.

With that, we will do everything we can to help and consult with you as you are doing these things, and as we have to make choices, try to involve you in those choices so that if we do have to make some changes, we know what are the most important.

FUNDING FOR COURT SECURITY

A couple of questions about court security. Your budget request totals for court security, $298 million, about the same level that you had last year. Should the funding request decline from fiscal year 2002, since much of the counterterrorism supplemental was for nonrecurring security requirements?

Judge HEYBURN. I understand exactly what you are asking. That is a good question. The supplemental was about $77 million and about half of that we view as recurring. The part that we view as recurring is the United States Marshals, who we think are going to perform a really tremendous supervisory and organizational function, for fiscal year 2003. The amount is needed for those positions in 2003 is about $17 million.

We also hired approximately two additional CSOs for each district to take care of perimeter security. Although we recognize that those CSOs have been hired on a temporary basis, we believe that they are necessary for our security at the building perimeter. That is why we believe that it is really a recurring cost. The remainder of the $77 million is nonrecurring, but our budget requests an additional $24 million for CSO wage adjustments equipment, X-ray machines and other things that we think are necessary for the security of our courthouses, and obviously we would be willing to talk to you about all of that, but it really breaks out about 50–50, in terms of what we believe to be recurring and nonrecurring.

Mr. WOLF. There have been some complaints about the Marshals Service not dedicating enough individuals with regard to the protection of the judiciary. You saw the film. I think we had a film last year that you saw on the southwest border.

Judge HEYBURN. Yes.

Mr. WOLF. The Department of Justice fiscal year 2003 request includes funding for 246 additional deputy marshals. Do you think it is a good level? Is it about right? Is it a little low? Is it too high?

Judge HEYBURN. Well, it is hard for me to say specifically, but certainly, from the judiciary's point of view, as you know, Congressman, we have been advocating additional funding for the Marshals Service for a couple of years. Of course, we are not here to carry their brief, but we are delighted that they have asked for the 240, and of course——

Mr. WOLF. Was that done in consultation with you or not?

Judge HEYBURN. No, not specifically, no.

Mr. WOLF. They just knew your need. You are a customer of theirs, and they felt that——

Judge HEYBURN. Yes. The Marshals Service has a lot of work. Some of it is directly to support the judiciary, some of it tangential, and some of it has little to do with the judiciary directly.

So we are delighted they have asked for it, and we certainly hope you will give it consideration.

Mr. MECHAM. May I make a comment on that point, Mr. Chairman?

Mr. WOLF. Yes.

Mr. MECHAM. We do meet regularly with the head of the Marshals Service here in town, and the Executive Committee of the Judicial Conference meets with the Attorney General twice a year. We have urgently requested, every time we have met with them, that they provide more Marshal manpower because we do not have enough protection out there.

Mr. Marshall, the prior head of the Marshals Service, had a survey made, and they concluded they were upwards of at least a thousand positions short of what they needed, and some people even thought it might be as high as 2,000. I cannot verify those figures, but I do remember the statement. And the problem is that the Marshals Service has to go through the Department and has to go through OMB. And by the time it gets through, usually, they do not get enough. And our experience has been that the Marshals Service has been the orphan of the Justice Department. DEA, FBI, all of the rest of them come in and get substantial increases, but generally the Marshals Service lags way behind.

Mr. WOLF. If the Senate goes along with it, one of the former heads of the Marshals Service will be joining your team, Henry Hudson.

Mr. MECHAM. Oh, yes, good man.

Mr. WOLF. He is a good man. He really is. I would not expect there would be any controversy with regard—he was head of the Marshal Service I think during both the Bush administration and the Clinton administration, but I think he will really, really do a good job.

IMPACT OF ANTHRAX SCREENING ON THE JUDICIARY

On the anthrax issue, a couple of questions. Are all of the courts going through this anthrax screening that you are talking about or is it just in certain areas. Like our mail, my letters, I am still getting Christmas cards now, and the letters that I am signing, which came from constituents, I am making clear, like it will be dated December 2nd, and I get it on, you know, March 1st, I put it in there because of the anthrax and explaining it. So what impact is the mail system having on the courts, and are all of the courts dealing with this or is it just those in the metropolitan areas that are impacted?

Judge HEYBURN. Director Mecham can respond, also, but I think it is fair to say that the Administrative Office has provided the resources for the individual courts to look at the problems as they see fit, and also the expertise to assist the individual court units.

I think it is fair to say that the court units have responded in many, many different ways. In my own court, for instance, we immediately established a separate mail sorting room in the basement, very little additional expense, and we have all of the mail sorted there with special personnel, and then it goes right up. So there has been no delay in the actual mail.

The situation in Washington is a little more complicated, but the Director, I think, could respond.

Mr. MECHAM. All of the courts have had the consultant support made available to them for testing, if they wish, but only 25 felt there might be a problem in their courts, and so they did undertake testing. We have provided a consulting service as well.

With respect to the mail, all of our mail used to go through Brentwood, too, and I am still getting the same kind of mail you are. Mail that was sent in November, we did not get until mid-February in some instances.

Mr. WOLF. Did you get my Christmas card? [Laughter.]

Mr. MECHAM. Did you get mine? [Laughter.]

But what we have had to do——

Mr. WOLF. I sent you one, just——

Mr. MECHAM. Well, I sent you one. [Laughter.]

What we had to do to meet this problem was, and again it is because of the resources that you provided us, we have set up a data communication network and an Internet system throughout the country, local area networks. We were able to go swiftly to almost total use of e-mail, fax, and flash fax. Just about all of the mail that we are sending out of my agency is going out that way, and a lot of the courts are doing the same. It is not as pressing for them because they do not have to go through the Post Offices in this area, but their mail comes through here when it comes to us. So we have I think responded with some effectiveness. We still have a couple of problems. We hope we can work them out.

Mr. WOLF. Are more electronic filings taking place all over the country? Is it changing the way people practice law now?

Judge HEYBURN. I do not think that it is fair to say that 9/11 has changed the way the filing has occurred. That is a much more complicated issue, and the judiciary has been dealing with that over a number of years, and particularly in areas such as bank-

ruptcy, Social Security and in other high-density areas the particular courts are dealing with it.

But I do not think the practices have specifically changed because of 9/11, except that in some courts they have had to be aware of the fact that mail was delayed, that people did not have access to courthouses so things could not be filed in a timely fashion. So courts have had to adjust their schedules and be sensitive to that all around the country.

Mr. WOLF. Maybe it is a bigger problem here, I guess, perhaps.

Judge HEYBURN. I think it is.

Mr. MECHAM. It is.

Mr. WOLF. Because of Brentwood, yes.

Why do I not recognize Mr. Serrano and then we will go for another maybe 9 minutes, and then we will go down and vote.

Mr. Serrano?

Mr. SERRANO. Thank you so much.

JUDICIARY'S ROLE IN THE PROTECTION OF CIVIL RIGHTS IN THE AFTERMATH OF 9/11

As I am listening to you, and we talked so much, as we should, about September 11th, it dawned on me that an issue that I have discussed with the FBI, with the Secretary of State, with the Attorney General, plays perhaps as big a role for the folks you deal with as for anyone else, except that it is a touchy subject to bring up with you. And that is that during this very difficult time, many of us feel that the government at times may overstep how it deals with people that are suspected of something and a violation of civil liberties may come into play. I brought that up with the FBI; I raised the same concern with Attorney General Ashcroft, with the Secretary of State, General Powell, yesterday, and with anyone who will listen.

It just dawned on me, as I listen to you, that I had not concentrated on the fact that at the end of that road might be a judge somewhere who may look at a case and say, while we are all in favor of getting rid of terrorists, the way this person or this group was brought before me was not the right way, and some people's rights have been violated.

I am not asking you to even comment on it if you do not wish. I am not asking for anything other than that I hope that the judiciary, in general—and I know today we are talking a lot about buildings, and hiring, and so on, but at the end of that is the fact that you folks have this wonderful responsibility in our society, and you might be the ones who, at the end of the road, stop some abuses from taking place, abuses that otherwise we may 40 years from now be discussing, as we do what happened during World War II.

You have a lawsuit right now that I just read about in my Blackberry, a group suing over immigration detainees and the way that immigration hearings are being held in secret without the public scrutiny that we had before. So I would just hope that all of us, as Americans, and residents of this country, but certainly folks in your wonderful profession, keep in mind that at the end of the day you might be the ones who decide that our desire to get the bad guys may at times hurt the good guys, and that is not right. And so I just wanted to say that to you.

Judge HEYBURN. Well, I think that all of the members of the judiciary, obviously, without commenting on a specific case, would agree with you. My predecessor, Richard Arnold, who appeared before this committee, used to say that sometimes people forget that something occurs in between the arrest and ultimate incarceration of a defendant, and that is a fair trial, and that is what we are here for, among other things. And, of course, one of the things the Founding Fathers envisioned as a central purpose of an independent judiciary was, in fact, to protect the citizens from the excesses of their own Government.

Mr. SERRANO. Right. I think that you will have, and I will close on this, you will have perhaps the greatest responsibility of them all because actual trials with people being brought up as suspected terrorists or alleged terrorists may be a small number compared to how many lawsuits or actions will begin to take place with people saying people's rights are violated, the way you detain people, the way we are reading mail, whatever, and that at the end of the day you may have to make those decisions.

ROLE OF THE JUDICIARY AND THE U.S. MARSHALS SERVICE IN PROVIDING COURT SECURITY

The U.S. Marshals issue is a little confusing to me, and I want you to try to clear it up. As I understand it, you are not going to be actually going out to hire some marshals?

Judge HEYBURN. No.

Mr. SERRANO. You will be paying for them.

Judge HEYBURN. What you authorize——

Mr. SERRANO. You should hire people you pay for, you know that. [Laughter.]

Judge HEYBURN. The Marshals Service has the primary responsibility for the protection of the judiciary, and we have no desire to change that at all.

Through the AO and our Security Committee last year we engaged a consultant to make recommendations about how we could improve the security of judges in courthouses, not how to spend more money, but how we could improve the security.

One of the initial suggestions they made, based on their observation that perhaps there was not a central coordinating figure for the security needs in districts, and part of it had to do with the lack of resources of the Marshal, was that a United States marshal be designated in every district as the central coordinator. So our response was to suggest, and Congress agreed, that a United States marshal should be hired for the specific purpose of doing that.

We are now engaged in, if you will, negotiations with the Marshals Service to come up with a Memorandum of Understanding to make sure that when these additional 106 United States marshals are hired that they perform the function that Congress envisioned when you authorized their hiring and which we envisioned, and that is to perform a coordinating and supervisory function of all of the judicial security needs.

So that is our hope, and we are in the middle of doing that. We hope to have about half of those hired by the end of the fiscal year. The remainder of them would be hired in 2003. So it is a work in

progress, but we think it is a good idea. We are glad Congress agreed, and we hope it is going to provide a significant benefit, for a relatively small expense.

I hope that is responsive to your question.

Mr. SERRANO. Yes, it is just that it is almost like, well, I know that we authorized it, but it is almost like we are tearing away certain parts, and then it is not clear the responsibility that you will have in supervising them. I mean, it is coming out of——

Judge HEYBURN. We will not have a supervisory responsibility. I would hope it is a cooperative effort. Obviously, the marshals have to listen to the concerns of the judges and the employees in a courthouse in order to provide security, but we are not the experts in security. I do not think any judge believes that they are an expert in security. It is the Marshals Service, and so we believe that they have the responsibility. We want to be cooperative and helpful, of course, just as you do, and that is the basis I think upon which we are proceeding really.

Mr. MECHAM. Can I make a comment, Mr. Serrano?

Mr. SERRANO. Sure.

Mr. MECHAM. Basically, they will be working for the U.S. Marshals, and they will be Marshals' employees, but we will be working very closely with them, hopefully, to make sure that they do the court security work that they are intended to do. In a way, this is a continuation of the work that began in 1982/1983. At that time, the General Services Administration was systematically starved for money. OMB would not allow them to request anything, and consequently the Federal Protective Service almost died, and the courts were totally or almost totally unprotected.

As a result of that, then-Chief Justice Warren Burger and the Attorney General, William French Smith, got together and said we just cannot have this continue, and so they reached an agreement. The agreement was that the judiciary would request money for court security officers, and the Marshals Service would administer the program if the money was transferred over to them. That is how the Court Security Officer program was born. If it had not have happened, we would probably have had very little security since 1983.

The Court Security Officer program is a parallel because, as you know, we have money in our budget for that program, and then we transfer it over to the Marshals. We monitor that very carefully to be sure that it is spent the way it was intended, and I am sure the Marshals Service monitors it very carefully as well.

As I said earlier, the Marshals Service has been starved, not as bad as the GSA was, but the judges are sitting out there worrying about their security, and this is the reason we recommended this. It was the highest priority recommendation of our consultants to get someone to coordinate security.

SHADOW GOVERNMENT

Mr. SERRANO. On the issue of security, first of all, this question almost sounds like a comical question, but it is not. It is not funny at all. Is the judiciary part of the so-called "shadow Government"? [Laughter.]

See, I knew they would laugh, but it seems that everybody in that so-called "shadow Government" is appointed and not elected.

Judge HEYBURN. I do not know that we are a part of the shadow Government. When my son heard about the bunker at the Greenbrier, he wanted to know whether I had a bunk there. I told him if I did, nobody had told me yet, that I thought there maybe were nine bunks there for Justices, but that the rest of us maybe were left out.

Mr. SERRANO. The reason I ask, and I am deadly serious about this is, it would seem to me that if the purpose of a so-called "emergency Government" is to keep the republic functioning, then you would think, in addition to some White House folks, there should certainly be some people there that were elected by someone somewhere to make some decisions; and, secondly, that you would have members of the judiciary.

Now, again, I do not have to tell you—I did not watch, but I am sure Jay and Dave made a thousand jokes about the shadow Government for a couple of days and "Comedy Central" is going to go crazy this week, and "Saturday Night Live"—but it is a serious issue because most people certainly do not know what is going on, and so I guess publicly we are asking for someone to perhaps answer later in the day or tomorrow from the White House: who is planning on including whom and should the judiciary be included, which I think they should.

Mr. MECHAM. Can I make a comment which is somewhat germane to that?

Mr. SERRANO. Sure.

Mr. MECHAM. The Senate Appropriations Committee last time, and I gather you accepted it in conference, directed us to make a study with respect to the Administrative Office to determine whether or not we should have some sort of off-site facility so that the judiciary could continue to operate in a crisis.

Mr. SERRANO. That is my next question.

Mr. MECHAM. Oh, well, then I should not be taking it up. But we have a member of the staff here from the Supreme Court, and he indicates that the Supreme Court is not included in the shadow Government either.

Mr. SERRANO. Not included.

Mr. MECHAM. Not included.

Mr. SERRANO. Well, that is interesting. We finally have heard from someone who is not included. We have heard from no one who is included. [Laughter.]

OFF-SITE FACILITY FOR ADMINISTRATIVE OFFICE OPERATIONS

So that is interesting. Now, that was my question. Is there something in place for off-site, you do not have to tell me where, but for continuity, should there be a problem?

Mr. MECHAM. What we have is a study underway pursuant to that language in the Senate Appropriation Committee report to determine whether it would be desirable and feasible to have a Court Operation Support Center, not the whole Administrative Office moving out of Washington, but where if all of our communications get knocked down, we had some off-site ability, if we do not have computers, if we do not have telephones, to have sort of an emer-

gency off-site center available, where we could continue those functions. Probably, it should be near Washington, D.C., where we could interact if we need to.

Mr. SERRANO. We have to go vote. We have two votes, right?

Mr. WOLF. Two votes. We are in recess. We will be back in about 5 minutes.

[Recess.]

Mr. WOLF. Do you want to continue?

Mr. SERRANO. No, go ahead.

JUDICIARY PARTICIPATION IN SHADOW GOVERNMENT

Mr. WOLF. Following up on what Mr. Serrano said, I had written down here shadow Government too. I think the Bush administration did do the right thing with regard to that. It is just prudent, and I think the more you look around the world, and if the American people could see what has taken place in Algeria, and Sudan, and some of those places, but I do think there is a need, perhaps, that somebody from the judiciary should probably be participating in that, in whatever way.

My suggestion is that the Chief Justice might want to just place a call. I do not think that is the type of thing you do in public or anything, but probably someone from the judiciary probably ought to be involved. We were talking to Mr. Serrano, and you could do probably without the Congress, insofar as that process, because this is a different process. That is an orderly process of making the water come, and making checks go out, or making whatever, and then I think obviously there is consultation with the Congress.

But I think the Executive Branch has to make sure that those basic functions of health care and emergency response, and I think the courts would sort of fit into that. So there might want to be something, following up with what Mr. Serrano said, where someone from the judiciary does make a contact with the Administration with regard to this thing as it develops because this effort will be with us for a long, long, long period of——

Mr. SERRANO. Mr. Chairman, can I break a rule and interrupt you a second?

Mr. WOLF. Sure. Absolutely.

Mr. SERRANO. Here is my concern: We are easily unique. We are the greatest democracy on Earth, and people now more than ever look to us and ask how do you run a Government, how do you run a country the way you guys do. It would be a mistake I think if we did have an emergency Government in place, if it did not include the judiciary, and in my case, I think if it did not include someone, the Speaker or someone.

The problem is that we keep hearing that this Government may be in place as we speak right now, ready to take office at any given moment, so to speak. Of course, it would be easy to know which members of Congress have been missing for the last 60 days. That is a problem, but I have a serious problem with the notion of having any kind of a Government, even if it is just to run the water system, as long as you call it a Government and think it is a Government that will function that way, if it does not have the judiciary.

And then, secondly, how can it not have someone who is elected by the people?

INCREASE IN BANKRUPTCY FILINGS

Mr. WOLF. A couple of more questions. If you would just give us a report, unless you want to comment about it, how much are bankruptcies up? Have you done any studies, Mr. Mecham, on the bankruptcy level?

Mr. MECHAM. Yes, we have. We put out monthly reports, as a matter of fact.

Mr. WOLF. Where are they now?

Mr. MECHAM. Well, we are up about 50 percent over the bottom.

Judge HEYBURN. 1.4 million filings.

Mr. MECHAM. 1.4 million filings, the chairman knows.

Mr. WOLF. And what was that, say, 5 years ago?

Judge HEYBURN. Well, it has been up and down. As the Director said, at one point in the past 10 years, filings were as low as about 800,000, and the 1.4 million would be the high.

Mr. WOLF. Are we at the high now?

Judge HEYBURN. Yes.

Mr. WOLF. We are at the high.

Judge HEYBURN. I believe that what we are projecting for 2003 is going to be higher than that.

Mr. WOLF. Is that because the American population is growing or is that because bankruptcies are actually growing. If you would look at the normal growth rate based on the census, is it tracking that or is it going up higher? I think I know the answer, but I want to make sure.

Judge HEYBURN. I think the answer is that the economy obviously has something to do with it, and the more people you have, you are going to have generally more bankruptcies, although the bankruptcy rate seems to go up and down irrespective of population growth. It depends on the economy, and particular things that are happening in certain sectors of the economy.

Mr. WOLF. Now I had seen that several years ago that bankruptcies were high when the economy was booming.

Judge HEYBURN. Well, as I said, there are all kinds of things that happen in different sectors. When the economy is booming, people are buying things, they have more credit card debt and that could be a factor.

But, currently, it is at a record high, and the only obvious thing you can attribute it to is the higher unemployment rate and the current economic conditions.

IMPACT OF GAMBLING ON BANKRUPTCIES

Mr. WOLF. I would maintain, though, and I would test this theory with you and maybe you could have your people put this together. I would argue that you will find that bankruptcies are higher in areas that have a heavy concentration of gambling. I would argue that in Memphis it is higher because they are booking down at Tunica. I would argue in certain parts of California they are going over to Vegas. This is not an original idea of mine. I had seen a bankruptcy study 5, 6, 7 years ago that seemed to indicate there were four areas of the country.

So, if you could have your people look at this, and I may be wrong. If I am wrong, that is fine, but I think I may be right. There is no secret on how I feel about gambling. I was the author of the National Gambling Commission. I think it is beginning to corrupt the process in the country, but I think I would like your people to see if there is any correlation between bankruptcies and areas that have a high concentration of gambling. See if there are any indications. I would just like to see information for the record with regard to that.

Judge SMITH. Mr. Wolf.

Mr. WOLF. Yes, ma'am.

Judge SMITH. One of the things you might be interested in, in that regard, is that the Federal Judicial Center was recently asked to update the case weights for the Bankruptcy Courts, which basically involves looking at the time that different kinds of cases require. That might, I think by inference, at least, show some of the issues you are talking about, and so we would be happy to analyse——

Mr. WOLF. Good. I would appreciate that.

Mr. MECHAM. One of the big issues, too, is credit card debt. It is so easy to get credit cards—high school kids, college kids, anybody.

Mr. WOLF. And now with Internet gambling, you can sit home in your bathrobe in your family room with your credit card and go bankrupt in about a weekend. It does not take long, you do not even have to get up and, you know, get dressed, and shaved and go out to the casino. You can just do it, and that is all with credit cards. Were it not for the ability to deal with a credit card, you could not do it.

The country, the Congress, the Administration are going to have to address this issue. It is really going to have an impact on this country in a very, very negative way. I think it will begin to corrupt the political process, which leads me to the next question. There is no connection to this question of what I just mentioned.

IMPACT OF THREATS ON FEDERAL JUDGES

I appreciate the high standards of the judiciary. We very seldom hear of a corrupt Federal judge. It is a rarity, and I think that is important for the American people to know that the judiciary is made up of good men and women of all political views, obviously, but where there is a standard of ethics, and integrity. So you really literally never almost hear, we have had these certain cases, which we all know, but at the Federal level, you have had a very few, and at the State level, too, at all levels, but since we are talking about Federal issues, there is a very good, very positive record which I think the American people can be proud of.

For the record, unless you want to comment or give me some idea, how many, since we were talking about security how many Federal judges in the last 20 years have been injured or have been killed or have had impacts of threats?

Mr. MECHAM. Judge Vance, circuit judge in the Eleventh Circuit was assassinated. His wife was seriously injured.

Judge Daronco was killed by the father of a disappointed litigator. He was a new judge in the Southern District of New York.

Judge Wood, I do not know whether that is within your 20 years or not, but he was killed in Texas.

As far as threats go, we would have to get that from the U.S. Marshals Service. They put out a threat list almost every week of how many people are under constant protection. Earlier you had mentioned the World Trade Center trial. We have had two judges that have been under constant protection, one of them since 1991, one since 1993, their families as well, everywhere they go.

It is a serious matter, and judges are kind of a natural target, and I fear that courts would be a natural target for terrorism as well.

[The information follows:]

FEDERAL JUDGES KILLED OR UNDER DIRECT THREAT

Over the past 23 years three judges have been killed. They are:
Judge John Wood (Western District of Texas)—1979.
Judge Richard Daronco (South District of New York)—1988.
Judge Robert S. Vance (11th Circuit)—1989.

The U.S. Marshals Service reports that seven judges are presently under protective detail due to direct threats and/or high risk trials. In some cases the protection is for 24 hours, seven days a week. In other cases the protection is "portal to portal", to and from the courthouse. From 1990 to the present, the Marshals Service has had 1,209 protective details. Some of those details have been for U.S. attorneys and assistant U.S. attorneys, but the majority have been for judges.

Mr. WOLF. I agree. I agree completely.

INTEGRITY OF THE FEDERAL JUDICIARY

Judge HEYBURN. I appreciate your remarks about the integrity of the judiciary, and I think they are correct. One of the things we pride ourselves on, one of the reasons for the integrity of the judiciary, is the openness of the judiciary. Almost everything we do is open to the public, and so there is that observation. When we make decisions we give reasons for them, and those reasons are on paper.

Obviously, not everybody agrees with a particular decision, but that is part of our craft, that is part of what we do, and I think it contributes to the respect for the judiciary. Even when, in difficult issues, we know that fair-minded people can disagree about things, we take considerable time and effort to explain why we come down on one side or the other.

If people do not agree, of course, they can appeal, even appeal to Congress, if it is a matter of interpreting a statute, as Congress often does. It is sort of like a communication between us and the Congress. We give our interpretation of a statute, and of course if the Congress disagrees, as happens from time to time, then the statute is reenacted. That is the way our Government works. I appreciate your comments.

Mr. WOLF. Well, all the way back to the time of Thomas Moore, I think he almost sets the standard for lawyers. You know, the king wanted him to agree, it would have been very easy to have agreed, and yet the king wanted him to agree more than anyone else because he was probably the most honest guy in the land. And, yet, in essence, because he did not agree, we all know what happened to Thomas Moore.

Judge HEYBURN. I think a very interesting example of that is what has happened just in the past couple of days. As you know,

Chief Justice Rehnquist for years has championed the need for pay increases for the judiciary. I noticed there was a comment in the New York Times on how could he be for a pay increase and yet be one of the justices who did not go for cert? The reason, I think, goes to his integrity as a person and as a judge.

There is a great deal of difference between, as a policy matter, being in favor of increased salaries, and on the other hand, believing that as a Constitutional matter, judges are entitled to an increase. He understands the difference, and therein lies the reason why one can be, for years, in favor of a pay increase and yet not vote to grant cert on an issue that many, many judges thought was a valid case.

Mr. WOLF. I understand.

LOCATION OF ADMINISTRATIVE OFFICE OFF-SITE FACILITY

Director Mecham, your statement discusses a study on the feasibility of an office, that you said it ought to be somewhere in Washington. Obviously——

Mr. MECHAM. Near Washington.

Mr. WOLF. You are not suggesting it has to be a secret, this facility, though.

Mr. MECHAM. I am not in this case. That could be part of the study, but I would think it would not be secret.

Mr. WOLF. I would not think so. I do not think that would be—you know, the Marshall property would have been a great property for that.

Mr. MECHAM. Well, we will keep you fully advised.

Mr. WOLF. It is sold, so——

[Laughter.]

Mr. WOLF. I bumped into a gentleman about 2 weeks ago who said he had purchased it, but I thought, wow, for lawyers not to, but that would have been a great, but to have been able to kind of walk the land that Marshall walked, and his house is still there. It is, as you are going out 66, off to the right, when you come around the Marshall area. If you can keep us informed, though, I think it ought to be close by.

Mr. MECHAM. We will be pleased to keep you informed.

PANEL ATTORNEY RATES

Mr. WOLF. In the fiscal year 2002, we provided funding to increase the hourly rate paid to private panel attorneys from $75 per hour in court and, $55 per hour out of court, to $90 per hour both in and out of court. The increase implemented in May 2002 provides panel attorneys with a 20-percent pay increase for in-court hours and a 64-percent pay increase for out-of-court hours.

On top of requesting $30 million in fiscal year 2003 to annualize the increase provided in fiscal year 2002, your fiscal year 2003 budget requests an additional $17 million to increase the hourly rates to $113 an hour. Can you explain to the committee why you have requested an increase to $113 per hour, when the Judiciary has not even implemented the $90-per-hour rate or studied what impact a $90-per-hour rate would have on the courts' ability to attract and retain counsel?

Judge HEYBURN. Yes. We would be glad to do that. It is a good question.

As you know, we requested $113 last year based on a study by our committee, and a belief that due to inflationary pressures $113 was the hourly rate that we believed was necessary. Last summer, the Defender Services Committee recommended to us, and the Budget Committee approved the request for fiscal year 2003 for a $113 per hour rate. At the time we did not know, of course, whether you were going to give us any increase at all for fiscal year 2002 or, if so, what it was going to be.

You are exactly correct, number one, that we are so appreciative, and so many people around the country are appreciative of the increase to $90. You are exactly correct that we do not know what the impact of that will be. We do not know whether that will end up solving a lot of our problem or whether there will still be pressures. But the reason we asked for $113 is twofold.

We believe, based on the study we did in the last year, that the $113 is the number that would bring us up and correct for inflation, and it was the number that we had decided on prior to the time we had approval of the $90.

We are obviously going to be looking at it and trying to assess what the impact of the increase to $90 is, once we get there. We view that as a floor. We hope it is going to create an impact. If our views change on that, we will certainly let you know.

Mr. WOLF. Have you ever looked at an hourly rate based on location? The Federal Government does a locality pay. Obviously, it is much more expensive to live in Mr. Serrano's district than it is to live in Davenport, Iowa. Maybe that is not fair, but whatever. There are different places in the country——

Mr. SERRANO. Waukegan, Illinois.

Mr. WOLF [continuing]. Waukegan, Illinois. [Laughter.]

Judge HEYBURN. Yes, we have.

Mr. WOLF. I just wondered, it has worked in certain areas. There was a standard pay, but then for people who are in particularly difficult areas like New York and Washington, that they then go a little bit higher. Have you looked at that?

Judge HEYBURN. We have looked at that, and years ago we did have, in essence, a sort of locality pay situation set up. We believe, at this point though, with respect to the $90, we did go across the board because we believed that was really a floor. If we went to a higher rate, perhaps we would think about locality.

But it is interesting. We have really studied this, to a great extent, and the cost of living in any particular area is not necessarily the determining factor about how difficult it is to get panel attorneys, and after all that is what we are concerned about—whether we can get adequate representation for the indigent defendants.

You know, New York is sort of an interesting example. Because New York has such a strong ethic of service, pro bono service and representation for indigent defendants, at least in Federal Court, that even though it is a place of a high cost of living, the panel rate does not necessarily seem to be a bar to finding adequate representation. In other areas, where the travel is difficult in rural areas, even though the cost of living is low, the panel rate does seem to have an effect. It really just varies around the country, depending

on the circumstances, the prevailing ethic of the bar, and a variety of things.

It is not really analogous to a Federal employee. We know they all have to rent or buy a house. They have to buy food and pay for transportation. You can quantify that it is going to cost more in New York than it is in Albuquerque. The issue of panel attorney rates is a more complex situation, and that is really why it was difficult to come up with a number that we thought was fair, both to all of the panel attorneys and the Congress. There were many people who thought the $113 was too low and urged us to go higher, and we just thought, no, we will not make that kind of a request.

I hope that is responsive to your question.

Mr. WOLF. Yes. You anticipate providing representation for the current list of terrorists in the high-profile cases. Do you think that will have an impact on this account?

Judge HEYBURN. It is bound to. Of course the request we have made to you this year does not take that into account because it is a mere speculation, although I think it is a speculation we can count on. But we base our appropriation request on the projected numbers of indigent defendants and the previous average defense cost. Obviously, if you get a situation like Oklahoma City—we have been through these situations before—the Oklahoma City trial, the World Trade Center trial back in the early 1990s, these are huge, huge drivers of cost, particularly if the death penalty is involved. In those cases, you have a higher panel attorney rate and more attorneys.

So there is going to be an impact. I do have a lot of confidence that our people in the AO, the people in the defenders organization can keep track of this, and we can deploy the resources in a way that we can handle the situation. We always keep your Committee and the Senate advised if an extraordinary circumstance arises. There is always the possibility of that happening, and we are prepared for it, we believe.

INCREASE FOR FEES OF JURORS

Mr. WOLF. With regard to fees of jurors, your request asks for a 20-percent increase for Fees of Jurors, from $48 million to $58 million. Can you explain that increase in the request?

Judge HEYBURN. Yes, absolutely. It looks like there is actually an increase in juror days, but in fact, there is not. The increase is due to the fact that back in fiscal year 2000, at one point we underestimated the number of juror days, and there was some carryover left that was applied in 2001 and 2002. We are having to adjust for non-appropriated sources of Funds that will not be available in 2003. It is really a budget readjustment situation.

In fact, if you looked at the actual expenditures for the payment of jurors, it has gone down slightly over the last 5 years, but to most people it looked pretty flat. The increase is a financing adjustment to the budget year. Next year the request should be down.

IMPACT OF ENRON AND GLOBAL CROSSING BANKRUPTCIES

Mr. WOLF. You should also give us, too, some indications of the resources, perhaps later on, but with regard to both Enron and Global Crossing bankruptices that you mentioned, and if there are

others, which we hope there are not, but what impact that is going to have too.

Judge HEYBURN. We have already deployed extra resources to New York to make sure we can efficiently handle the Enron bankruptcy, and the Global Crossing bankruptcy.

Mr. WOLF. Why is that in New York and not in Houston?

Judge HEYBURN. There is an answer to that question, and it would probably bore us all, and I would probably get it wrong if I tried to give you the answer. The very brief answer is, that under the bankruptcy statutes there are a lot of different places you can actually file a bankruptcy action, and New York is one where it is apparently permissible to file a bankruptcy in the Enron action. At least one of their major subsidiaries is a "citizen" of the State of New York. There are a lot of different bankruptcy rules, but apparently that is the reason why it has been filed, at least for now, in New York.

Of course, there is always the possibility, and I am not suggesting at all that this would happen, but that one of the parties to the case could come in and say, this should not be filed in New York, it should really be someplace else.

Mr. WOLF. Is that a situation of forum shopping?

Judge HEYBURN. I guess that would be the pejorative term to use. You know, in any lawsuit, there are usually a variety of different places in which it is permissible to file a lawsuit, and in a lawsuit as large as the Enron bankruptcy there are probably a multitude of places where it might be permissible. I never was a bankruptcy lawyer so I do not want to get too far afield, but I am informed that New York is one of the places where it is permissible to file. Of course, once any case is filed in a place where it is permissible to file, a court can then determine, even though it was permissible to be filed there, and they have jurisdiction, it is not the most convenient or best place to resolve this matter, and there can be motions to transfer to some other place. I am not suggesting that is going to happen in this case, but these things do get resolved.

PRO BONO EFFORTS OF LAW FIRMS

Mr. WOLF. A little controversial question, so you know it is coming. President Bush asked people to donate, over their life span, 4,000 hours of volunteerism. In America, people volunteer. We have this culture that is different than most other places. In Romania, volunteerism just is not something they ever really thought of, and it is beginning to change as they begin to have experience with the West. But in America, do you think that major law firms give enough pro bono effort to helping the poor, and the hungry, and doing those things? I mean, I am not singling out any particular——

Judge HEYBURN. I do not know that I am qualified to answer that question. I know that a lot of law firms donate substantial time, and effort, and even money to charitable legal matters. Someone else would have to make the judgment whether they donate enough, and I am sure that some firms are more generous than others. We are not just talking about, you know, big law firms. I mean, lawyers, as a whole, I think are, in my view, very, very civic-

minded. I mean the whole ethic of lawyers is to solve problems and donate or contribute their expertise to a variety of different causes, and I think you find that in any community, large and small, in any civic endeavor, there are lawyers involved.

Mr. WOLF [continuing]. I know. I am a lawyer.

Judge HEYBURN. It always, I guess, depends on how you count it up.

Mr. WOLF. I was just wondering if maybe, I know there are a lot of law firms that do have lawyers who donate their time, but I just wondered if there is really enough of it, really being—sometimes it is done on a high-level case when there is, you know, big class action, a lot of publicity, but I am wondering on a case where a poor person, he really literally cannot afford, you are not going to make great case law, but you are going to help that individual. And to that individual, that is more important than making great case law or getting a newspaper story.

I just wonder if some of the larger firms are doing—I know they and I know they do some of that, but I wondered if they do enough.

Judge MCCOUN. Chairman Wolf, I was going to point out, though, a lot of that is driven by the State bar associations.

Mr. WOLF. The State bar kind of sets the standards as to——

Judge MCCOUN. In Florida, you have an obligation to work "X" number of pro bono hours. You have to verify that on an annual basis to the Florida bar. The interesting thing that they are doing in Florida is they are now discussing whether or not they should impose that pro bono requirement on the judges as well. Heretofore, it has not been a part of the requirement. In fact, the judges have been exempt, but on an annual basis, I think it is 25 hours or they can opt out and pay "X" number of dollars into a fund that would then be used for that type of thing, but a lot of it is driven by the State Bars.

Mr. WOLF [continuing]. How many States have that type of a——

Judge MCCOUN. How many States?

Mr. WOLF. Yes.

Judge MCCOUN. I wish I could tell you. I do not know. I do not know.

Mr. WOLF. I have some more, but I will just recognize Mr. Serrano, and then I will kind of end with this last batch.

Mr. SERRANO. Thank you, Mr. Chairman.

PROGRESS OF RECRUITMENT OF MINORITIES IN THE JUDICIARY

I will ask Justice Kennedy this question next week, and I asked him last year, but I want to also ask you folks, what are we doing to encourage the participation of minorities, and what are we doing in terms of recruitment, and have we made any progress in hiring in the judiciary?

Judge HEYBURN. Well, I know one thing that we have done——

Mr. SERRANO. I am sorry to interrupt you.

Judge HEYBURN [continuing]. That is all right.

Mr. SERRANO. Let me say something that I told FBI Director Mueller yesterday. One of the things that I have noticed in the aftermath of 9/11 in New York is that the coming together of the community now has people wanting to participate at all levels in

the society that before you did not hear, but now I often get that kind of request.

I commented to him, and he laughed and was very happy, that people who ordinarily would never approach me in my neighborhood and ask me about the FBI and the CIA are asking, young people, interested. In other words, if there is, and I was clear yesterday that I do not think there is, but if there is anything positive that came out of 9/11 is the fact that there is a new sense that we are one family and that this family has to take care of each other.

And so you have people who want to go into areas of work that before, for whatever reasons, they did not believe in, they did not think it was for them or maybe they thought it was not treating their community fairly, like the FBI, and yet now people want to be part of it.

So, with that in mind, what are we doing in the judiciary?

Judge HEYBURN. Well, one thing that we have done, I think we all know that one problem in anyone being hired as a law clerk for a Federal judge is simply access to the process. That is very important, and that is particularly difficult, with respect to getting hired as a law clerk, because you essentially have a thousand different processes. Every judge makes his or her own individual hiring decision, and it makes it sort of difficult for someone who is not clued into the process.

One thing the Administrative Office has done is set up, as part of the judiciary's website, is a law clerk clearinghouse, if you will. So all of the information about hiring of law clerks for all of the participating judges is on that website, and you can find out exactly what judges are hiring law clerks, when they expect the applications to be in and what should be included in the application.

In my opinion, that represents a huge lowering of the barrier to just access, generally, because we are always, as judges, trying to get the best applicants we can to apply, no matter where they are from and no matter what their color or background. And part of the problem is, and this does not apply to a particular minority, it is that, number one, a lot of people think, well, I will never get hired, and so they are reluctant to apply. They do not exactly know how to apply, and sometimes the law schools are not as helpful as they could be.

That is why we thought the best way is to open up the process, and if we can give people more information, then everybody will know how to apply, and then it will be more fair. I think that is, at least in the last year and a half, that is the biggest thing that has occurred to open up the process, and I think it will have, hopefully, a long-term effect.

I do not know exactly what the numbers are at this point.

Mr. SERRANO. Let me tell you, in one of the exchanges that I had with Justice Thomas a few years ago he said the schools do not send us minorities.

And then I said, "Well, what schools are you talking about?"

He said, well, I think he said Harvard right? He said, "We recruit from Harvard."

I said, "How about recruiting from some other schools?" It seemed that the Supreme Court was recruiting, had an unofficial contract with a couple of schools in the country. That is fine. But

if you are looking at specific product, if you will, then you have to go where that product exists.

Judge HEYBURN. I think the Supreme Court may recruit. I do not know their hiring practices. But there are over 650 Federal district judges, and we hire, between us, about 1,200 law clerks a year, and there are probably about 40 or 50 Supreme Court law clerks. Admittedly, that is a more prestigious job, but for the average law student out there, they would be delighted to have a clerkship with one of us.

Most District Court judges do not recruit. It is a very time-consuming process. So what most District judges and Court of Appeals judges do is, answer the mail. People send in their resumes, we look at those letters, we pick out a few people to interview, and then we hire. So that is why I think the Internet site is so effective. I do not go to Harvard, I do not go to Howard. I just do not have the time to do that. I wait for the resumes to come in.

We felt, and I think it was a correct decision, by opening up the process, we encourage anybody to apply and no one would be discouraged because they were intimidated or because they did not know the information.

Mr. SERRANO. But we have to be careful in how much we rely on the Internet because you might have very well-prepared people out there who still have no access to the Internet. I mean, that is a fact of life.

Judge HEYBURN. I think most of these law schools have access to the Internet.

Mr. SERRANO. Right, but a lot of those schools do not have people there who are involved in trying to steer these folks, minorities, into the judiciary.

What I am saying is that one has to do outreach, and the Internet is a very—I am a big fan of the Internet. I promote it, I use it, I am addicted to it, but I also know its shortcomings. I mean, Roberto Clemente did not make it on the baseball All-Century team because it was done through the Internet and all of the kids voted for Ken Griffey, who they knew from this generation.

The other folks, they voted for who their parent had spoken about, and so Clemente missed by a handful of votes. Why? Because his constituency, if you will, may he rest in peace, did not have as much access to the Internet. And so it plays along the society. I am not asking you to recruit, because I do not think the Supreme Court recruits, but I think, as I have been advised by staff, the Supreme Court may have a relationship with certain law professors, for instance, who then recommend the cream of the crop for them. Well, there is cream in other parts of the society.

Again, we cannot ask people to continue to take a major role in the defense of the country and not share with them some of the perks of the society, which is the prestige, and the satisfaction, and the import of working with you folks.

Judge HEYBURN. I would agree with that. I hope that we are having an open process. I know a lot of Federal judges who like myself go to our universities. I am in Louisville, Kentucky, and I have gone to both the University of Kentucky and the University of Louisville law schools and talked to the first- and second-year class, generally, about encouraging them to apply for clerkships.

People of all races are there. Of course, we cannot control who applies.

One situation, you know, is a changing dynamic. Even though the clerkship is a very prestigious job, and I think a fascinating learning experience, a lot of these kids getting out of law school now have debt. Although we pay a decent salary, I think a starting law clerk maybe is $45,000 or $50,000 now, many of these kids can earn over $100,000. Some of them can earn even more than a Federal district judge in their first year in a firm. And so it is a sacrifice for those people, particularly those who are in debt or not financially well off to begin with, to take a job with a Federal judge.

Mr. SERRANO. I understand that, and I do not want to beat this to death, but let me tell you something. About 20 years ago, the problem in New York for getting minority judges was exactly that. Every politician we spoke to said, but, you know, if you are one of the few blacks or Hispanics graduating from law school, somebody is going to offer you a lot of money, and the keys to the executive washroom, and you do not want to be a judge. My political answer was then go find them. Find the one who does not want the executive washroom key and would rather come and serve.

Now we have a lot of fine, fine Hispanic and African American judges in New York because there was a political effort, and the word "politics" in this case is not dirty. When it came to the judiciary, there was a political effort to go find these folks.

So what I am saying to you is I am the biggest friend you have got. Be a friend to me. Find some folks to serve our society with you.

Mr. MECHAM. Mr. Serrano, the discussion has been pretty much on judges and law clerks. There are 2,000 judges out there, and we have 30,000 other employees in the judiciary. We put out a Fair Employment Practices report every year for the judiciary, and in looking at that I would say that we are showing real progress in identifying and developing employee skills and abilities and involving minority people in hiring opportunities.

I think, really, there is a proactive program in a lot of courts across the country on recruiting, hiring, promoting, and retaining minority employees, as well as those with disabilities and others. So I am not saying we have conquered the world yet, but I think we are making progress.

POTENTIAL WORKLOAD INCREASE ON THE NORTHERN BORDER

Mr. SERRANO. I have one further question here.

Last year we discussed a lot the Southwest Border Initiative. Now, since September 11th, there is also a lot of attention being paid to the northern border. Has this increased workload? Has this increased the kinds of things you folks have to do? Does this play a role in how to finance your activities?

Judge HEYBURN. Well, it certainly will if and when the response on the northern border creates the kind of cases or activity that the response on the southwest border did. The appropriations request that we make in any given area, for instance, with respect to probation officers or clerks, has to do with the actual caseload for 2002. That is the request that we make. So, even if we might project that there will be an increase in 2003, our request to you

is not based on that projection, it is based upon the actual workload that we are experiencing now.

On the northern border, it may well be that in the coming year we will see an increase in activity, but we do not know that yet. We are not going to speculate at this point and ask you for resources that we may or may not need. We really appreciate the way you responded last year with Southwest border situation, and that is a distant memory, it seems, at this point. It is still its own mini-crisis down there, but I think we are handling it pretty well with the additional resources that you have given us.

JUDICIAL VACANCIES

Mr. SERRANO. One last question. How many nominees are currently pending before the Senate, judicial nominees, to your knowledge?

Judge HEYBURN. How many nominees are pending?

Mr. SERRANO. Right. Federal judicial nominees. And given the concerns that the Senate has raised with the White House about some of these nominees, what assumptions do you make in your budget request concerning these positions being filled?

Judge HEYBURN. There are 53 nominees that are currently pending. I do not know how many vacancies there are.

Mr. MECHAM. There are nearly 100.

Judge HEYBURN. And in our budget request, we make certain assumptions about the number of judges who will retire and the number of judges who will be confirmed, all of which obviously affects, to some degree, the amount of money we will need to pay the judges, et cetera.

I think, at this point, the number of confirmations is actually running slightly ahead of what our projections are. If that were to continue, of course, that would be a greater expense. To the extent the Senate confirms fewer than what our projection was, I cannot remember exactly what our projection was.

Mr. MECHAM. Sixty-eight.

Judge HEYBURN. Sixty-eight, then there would be a savings there. Of course, you know, what has happened in the first 3 months of this year is not necessarily a precursor to what is going to happen the remainder of the year.

So we make the best estimate we can on that, and we certainly cannot control the politics of judicial confirmations.

Mr. SERRANO. Thank you, Mr. Chairman.

Mr. WOLF. Hopefully, we can finish by or before 12:00.

PROGRAMS AND SERVICES PROVIDED TO RELEASED OFFENDERS

There are a couple of things. With regard to your probation services, what are you doing to help offenders released from Federal prison, particularly those involved in substance abuse?

Judge HEYBURN. We are doing a lot. Just in my time as a Federal judge, what I have really appreciated is the many, many more options that are available for sentencing and for supervision, whether it is home confinement, community confinement, half-way houses, all of these sorts of different resources that involve different kinds of community treatment, drug treatment, and alcohol abuse treatment.

What we are seeing at the district level, and this is a tribute to the professionalism and the innovation of probation officers and some of the training they get from FJC is what we want as judges—more options because with people who are involved in crime it is not a cookie-cutter situation. Obviously, many of them need to go to prison, but there is a whole other classification of people where treatment, some kind of treatment, appropriate to the security needs, is the best option, not to mention being hugely less expensive. So we are dealing with that.

We have got 138,000 people that are now on some sort of supervised release, which is more persons that are in the Federal prison system.

Mr. WOLF. Now, when you are out, and you come out for a drug offense, are you obligated to be in a drug treatment program? I know you are, when you are in a Federal prison, but when you leave?

Judge HEYBURN. I am not sure whether it is actually a statutory obligation, but in almost every instance where there is drug involvement in a crime or where the probation officer determines, based on their intensive review of the background of the individual that there is a drug problem, then there will be a mandatory requirement of drug treatment.

INCREASE IN OXYCONTIN CASES IN FEDERAL COURT

Mr. WOLF. Have you seen any growing number of OxyContin cases in the Federal courts?

Judge HEYBURN. I have not, personally, in Kentucky, and I do not know whether anybody knows——

Mr. MECHAM. I did not hear the question.

Judge HEYBURN. OxyContin.

Mr. WOLF. Have you seen any increase in OxyContin drug cases in the Federal courts?

Judge MCCOUN. It is in vogue now.

Mr. WOLF. I know.

Mr. MCCOUN. Mr. Mecham, there were four OxyContin robberies in Loudoun County 2 weeks ago, a CVS, an Eckards, a Safeway, and I forget the other store. While this is a very good drug for people who are dying of cancer for severe pain now you are finding people knocking over pharmacies and taking. It was also in downtown Reston, which is very close to where I represent, not in my district, 2:10 in the afternoon, I think, a Target pharmacy was robbed.

But I wonder, is there a growing number? Can you tell us, for the record, perhaps, what is taking place around the country?

Judge HEYBURN. I can get you that information.

[The information follows:]

INCREASE IN CRIMINAL CASES RELELATED TO OXYCONTIN

OxyCodone, present in large amounts in OxyContin, is the generic substance which is tracked by the Sentencing Commission in criminal sentences. The data on the number of criminal sentences (cases) are as follows: FY 1999—13 cases, FY 2000—16 cases, FY 2001—50 cases.

The increases is significant for a drug which is not one of the major drug types.

In FY 2000, of 23,376 drug-related criminal sentences (cases), all but 557 were related to the five major drug types: Powder Cocaine, Crack Cocaine, Heroin, Marijuana, Methamphetamine.

Of the 557 cases which include a number of substances such as LSD and Ecstasy, OxyCodone counted for 16. If the total "other" drug cases in FY 2001 stays about the same in FY 2001) (557), not only would the 50 cases be over three times the number in the previous year, but it would represent 10% of the "other" drug cases.

Judge MCCOUN. The problem, the main problem would still be with cocaine and methamphetamine, that type of drug. I do not think it has reached that level yet at all.

Mr. WOLF. You have been to Hazard, Kentucky.

Judge HEYBURN. I have been to Hazard, Kentucky.

Mr. WOLF. Mr. Rogers has done a great job in trying to bring attention to this, but in Hazard, Kentucky, a lot of families there have been devastated. OxyContin has literally, and also in Southwest Virginia, down in Lee County, very few families in that area have not been negatively impacted, either a family member robbed or a family member involved.

Judge HEYBURN. I did not know that. That is, actually, as you know, that is in the Eastern Kentucky District Court, and I am in the Western District.

Mr. WOLF. No, I did not know the district.

Judge HEYBURN. We have split, and I am in the Western side.

Mr. WOLF. Where does Eastern sit, in Lexington?

Judge HEYBURN. They have a courthouse in London, they have a courthouse in Lexington, they have a courthouse in Ashland, which is right on the border there, and they have a courthouse in Pikeville.

Judge SMITH. Mr. Wolf, may I just add something to the previous question you asked about drug counseling and other things?

Mr. WOLF. Sure.

FJC EDUCATIONAL PROGRAMS ON SPECIAL NEEDS OFFENDERS

Judge SMITH. A great deal of the education that we do at the Center is for pretrial and probation officers. Most of that is done by distance learning, including a series that we have on special needs offenders. Many of those that come out of prison are offenders with a great need for education, job counseling, help with drug and alcohol dependency, et cetera. And part of our training is to make sure that our probation officers are current on what is available in all of these areas, both in community agencies and faith-based agencies.

One of the other things that we are involved in right now is that the Administration Office and the Judicial Conference Criminal Law Committee, have asked us to do a study of special needs of Native American offenders. That is an area where I think there is a crying need for counseling and alcohol and drug rehabilitation. And so we are going to be working with the Criminal Law Committee and with the Justice Department's Tribal Justice Office to see what we can come up with and to try to stay on top of Probation's ability to deal with these things.

Mr. WOLF. So that is a growing problem, huh?

Judge SMITH. It is. It is a terrible problem, and one of the sad things is that, well, the whole thing is sad, but one of the really saddest parts is how many juvenile offenders are involved.

Mr. WOLF. You just triggered something. I had not thought about it. NBC has now decided to be the first network to begin to take hard liquor ads. Shame on NBC. CBS does not, ABC does not, Fox does not. NBC broke the code. For 52 years, there was a self-imposed prohibition. We are just beginning to get a handle on drunk driving with regard to the young people. Every hour of every weekend some young person dies in an accident, and 50 percent of them are through drunk driving.

And NBC, even to the point of putting ads on the Olympics, I mean, that is unbridled, corporate greed. NBC's role is unbridled corporate greed. And G.E., I mean, if I were to go out now to buy, we just had to buy a new dishwasher, and we bought a G.E. You cannot take a dishwasher back once it is in, but would not buy a G.E. product because G.E. has been silent on this issue.

Are all of you parents? They said they were not going to have this after 8 o'clock. Eight o'clock?

Judge HEYBURN. I wish my kid would go to bed by 8 o'clock. [Laughter.]

Mr. WOLF. Central time, it just triggered that thought. Why would NBC do it? We hope to have hearings. We were promised hearings, and if anybody from NBC is listening, we were promised hearings by the committee with jurisdiction. Some people say we are not going to get hearings.

I want to tell NBC, if they are listening, we are going to have hearings in this committee. If the other committee does not have hearings, I am going to call a hearing, and we are going to bring up all of the people to talk, 25 groups in this Nation, from the American Medical Association to the many others, that have really come out against this. And NBC thinks they can hire some powerful lobbyists in this town and people will forget. We are not going to forget about this.

This is unbridled corporate greed, exploitation of people who have a real problem. And if you are trying to fight alcohol, and you are in a family where that is the problem, and you are doing everything you can, and NBC flushes these ads out, and then to see the number of young people——

Mr. SERRANO. Mr. Chairman, may I interrupt you a second?

Mr. WOLF. Sure.

Mr. SERRANO. And I am sorry to do this. Just for your information, NBC just purchased Telemundo, which is one of the larger TV networks in Spanish. So those ads now, Spanish version, will be in the 50 States, and the Caribbean and parts of Latin America, just creating even more of a disruption.

I agree with you. It is a very touchy subject for guys like me because of my belief in freedom of the press and freedom of expression, but what I always believe is that you should have these freedoms on paper and protect them by the Constitution, and then you should use good judgment and not necessarily exercise every single freedom that you have. And so I agree with you.

Mr. MECHAM. Chairman Wolf, I should report to you that my son is president of an NBC television affiliate, which has refused to run the ads.

Mr. WOLF. Good for him.

Mr. MECHAM. I do not know how many others have, but that station has refused to run those ads.

Mr. WOLF. Well, good for him. I would just say, because I have heard from some NBC people, that the NBC employees favor this. I do not think a lot of their people that you know really favor this, and so I think you have a situation of a couple, you know, people that are trying to get the bottom line to be more than it is, and so I am appreciative of that.

I understand that a lot of the employees have not been very, very supportive of it, but you find, I will not mention the guy's name, I do not want to mispronounce it or say it, he and a handful of others have made the decision.

I appreciate ABC not running this, and CBS not doing it, and Fox not doing it, because if they were to break this thing open, you know, it would just be, "Katie, bar the door." I mean it would be wide open. I think we would have major increase in drunk driving. I think we would have a major increase in the breakdown of the family and just a lot of problems. But we are not going to, you know, you triggered that when you mentioned youth drinking.

JUDICIAL EDUCATION PROGRAM

When you do your conferences, the 3-day conferences, are most of them done by telecommunication by satellite or most do they come together and where do you do them?

Judge SMITH. The judges do come together, which is I think an essential component of that particular conference.

Mr. WOLF. Are they done on a regional basis?

Judge SMITH. It depends. We have alternated between regional conferences one year, when we were on a 12-month basis, and a series of national locations the following year because each of those have advantages. So this past year we had national conferences. One was in San Diego, one was in Washington, D.C., and one was in New Orleans. When they are on a regional basis, they tend to go circuit-by-circuit.

And if you would let me expand on that just a little because these conferences I think play a special role. If I could, I would like to speak to them not in my role as the director of the Federal Judicial Center, I would like to speak to them briefly as someone who has been a Federal judge for almost 14 years. It ties in, and if I can use Congressman Serrano's example, with something he mentioned about the new antiterrorism laws, and human rights.

Being a Federal judge, I am not going to say it is more difficult than other jobs, it is certainly no more difficult than yours, but it is different, to some degree. One of the reasons it is different is because the vast majority of Federal judges do whatever they do in isolation. You know, we go out into our courtrooms by ourselves, we write our opinions by ourselves, we make our decisions by ourselves.

As valuable as distance education is, it does not, and cannot, replace the ability to sit down and talk to your colleagues. Something like the USA Patriot Act or some statute that says you can keep people in jail a reasonable amount of time, what does that mean? How are you handling it? Where is the juxtaposition? Where is the

confrontation between constitutional rights and what the statute says?

And the ability to meet with your colleagues to discuss these issues, to have speakers, and then say, "Well, you had that case? What did you do?" is just invaluable, and that is why we feel so strongly and why even our board of which the Chief Justice is chair, and Mr. Mecham is a valued member, wrote a supporting letter, which it had never done before about this, to say "once a year let the judges do this."

Mr. WOLF. I think it makes sense, and to develop relationships and share because you are kind of alone. After you become a judge, after a while, I guess you have got to be careful of who you know, becoming friends with. So I think it does make sense to get together.

Judge HEYBURN. No one calls you any more.

Judge SMITH. That is right. [Laughter.]

And we do try to combine efficiency and cost. I mean, we look at hotel rates. We do try to be as careful as we can.

Mr. WOLF. No, I think it makes a lot of sense. I have no problem.

Mr. SERRANO. Red Buttons used to say, "Nobody throws you a dinner any more." [Laughter.]

INTERNATIONAL EDUCATION PROGRAMS

Mr. WOLF. On your international programs, I just wanted to ask, AID funds most of that when you do the exchange programs; is that correct?

Judge SMITH. Well, it depends. AID——

Mr. WOLF. Particularly, if you go to a foreign country.

Judge SMITH [continuing]. AID funds some. The foreign countries fund a lot of them. We do not fund them. That is the main thing, but a lot of the countries send their own people. The State Department does some independent funding. Sometimes the Asia Foundation funds them.

Mr. WOLF. Do you do many in the Middle East?

Judge SMITH. We do a lot with the Middle East—or we were until the last couple of months. Yes, there are a lot. I, personally, have been to Egypt, to Tunisia, to Morocco, to Jordan. We do a lot over there. We have done a fair number with Russia. This past week we had Chinese judges. We had a 20-country multinational group that included I think six countries from Africa, which I was very pleased to see because they have not been as involved. We do a fair amount with South America. We have a big project, which we mentioned last year with Puerto Rico, which is going very well. We have a project in Venezuela having to do with public defenders, which we are very proud of.

Judge MCCOUN. Mr. Chairman, we have six Russian judges coming to the Middle District of Florida next week to visit with us.

Mr. WOLF. I think that is good. And I think the more from the Middle East, too, that see the values that we have here. I mean, when you saw the poll the other day, we are not doing well there. We should be doing very well because we are good people, and we are—if they only knew who we really were, but that is good.

RELATIONSHIP WITH OMB

The President transmitted your fiscal year 2003 budget without change, and I think that has been the tradition and the history. However, the President's budget included a $400-million negative allowance for "certain pass-through accounts." Since the Legislative and Judicial Branches are the only major pass-through accounts, this negative allowance must be intended to be applied, at least in part, to the Judiciary.

Can you explain your relationship with OMB and what authority they have to reduce the judiciary's budget request?

Judge HEYBURN. Well, it is a complex relationship. We have met with them over the years on numerous occasions.

Mr. WOLF. And they have a tough job, too. It is very easy to criticize OMB, and they have a tough job.

Judge HEYBURN. Certainly, I am not here to criticize them.

Mr. WOLF. Oh, I know you are not.

Judge HEYBURN. I am here to——

Mr. WOLF. I just wanted to make it clear I was not trying to develop a fight between you and them.

Judge HEYBURN [continuing]. Oh, exactly. I mean, we do believe quite firmly that a negative allowance in any form is unauthorized and perhaps illegal, and we do not believe they should do it because it implies that they have some ability to control what kind of appropriations requests that we make to Congress.

We submit it to OMB, pursuant to statute, so that the President and OMB can compile a budget that is ultimately presented to you, not so they can look at our budget and make their own decisions. Of course, with the State Department, the Justice Department, OMB has a function of looking at their request and putting it in a priority with all of the other elements of the Executive budget, but of course they do not pretend to do that with us, and they do not with you either.

So we do not believe that they should indicate a negative allowance. I thought perhaps the entire $400 million applied to the Legislative Branch, but——

Mr. WOLF. I do not think we know. [Laughter.]

Judge HEYBURN [continuing]. Nobody knows, and of course they did not check your budget either. I think our view is they ought to make their own priorities and let us submit the budget, as is, pursuant to statute.

FAMILY-FRIENDLY BENEFITS

Mr. WOLF. Without asking you, and you can just submit for the record, too, the family-friendly programs, you know, flex time, flex place, job sharing, leave sharing, tele-commuting, the language that we put in last year, I do not believe includes the judiciary. I am not sure if it does or not.

[The information follows:]

Employee Benefits

A goal of the judiciary is to be a model employer so it may attract and retain well qualified employees. The judiciary's employee benefits program is an important tool in attracting and retaining these employees. Therefore, the judiciary's benefits program will be one that is responsive to the reasonable needs of employees, is competitive in the marketplace, and is fiscally responsible.

Pursuant to this philosophy, the judiciary has adopted a number of supplemental employee benefits to improve recruitment and retention:

Premium Payment Plan - Allows employees to pay Federal Employees' Health Benefits premiums on a pre-tax basis, effectively reducing the level of these premiums. Approximately 95 percent of the judiciary employees have participated in this program since its inception. The average savings to each employee for 2002 is $526.

Flexible Spending Accounts - Allows employees to set aside salary on a pre-tax basis in special accounts that can be used to fund health care (including medical, dental, and vision) and dependent care (including childcare and eldercare) expenses. Judiciary employees are given the option to set aside an amount for either or both accounts. Participation increased by ten percent in 2002. Well over 27 percent of the judiciary's workforce participate in the reimbursement accounts.

Commuter Benefit Program - This program which began operation in 2001, allows employees to set aside salary on a pre-tax basis in special accounts that can be used to fund mass transit and parking expenses incurred in commuting to work. In 2002, nine percent of the judiciary workforce utilize the Commuter Benefit Program.

Long-Term Care Insurance Program - This program began in 1999. Since then, more than 4,700 judges, judiciary employees, and family members have signed up for coverage. This makes the participation rate for this program nearly 16 percent of the total judiciary population, a rate considerably higher than the industry average for employer-sponsored long-term care programs, and one that rivals the most successful employer-sponsored programs in the country.

This program offers comprehensive long-term care insurance to judiciary employees at group rates. During open seasons, employees may enroll on a "guaranteed issue" basis. The judiciary program offers a range of daily long-term care benefits designed to accommodate the anticipated needs and the budgets of the greatest number of employees.

The judiciary has been, and plans to stay, at the forefront of government agencies in terms of the benefits it offers to its employees. A benefits program office has been established within the Administrative Office of the United States Courts to examine what benefits the judiciary can provide to its employees. The judiciary is seeking legislation that would give the Director authority to expand the judiciary's benefit offerings.

The judiciary has adopted a number of family-friendly policies and programs, including:

Telecommuting - The judiciary has adopted a telecommuting policy that allows employees to perform their official duties and responsibilities at home or at some location other than at their official place of employment that management finds reasonable, such as at a telecommuting center. If a court, chambers or court unit chooses to establish a local telecommuting program, the local policy must be set out in writing, must meet certain minimum requirements and guidelines, and should cover short-term (e.g., temporary medical conditions) as well as continuing telecommuting arrangements.

Court Operations Support Center - The judiciary is exploring the creation of a court operations support center, an off-site work center that would support national court operations on a day-to-day basis and serve as a backup facility to ensure continued Administrative Office support of court operations in the event of a crisis or emergency. It is not currently envisioned to serve as a telework center.

Physical Fitness Centers Policy - Guidelines for local physical fitness center programs applicable to all courts, chambers and court units have been established. Courts are allowed the discretion to facilitate employee access to a physical fitness center to promote the physical and mental health of employees.

Child Care Centers in Courthouses - The judiciary supports participation in the federal day care center program. Following the disaster at the Alfred P. Murrah Federal Building in Oklahoma City, the judiciary encourages courts to pursue establishment of child day care centers outside of buildings that house courts.

The judiciary has developed the following programs and policies to improve the recruitment and retention of employees:

Information Technology Recruitment and Retention Bonuses - A recruitment and retention bonus program for automation employees began as a pilot program and was made permanent by the Judicial Conference in March 2001.

A recruitment bonus is defined as a lump-sum payment that may not exceed 25 percent of the annual rate of basic pay to a newly-appointed employee, provided the court unit executive determines that, in the absence of the bonus, difficulty would be encountered in filling the position with a high-caliber employee.

A retention bonus is defined as a lump-sum payment, not to exceed 25 percent of basic pay for a specified retention period, to an employee, if the unusually high or unique qualifications of the employee or a special need of the court unit for the employee's services makes it essential to retain the employee. The court unit executive also must determine that it would be difficult to retain the employee in the absence of a retention bonus.

Court Personnel System Flexibilities - The flexibilities inherent in the Court Personnel System (CPS) provide court units with the latitude to pay more and increase salary at a faster rate than is allowed under many other compensation systems, especially the federal government's General Schedule. Specifically, considerable flexibility exists in the classification of positions within the CPS, providing court unit executives with the option of increasing or decreasing the classification level of positions by matching job content against established CPS benchmarks. Court units may request a waiver of qualifications standards in positions which have been difficult to fill.

Mr. WOLF. I put language into the transportation appropriation bill mandating tele-work for Federal employees who are eligible to tele-work; 25 percent, 50 percent, 75 and 100 percent by the end of 4 years.

I know you have a lot of jobs that are not eligible, but I do not know, is the judiciary covered by that?

Mr. MECHAM. Not to my knowledge.

Judge HEYBURN. I do not think it is, but we have encouraged it, and I think 29 percent of our courts actively have people in tele-commuting, and I think about 2 percent of our employees are actually involved in tele-commuting.

As you suggest, there are just many job categories within the Judiciary where it is simply very, very difficult to implement, but where appropriate, we are certainly encouraging it.

Mr. WOLF. Also, some of the others, the flex time, and flex place and job sharing.

Mr. MECHAM. We do that.

Mr. WOLF. With that, I will just submit the rest for the record, unless Mr. Serrano has anything.

Mr. SERRANO. No. In fact, I have to get to the White House, name-dropper that I am. [Laughter.]

Judge HEYBURN. Maybe you will find out that you are in the shadow Government.

Mr. WOLF. Maybe they were watching. [Laughter.]

I just have a meeting in my office, so I do not——

Mr. SERRANO. I just hope this shadow Government does not have an English-only provision. [Laughter.]

I had a lot of problem with the other one.

Judge HEYBURN. If he does not come back, we will know he is in the shadow Government.

Mr. SERRANO. Let me just say, very briefly, I made a comment, you were comparing to another community, and I threw in Waukegan, Illinois. For years, I did that, when comparing a smaller place to New York, I said, Waukegan, Illinois, and why Waukegan, Illinois? Because that was Jack Benny's hometown, and I was a big fan—okay.

Now I come to Congress, and a wise-guy comment, I say, "Waukegan, Illinois," and the only person on the panel was from Waukegan, Illinois. [Laughter.]

And I learned how to quickly backtrack and say that I was a big fan of Waukegan, Illinois.

Mr. WOLF. Have you ever been there?

Mr. SERRANO. Yes, in fact, years ago.

Mr. WOLF. Maybe they should give you the key to the city.

Mr. SERRANO. No, that is okay. [Laughter.]

I want to thank you. Again, we have immense respect for what you do. You are such an important branch of our great democracy, and we will continue to work together to make your life easier. And just remember what I said, just keep thinking of the fact that at the end of the day, you may be the ones to protect this democracy more than anyone else during these difficult times.

Thank you.

Mr. WOLF. Thank you. The hearing is adjourned.

QUESTIONS SUBMITTED BY CHAIRMAN WOLF

Additional FTE

QUESTION: The budget request funding for an additional 1,300 clerks office, and probation and pretrial services office staff in fiscal year 2003. Please explain why such a large increase is necessary? Is it even realistic that you could hire such a large number of staff in one year?

Filings and caseload, particularly in the criminal, bankruptcy, and probation/pretrial services areas (especially the record high estimates for both bankruptcy filings and the number of persons under the supervised release program), are the main drivers for these additional FTE. However, compounding the size of the requested increase is the fact that Congress was unable to provide funding for fiscal year 2002 to address the workload growth experienced by the courts for that year. So, effectively, the 1,300 additional staff are to address two years worth of workload growth.

While seemingly large, because these 1,300 staff will be distributed to operating units throughout the country, the increased number of FTE requested for FY 2003 equates to an average of less than four FTE per court unit; logistically attainable by even small operating units.

Because staffing needs are calculated based on workload requirements the courts are already experiencing this year, operating units will know early on that they will be eligible to receive additional staffing and can begin the hiring process before the fiscal year begins. However, no hiring decisions are actually made until the operating unit has received its allotment and can determine that adequate funding is available.

QUESTIONS SUBMITTED BY CHAIRMAN WOLF

Use of Automation

QUESTION: What impact has the increased use of automation had on the Judiciary's resource needs? Shouldn't the increased use of automation offset the courts' need for additional staff?

The judiciary recognizes the growing importance of making effective use of information technology and continues to invest in automated tools and systems that are needed to improve the administration of justice. Investment in information technology has created efficiencies by automating labor intensive work processes, and has provided substantial benefits, cost savings, and offsets in areas such as printing, postage, personnel, space, travel and training, thus equipping us to deal with a greatly expanded workload for which other resources were not provided.

Because the judiciary's workload is generally continually increasing, it is difficult to determine the precise effect automation has on staffing requirements. However, analyzing the results of the recent updates to the judiciary's staffing formulas provides evidence of the impact automation has had on staffing requirements. Bankruptcy Courts, whose operations lend themselves to being automated, saw a reduction in staffing requirements of approximately seven percent over the previous staffing formula level they had been operating at -- although actual staffing levels have increased as a result of surging case filings. It is possible that our current investment in automation targeted at other court operation functions, such as the Case Management/Electronic Case Filing, could result in reduced needs for additional staff in other court types when future updates of the staffing formulas are completed.

WEDNESDAY, MARCH 13, 2002.

SUPREME COURT OF THE UNITED STATES

WITNESSES

HON. ANTHONY M. KENNEDY, ASSOCIATE JUSTICE
HON. CLARENCE THOMAS, ASSOCIATE JUSTICE

OPENING STATEMENT

Mr. WOLF. The hearing will come to order. Good morning. Thank you, Justice Kennedy and Justice Thomas, for appearing before the subcommittee this morning to discuss the Supreme Court's fiscal year 2003 budget request.

Obviously a lot has happened since you were here last year, and I am sure your testimony will cover that.

We are also interested in hearing the status of your building renovation project. We were pleased that we were able to fund over $60 million for this important project in fiscal year 2002. And I—or we, if I can speak for Mr. Serrano, would hope that we can continue to fund this project. But I would ask you and say quite forcefully and sincerely, you really are going to have to tell us what you need and not what you would like to have, because the budget this year is extremely tight. I am committed to keeping within the confines of the budget allocation that we are provided. I would like to know precisely how much funding will be obligated this year on the project so that we can fund only that portion and not be required to cut funding for another agency such as U.S. Attorneys or the courts or the FBI or whoever we may be talking about.

I do appreciate both of you being here. I have great respect for both of you as individuals and for the Court. I have felt an obligation to adequately fund the Court—because I know you really can't lobby, and you should not be lobbying for funding. So we are attempting to meet your needs, as we have attempted to meet the needs of the Judicial Conference, particularly as a result of September 11th.

With that, I recognize Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. And welcome to both of you.

As I have said in years past, I always feel somewhat uncomfortable at this hearing because I hold the Court in such a special place in my life, and certainly in the life of this Nation, that the whole idea of members of the Supreme Court talking possibly about buildings and paper clips and paper and supplies just doesn't sit well with me, even though at times, obviously, the Court breaks my heart. But, interestingly enough, this is the one hearing where we know that there is a line drawn between discussing budgetary issues and philosophy. All the others who come before us—Secretary of State, Attorney General—are questioned heavily on where

are they going, although I suspect that a lot of the questions I have been asking them will come to rest with you, this whole issue of how we deal with terrorism, how we deal with people's rights and civil liberties.

But I do welcome you. I want to join Chairman Wolf in telling you that I also want to be helpful for the things you have to do, but he is right, this is a tough budget year. We suspect there will be a couple more to come before it gets better, and we should be talking about that which you must have rather than that which you wish you had.

Thank you so much.

Mr. WOLF. Thank you, Mr. Serrano.

Justice Kennedy, Justice Thomas, you can proceed. Your full statement will appear in the record, and you can proceed as you both see fit.

Justice KENNEDY. Thank you very much, Mr. Chairman. Justice Thomas and I bring to the committee the greetings of all of our colleagues.

We have a number of our Court officers with us here today. I also see the Architect of the Capitol, Mr. Hantman, with whom we have developed a wonderful working relationship over the past few years; Tony Donnelly, our Budget and Personnel Officer, who works with your staff. And this also has been a very productive working relationship, and Pamela Talkin, our Marshal from our Court; and some of our other Court officers and personnel.

We are very conscious, Mr. Chairman and members of the committee, that it has been our tradition and our practice to be very cautious about our request. And let me talk to you—and we think that we have reached our budget request and our estimates in the correct manner, with the correct methodology. Of course, we are here to assure you that that is our purpose and that we have succeeded in that.

It is true, Congressman, that there is a very interesting interplay of checks and balances, and judges in foreign countries are fascinated by this. Even as we speak, there is a conference, a very important conference of judges in Rwanda where they have made it a first priority to have a judicial infrastructure. And I addressed that convention, and the President was there, by a closed-circuit television camera over at the State Department. They have such great respect for the American judiciary that I think what we do in this city and in this Government with the courts and what we do in order to have the correct working relationship with the Congress of the United States is of immense importance, not only to us but to all who view us as a singular example of the independence of the judiciary and of the primacy of the rule of law.

SUPREME COURT SALARIES AND EXPENSES

Our budget is in two parts. Of course, I would like the headline to be that we are asking for a reduction. As you know, that is just because of the way in which the major appropriation for the building has been allocated in 2 years. So far as our operations are concerned, we are asking for an increase of some 16 percent over last year's authorized amount. Two-thirds of that are adjustments to base that you are familiar with. You will notice that we have a

very substantial amount for the police overtime. Police costs are going to continue to rise because of security concerns.

Also, we have something of a personnel problem. Air marshals are paid very well, and we have lost a number of our really good people to the air marshals because of not only the base pay but apparently the retirement benefits are much better. And I am not sure if that is true with the Capitol Police, although it may have been true there, too. So two-thirds is adjustment to base.

The balance of the increase you approved last year in this committee, and we are simply requesting it again. I am talking now about our operations, and I will leave the building for a moment.

Last year, and again this year, we are requesting 15 new positions, and the way to think of those is four are related to workload—library, telephone, and analysts in the Clerk's Office; five are related to our off-site facility where we are doing mail screening and where we are storing hazardous materials and moving our shop function, which shouldn't be in the Court; and five are for our computer technology and our electronic technology.

Although these were denied to us last year, in a sense it was fortuitous because we can confirm now that we really need it. We have been doing the Peter-to-Paul larceny act with our staff, assigning them to different functions, and borrowing here and borrowing there, particularly with computer technology. We are moving more and more into that age. The entire Court is dependent on it.

Just as an example, last December was, setting aside the events of September, we thought somewhat of a normal month for the Court. And our website had over a million hits, and something just under 150,000—I think they call them "lessons" or "conversation," "visits," something like that, where the user talks back and forth with the Court to get the information.

We were very concerned about mail disruption. Maybe some of you are still opening Christmas cards.

Mr. WOLF. We are.

Justice KENNEDY. And we are dependent on the mail for our certiorari petitions. And we were concerned that we would fall behind. The certiorari petition is protected because the postmark protects the filing, so the petitioner wouldn't be late. But we were concerned that we would not have enough inventory and that they would have to put into next year and have an imbalance of our case inventory.

What our clerk's office did—with, I think, considerable innovation—is contact all the major printers in the country. They tell us the names of the attorneys who are filing, requesting you to print petitions for certiorari. We then contacted them by telephone and had the filings done electronically, and the clerk's office was able to find 400 cases that otherwise would have been delayed. So we use this electronic technology all of the time.

And Justice Thomas is our real in-house expert on that, and he has looked at each of these five positions and can speak more directly to that.

BUILDING MODERNIZATION

On the building, Mr. Chairman, we assured you last time—and we continue in this effort—that this is what we need. We have some questions whether we are sacrificing things that should be done. We think the answer to that is no, although, as you will recall, we said that this was not going to be historical restoration where you spend many hours and dollars in restoring original paint colors and so forth. We are not doing that. These are structural things that need to be done.

The building costs, using round numbers, the project cost, is $122 million. As we told you before, this was a new number for us to deal with, a new concept that we would have to spend so much money on an existing building. And as you know, we hired our own architect. We had peer review. We made it clear to the Architect of the Capitol that we want just the minimum. But because of all the systems to be replaced and it is a historic building, the cost estimates have been done in the right way. We have been assured, and our own outside architect has assured us, of that.

Of the $122 million for the building, we are asking for just under $50 million this time. About $49 million of the architect's $53 million budget is for the balance of the appropriation for the building. So far—and the architect can speak with more precision—my information is we have spent about $10 million of that on plans, drawings, testing, seeing whether a slab can handle the new construction, soil testing, taking out some of the walls to see the most efficient way to replace pipes and air-conditioning ducts. The balance, we request be appropriated this time so that we can let the contract. The contract is ready to go on the present schedule so that construction can begin in 2003, and a completion date is 2009. So we will be competing with your jackhammers right across the street from us for that period of time. As I told the Committee earlier, we said we would examine the possibility of our moving out of the building, if that would accelerate its completion and save dollars, and the answer was it would not save dollars. It would cost more. And we have assurances that they can work around us, and we are satisfied that the project is appropriate.

PERIMETER SECURITY

We may ask for a supplemental appropriation for perimeter security. That is still unresolved because we do not know what the master plan is going to be for Capitol Hill and what streets are going to be closed off with barriers. And our staff, our Marshals Office, are working with planners at the Capitol to see what the master security plan is going to be. Although I haven't followed that closely, it seems to me they are a little bit slow in coming up with some recommendations. But we want to be a part of that, and we don't want to spend money unnecessarily on perimeter security if a wider perimeter plan is going to adopted.

Mr. Chairman, I think I should say that our appearances before this Committee have always been ones in which we have been treated with great respect, and you have been very attentive to our needs. We have tried to follow the directions of the Committee. You have asked us to make sure that we are updated say, for instance,

in computer technology, and we are following that direction. We think our requests are both necessary and prudent, and we ask for your favorable consideration of our budget request.

Thank you, Mr. Chairman.

Mr. WOLF. Justice Thomas.

COURT AUTOMATION

Justice THOMAS. Good morning, Mr. Chairman, members of the Committee. I would just simply reiterate a portion of what Justice Kennedy said.

Last year, we did request some upgrade to our technology area, and we are, at bottom, an information-based entity. We receive petitions. We then process them. We accept cases. We decide them. We write opinions. We distribute them.

Everything we do has some basis in information that we receive or generate. And the ability to do that efficiently and effectively in this age, this modern era, is imperative. And I have said that before.

Each time I have come here, we see that this Committee recognizes it just from looking at the equipment. We are not there. You attempted to do that for us last year, and somehow portions of that did not end up in the final budget. It is a small part compared to the renovation project that we are talking about, but I think it is a very critical part. And I think it is the sine qua non of our ability to do our job effectively in the future. And that is why I continue to highlight that and to place an asterisk next to it.

I would hope that you would continue to be supportive of that aspect of our budget, and it would be my hope that on the other side of the Hill that that would continue to prevail in the budget.

With that, Mr. Chairman, I simply attach myself to my colleague's remarks.

[The information follows:]

Justice Anthony M. Kennedy
Supreme Court of the United States
March 13, 2002

To the House Appropriations Subcommittee:

Mr. Chairman and Members of the Committee, Justice Thomas and I appreciate this opportunity to appear before your Committee to address the budget requirements and requests of the Supreme Court for the fiscal year 2003. We bring you greetings from the Chief Justice and from all of our colleagues at the Court.

We have with us today Sally Rider, Administrative Assistant to the Chief Justice; Pamela Talkin, Marshal of the Court; William Suter, Clerk of the Court; and Tony Donnelly, Director of Budget and Personnel.

Judicial independence as it now exists in the United States is still a primary objective for emerging democracies in the modern world, as they seek to establish enduring constitutional structures of their own. The same question is asked again and again in meetings in Africa, in the Russian Federation, in Asia, in South America, and it is this: What are the requisites of judicial independence? One of the points we stress is that judicial

independence is not a single historical event but instead a constant, never-ending process.

An aspect of this process which fascinates outside observers is the very implementation of checks and balances that we engage in this morning. We explain the budget process by saying that while it is the privilege, and the constitutional responsibility, of the Congress to determine the funding of the courts, tradition has it that the judiciary's own assessment of its needs be given some deference. In this respect, much depends upon the confidence you place in our submissions. It is our principal objective in coming before you today to assure you that in making our assessments, we have tried to conform to the highest standards of caution and prudence.

As is customary, the Supreme Court's budget request is in two parts. The first is for Salaries and Expenses of the Court. The second is for Care of the Building and Grounds. To address what we understand to be the concerns of the Committee, and to allow full consideration of the major funding request for modernization of our building, we will be pleased to talk about Buildings and Grounds in much more detail than usual.

Let me turn first to Salaries and Expenses. With regard to this portion

of the Court's budget, our total fiscal year 2003 budget estimate is $46,324,000. This is an increase of $6,288,000, or 16 percent, over the budget authority for the current fiscal year, 2002.

Most of the fiscal year 2003 increase represents base adjustments — that is, required increases in salary and benefit costs and inflationary increases in fixed costs. Specifically, $3,533,000 of the adjustment represents required increases in salary and benefit costs. Also, $487,000 is requested for inflationary increases in fixed costs, allowing us to keep up with rising costs in all of our operations. This results in a $4,020,000 increase to the budget base.

We have included in the adjustments to base two items related to safety and security that generate unavoidable increases in costs. We request $871,000 to keep our police pay schedule on par with the Capitol Police pay schedule and to cover police overtime costs, and we request $237,000 for the increased cost of larger offsite warehouse facilities, which include an offsite mail screening facility. Both the police overtime and the offsite mail handling are directly related to the need for increased security since the terrorist attacks last September.

In addition, we request $2,268,000 over base adjustments this year to

fund fourteen positions and two program increases. Most of the increase, $1,911,000, is related to technological improvements in automation and security. During the last ten years, the Court's use of information technology has increased to such an extent that an automated system is now an essential part of every Court function. We rely on automated systems to docket cases; to draft and publish the Court's opinions; to procure equipment, books and supplies; and to pay bills. The automation has increased effectiveness and efficiency; but automated systems and equipment must be maintained and upgraded. As computer hackers and other wrongdoers become more sophisticated, we must try to stay ahead of them and maintain secure, up-to-date data systems. We were unsuccessful in last year's request for additional funds and staff to address these critical needs and as a result, our current resources are stretched to the limit in keeping our existing systems running. In previous years, this Committee has encouraged the Court to adopt the most modern work processes by using the latest technology. We ask the Committee to support our current request for increases in the Court's automation program in order to enable us to make necessary improvements. At present, our technical staff must spend its time maintaining existing, inadequate systems and equipment, leaving insufficient resources for essential improvements. Security concerns arising after September 11 only exacerbate the situation.

We request four technical positions in the Court's Data Systems office: two PC/Network Specialists to test and deploy new equipment and technology, a Local Area Network/PC Security Specialist to develop and support Intranet/Internet applications and ensure the security of the Court's sensitive data, and a Programmer/Analyst to develop new software applications. The total cost of these four positions is $216,000.

We also request $100,000 for a consulting service contract to upgrade the library's research inquiry database. We are requesting an increase of $1,550,000 to the data systems area of the Court's budget to fund new software and hardware technologies, to provide training, and to enhance computer security. The Court will take necessary steps to ensure cost-effective selection of data systems, and we will try to achieve savings wherever possible. With this authorization we intend to fund such activities as: upgrading equipment for Justices, Court staff and the Court's technology lab; engaging consultants to evaluate and enhance security measures; increasing automation skill levels of Court staff; and introducing specialized technology for security.

The remaining $402,000, an increase to the Salaries and Expenses account, is to add ten positions. Seven of these we asked for in fiscal year

2002 but did not receive: a telephone operator to perform telephone console operations duties, a secretary to provide budget, procurement and other administrative support for the Data Systems Office, and five logistical support positions for our off-site warehouse space — which has been expanded to meet modernization needs and address security concerns such as offsite mail screening. The other three positions we wish to add are: a library technology assistant to support three major library systems with training and user support, a special collections librarian to assist in conserving the Court's rare books and archival records and briefs, and a case analyst to address the docketing of an increasing number of cases filed.

Since we appeared before this Committee five years ago, we have made substantial progress in the planned modernization of the Supreme Court building. Our building, which is a splendid and revered symbol of justice in our democracy, has not been updated since it opened in 1935. Unlike the White House, the Capitol, and most of the government buildings on Capitol Hill, the Court building has had no major renovation. Its basic systems fail to meet modern standards. The heating and air conditioning, and the mechanical and electrical systems must be replaced. They have long outlived their expected useful lives and now require constant maintenance in order to avoid a catastrophic failure. The engineers who designed the electrical system had not

heard of computers, faxes or copy machines. The longer we live with these outdated systems, the more likely we are to experience a disruptive – and possibly dangerous – system failure.

The full cost of this project is $122,283,000. Of that sum, the remaining appropriation required is $49,696,000.

We have worked in close cooperation with the Architect of the Capitol, the design architects, an independent peer review panel and our own consulting architect in order to develop the most efficient plan to modernize and upgrade the building. Even prior to September 11, we were considering and designing upgrades to security and safety for building occupants and visitors.

We received the bulk of the funding for the modernization project in fiscal year 2002 and we appreciate your acknowledgment of this necessity. This year, we seek the final portion of funding so that we can keep the project on budget and on schedule. Assuming that we receive this final funding in this fiscal year, we intend to begin construction just over a year from now, in June 2003.

We are convinced that this project is essential for the continued safe and efficient operation of the Supreme Court. We underscore both the necessity of the work and its absolute urgency. Mr. Alan M. Hantman, Architect of the Capitol, will present a separate statement to the Subcommittee regarding this portion of the total budget.

This concludes a brief summary of our request. We will be pleased to respond to any questions that the Members of the Committee may have.

ANTHONY M. KENNEDY

BIOGRAPHICAL DATA

Born July 23, 1936 in Sacramento, California. Married Mary Davis, June 29, 1963; three children.

Education

Stanford University, 1954–57; London School of Economics, 1957–58; Stanford University, B.A., 1958; Harvard Law School, LL.B., 1961.

Judicial Offices

Nominated by President Ford to U. S. Court of Appeals for the Ninth Circuit; took oath of office May 30, 1975; Nominated by President Reagan as Associate Justice of the United States Supreme Court; took oath of office February 18, 1988.

Law Practice

Admitted to California bar, 1962; U. S. Tax Court bar, 1971; Associate, Thelen, Marrin, John & Bridges, San Francisco, 1961–63; sole practitioner, Sacramento, 1963–67; partner, Evans, Jackson & Kennedy, Sacramento, 1967–75,

Law Teaching

Professor of constitutional law, McGeorge School of Law, University of the Pacific, 1965–1988.

Other Offices

California Army National Guard, 1961; member, the Judicial Conference of the United States Advisory Panel on Financial Disclosure Reports and Judicial Activities, subsequently renamed the Advisory Committee on Codes of Conduct, 1979–87; the Committee on Pacific Territories, 1979–1988, named chairman 1982; board of the Federal Judicial Center, 1987–1988; American Bar Association, Sacramento County Bar Association, State Bar of California, Phi Beta Kappa; board of student advisors, Harvard faculty, 1960–61.

(Revised April 2000)

CLARENCE THOMAS

BIOGRAPHICAL DATA

Born June 23, 1948 in the Pinpoint community, near Savannah, Georgia. Married Virginia Lamp, May 30, 1987. Child: Jamal Adeen.

Education

Conception Seminary, 1967–1968; Holy Cross College, A.B. cum laude, 1971; Alpha Sigma Nu, Purple Key. Yale Law School, J.D., 1974.

Judicial Offices

Nominated by President Bush to the U.S. Court of Appeals for the District of Columbia Circuit; took oath of office, March 12, 1990. Nominated by President Bush as Associate Justice of the United States Supreme Court; took oath of office October 23, 1991.

Government Service

Assistant Attorney General of Missouri, 1974–1977. Legislative assistant to Senator John C. Danforth of Missouri, 1979–1981. Assistant Secretary for Civil Rights, U.S. Department of Education, 1981–1982. Chairman, U.S. Equal Employment Opportunity Commission, 1982–1990.

Law Practice

Admitted to Missouri Bar, 1974. Attorney, Monsanto Company, 1977–1979.

STATEMENT OF ALAN M. HANTMAN, FAIA
ARCHITECT OF THE CAPITOL

Fiscal Year 2003 Appropriation Request

SUPREME COURT, CARE OF THE BUILDING AND GROUNDS

U. S. House of Representatives
Committee on Appropriations
Subcommittee on Commerce, Justice, State, and Judiciary

March 13, 2002

Mr. Chairman, I am pleased to submit a formal statement to present the budget for the care of the building and grounds of the Supreme Court.

As background, the Office of the Architect of the Capitol is the agency responsible in the Legislative Branch for the structural and mechanical care, maintenance, cleaning, and operation of the buildings and facilities supporting the Congress, including the Capitol Power Plant. This responsibility extends to the Botanic Garden and the structural and mechanical care and maintenance of the Library of Congress buildings and grounds. This office also undertakes the design and construction of new facilities and alterations of existing facilities.

For the Judicial Branch, the Architect of the Capitol, by authority of 40 U.S.C. 13a-13b dated May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court building and grounds. My responsibilities do not include custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in the Court's salaries and expenses appropriation.

Working with the Court, my emphasis has been on improving the safety and security of the personnel and building structures. The Fiscal Year 2003 request continues the efforts

to improve the security and safety posture. In the past several Fiscal Years we placed four new security barricades in the driveways, and upgraded security cameras in all locations. In Fiscal Year 2002, we have installed bomb blast window film and plan to install a digital recorder by late spring to further increase building security surveillance options. Additionally, we've started work on the fire alarm system and fire pumps to improve safety. Although these last two projects are not proceeding as quickly as I would like, I'm working to complete them as soon as possible.

I'm requesting $53,626,000 to meet the requirements of the Court for the care of the building and grounds in Fiscal Year 2003. This request supports three major areas: $49,696,000 for the Building Renovation Project, $3,687,000 to maintain current operations and maintenance services, and $243,000 in program changes. This request is $13,904,000 or 20.6 percent less than the Fiscal Year 2002 available amount of $67,530,000. The funding requested is less than that for Fiscal Year 2002 because the funds required to support the Supreme Court building renovation and modernization project are less than the amount appropriated last year.

Building Renovation and Improvements

By far, the most significant item in this budget is the funding requested for the modernization of the Supreme Court building. The Supreme Court building, unlike other buildings on Capitol Hill, has not been upgraded since its completion in 1935. At 67 years of age, virtually all of its building systems have far exceeded any reasonable life expectancy, and they require an aggressive daily maintenance schedule to continue operating. In addition, building life safety, security, and essential building system requirements have advanced greatly since 1935. It has become critical that the Supreme Court building is brought up to

current standards, since each year that the project is postponed potential risks increase significantly to more than 400 occupants and 1,000,000 visitors a year. For example, the building incorporated the latest in fire resistant technology when it was built, but modern life safety systems, consisting of fire detection, fire suppression, fire alarms, and building egress, have not been provided since the building was completed. Also, security concerns were significantly different in federal facilities in 1935 than they are today - especially after September 11. Likewise, essential building systems, consisting of mechanical and electrical components, have not been upgraded since 1935. Virtually all systems have become obsolete and replacement parts are not available.

The remainder of the funding for the building modernization has been requested in one lump sum in order to keep the project on time and to award a single construction contract. We have continued to move forward with the project with an eye toward awarding a construction contract in the spring of 2003. If we do not receive the remainder of the funding in this budget cycle, we are certain to face a significant delay in the project as well as a significant increase in the cost of the project. A single construction contract is important for several reasons: to achieve single source contractor accountability for integration of the components that comprise the life safety, security, mechanical, and electrical systems; to maximize success in the performance of the integrated components; to minimize damage to the historic building by disturbing ceilings, walls, and floors only once; and to minimize the disruption of court occupants during renovation. A single construction contract is also the most cost-effective, since every construction contract must bear an overhead cost to contract, move on and off the project site, provide tools and equipment, and disturb ceilings, floors, and walls.

With the support of this Subcommittee, much progress has been made toward refining the scope and design for the project. The budget request for this project is now based upon completion of the preliminary design. I am pleased to report that the cost estimate for the modernization project remains at $122 million.

As you may be aware, in Fiscal Year 1999 we engaged in an independent peer review of the project to objectively evaluate whether the scope and cost were valid. That effort took place in conjunction with an additional set of independent reviewers brought in by the Court. The review took place and the conclusions were threefold: that the scope was valid, that the cost was reasonable, and that the renovation was necessary and should not be delayed. We are now in a position to begin this project with the funding requested in Fiscal Year 2003.

Currently, a total of $72,587,000 has been appropriated for the modernization project. In Fiscal Year 1998, an amount of $225,000 was appropriated on an annual basis to provide for a study on improvements and upgrades to the Supreme Court building and systems. Preliminary design of this project began in Fiscal Year 1999 with an amount of $1,529,000 which was maintained in the budget base in Fiscal Year 2000 for continued design work, as well as an amount of $2 million for window upgrades. In Fiscal Year 2001 an amount of $3.5 million was provided for continued design work, and in Fiscal Year 2002, $63,804,000 was appropriated. The Fiscal Year 2002 amount consists of $33,804,000 that was appropriated within the Judiciary Appropriations Act, 2002, and $30,000,000 that was provided in the emergency security supplemental for Fiscal Year 2002, as part of Division B of the Defense Appropriations Act, 2002. This amount will allow us to continue on schedule. If we receive the remainder of the funding in Fiscal Year 2003, construction will begin in mid-2003.

Therefore, to attain the total amount of $122,283,000 for this project, it is requested that $49,696,000 of $63,804,000 made available in Fiscal Year 2002 be retained in the budget base for Fiscal Year 2003 for full funding for the construction of the project.

Operations and Maintenance

As noted above, I'm requesting $3,687,000 to maintain current operations and maintenance services. Costs for current operations and maintenance services have increased from last year by $111,000 for mandated pay-related costs and $159,000 for higher costs projected for utilities, training, exterior point and caulking, and supplies.

Program Changes

A total increase of $243,000 is requested for program changes. An increase of $178,000 will support the hiring for three additional maintenance mechanic positions. The positions are needed to support significant increases for preventive maintenance for all equipment in the plumbing, HVAC, and electrical trade disciplines. Another $65,000 is requested for two capital budget projects. These projects are to upgrade the kitchen fire suppression system ($10,000) and to replace the metal detectors ($55,000).

I assure the Chairman and Members of this Subcommittee that I will work closely with you and the Subcommittee staff, as well as the Court to achieve adequate funding for the care of the building and grounds.

Mr. Chairman, that concludes my statement and I will be pleased to respond to any questions that you and the Subcommittee may have.

POLICE PAY AND WORKING CONDITIONS

Mr. WOLF. I thank you both.

On the air marshal issue, other agencies are having the same problem. I am not sure how long that will last because that is one of the most boring jobs that you can have. [Laughter.]

I had someone tell me—and I think Mr. Serrano may have been there—that they sat next to a person who was an air marshal, who was detailed, and he asked him how he liked the job, and he said: I have so many more weeks and so many more days and so many more hours, and I am out of here. So I think that is a temporary issue.

I think there is a law enforcement pay problem-officers jump from one agency to the other. We would hope before this Congress is over that we can address this issue and establish uniformity between law enforcement agencies. There has to be uniformity so that officers are not jumping back and forth just to get better pay. These jobs are too important.

Is the pay scale for the Supreme Court Police approximately the same as the Capitol Police?

Justice KENNEDY. Yes, we are achieving parity with the Capitol Police. We had not had that a few years ago, and we are rapidly getting there.

Mr. WOLF. The Capitol Police are working 12 hours a day, and they are really doing a tremendous job. But 12 hours a day, anyone can do that for a couple weeks, but it is pretty tough to do that for 6 and 7 months. And yet they are doing it. How many hours a day are your people working?

Justice KENNEDY. Well, I don't know precisely the figures. I was actually quite concerned when we had the anthrax scare and we had to move our operations to the Court of Appeals building that they were really putting in full double shifts, 16 hours, and we said this is just too much.

Mr. WOLF. If you could, just for the record, let us know how many days a week they are working and how many hours a day.

[The information follows:]

Question. Please provide the number of days of the week the average Supreme Court Police employee works and the number of hours of overtime worked.

Response. As of April 21, 2002, the average Supreme Court Police Officer works five days per week and approximately five hours of overtime per two week pay period, for an average overtime cost of $17,821 per two week pay period. this is more than twice the overtime cost per pay period in the previous fiscal year. Through April 2002, the Police have worked 7,295 hours of overtime. The total overtime hours worked during the entire last fiscal year was 6,262.

Justice KENNEDY. We would be glad to give you that information, Mr. Chairman.

SECURITY AND VISITOR TRANSPORTATION

Mr. WOLF. We are going to have a journal vote pretty soon. We will adjourn briefly for 2 or 3 minutes and come back. I think the White House has to appoint someone in the city to look at the whole city and its security issues. We can't shut the whole city down. Coming from Virginia, where both of you live, if my memory serves me, you come over one bridge and you are hitting the clo-

sure of Pennsylvania Avenue. You come over another bridge, and you hit the closure of something else.

I go through two security checks to come here, and that backs up traffic. We just can't shut the Nation's capital down.

Also, we are finding one agency is buying a certain kind of barrier; another agency is buying another type of barrier. There needs to be some uniformity so when people who come to see the Court and the Capitol see some sort of uniformity that is pleasant. So I think the Architect of the Capitol ought to be in touch with the White House, and I think the White House and with regard to the Supreme Court and the National Park Service have to create some uniformity and some understanding of what we shut off and what we don't shut off.

Route 110, on the other side of the river, no longer allows tour buses or trucks. Well, that has now impacted buses coming from Loudoun County. It is impacting on the way people live. I think we can do things in a very secure manner, but also make sure that the city is open for people to come and see and there is some pleasantness to what they actually see not a bunch of jersey barriers and concrete pipes.

Justice KENNEDY. If I may make just one comment on that, Mr. Chairman, I hope that as part of that plan the transportation for your new visitors center is studied. It seems to me there is a real opportunity there—I was talking with Congressman Miller before the hearing—to at least think about some off-site assembly point, for instance, using RFK, which is vacant all day long and has freeway access, and facilities for visitors who get off buses, and then think about transporting them on a shuttle bus or fast-rail or something.

Mr. WOLF. Sure.

Justice KENNEDY. Because as it is now, we are going to have buses in front of our building, and it would seem to me that that is not the kind of campus atmosphere you want.

Mr. WOLF. No.

Justice KENNEDY. I hope someone is thinking about that. We have asked our people to please be in contact with capital planning bodies, but as you indicate, there are any number of these bodies, and they are trying to coordinate. I just don't have the expertise to comment on how well they are doing.

Mr. WOLF. Well, I will tell you what we can do. We can ask the staff to do a letter to the White House and to the National Capital Planning Commission to ask that someone from the executive branch, obviously, and someone from the legislative branch, the Speaker's office, and someone from the Court come together to make sure that everything is being done, to make sure that visiting Washington is a pleasant experience. And it is safe and you are able to easily travel across the city.

So we will do that, and we will send both of you a copy of the letter.

Justice KENNEDY. Thank you very much.

Mr. WOLF. I will tell you what I am going to do. I am going to go vote and let Mr. Miller continue. I will be right back. That way we will just continue and won't waste time.

Justice KENNEDY. That is all right. We are here at your convenience.

Mr. MILLER. This is just a quick vote on the journal.

Justice KENNEDY. What would you like to know about? [Laughter.]

Mr. MILLER. The new facility, is it going to be more family friendly? That is one of the problems we have with the Capitol, with our facility and the reason we are building it, visitor friendly instead of family friendly.

Justice KENNEDY. Yes, with one exception. It is a thrill for visitors to go up our steps. They remember that. I did that when I came to Washington. I am afraid that we are going to have to have security screening facilities downstairs and they must enter downstairs. They can then exit off the front steps.

That isn't quite the symbolism of going up to see something that we want, but we just can't figure out any other way to do it.

The Court already is, I think, quite friendly toward families. It has exhibits in the downstairs. It has a good cafeteria that people enjoy. When you get out of the building, you are immediately in a beautifully landscaped area, and we will preserve that. We are increasing the size and moving the location of the movie theater. There is a film that runs for, I think, 20 minutes or 22 minutes about the Court, and young people particularly like to see that film. Now it is in just a makeshift, hot little theater, and that theater is going to be part of the center corridor. And I think it will, in your terms, make it very much more of a friendly experience.

Mr. MILLER. What we talked about earlier and what Mr. Wolf talked about is the copies of the plan, and maybe our committee doesn't get involved in it. I don't know if the Architect of the Capitol can address it here, if that is proper or not. But, the visitors come to this area, and more buses could be coming in. The last thing we need is a bigger traffic jam there on 1st Street. How do we handle that? I hope in the security concerns of 2nd Street and the whole area—I am interested in that, but it may have to come up at a different hearing.

Justice KENNEDY. I had hoped that it would be addressed as part of the approval of the visitor scheme as a whole. I thought transportation should have been a key link to that.

The Architect has thought about how buses enter and leave and so forth, but I think we have to go beyond that and think about new ways of getting the people up to Capitol Hill.

CONTINGENCY PLAN

Mr. MILLER. You mentioned September 11th and security and communications. I assume you all learned something. We learned on Capitol Hill that we didn't know how to communicate. Now we have BlackBerrys and stuff and alarms that go off. The White House is the same way. There are no fire alarms and such in the White House. There are a lot of things we learned. I was on Air Force One that day. They don't have—did not on that day have the ability to have live reception of CNN. They do today. So I assume you all have had a lesson about communications and security from that.

Justice KENNEDY. We have. I might say that there was a contingency plan in place for moving our Court operations elsewhere, and we used it. It worked like a Swiss watch. We moved to the Court of Appeals. That was for the anthrax.

Mr. MILLER. Thank you. I will yield.

SHADOW GOVERNMENT

Mr. WOLF. If I could just ask one more question, then I will go to Mr. Serrano.

Justice KENNEDY. Yes, sir.

Mr. WOLF. Are you part of the shadow government?

Mr. SERRANO. You took my question. [Laughter.]

Mr. WOLF. Are you participating, has the Court been a participant—and I don't want to know where you are or anything like that. But are you a participant in the effort with regard to the shadow government?

Justice KENNEDY. There are two different types. One for emergency evacuation and——

Mr. WOLF. No, not emergency evacuation.

Justice KENNEDY. But on a continuing basis, we are not—and we wonder about the necessity for it. All Article III district and circuit judges are courts of general jurisdiction and can issue writs under the All Writs Act. So we already are dispersed nationwide.

Now, it is true that the members of our own Court are all here, but there are provisions in the statute for what will happen in the event we are all disqualified somehow and there are en banc procedures. There are circuit courts in the country in that event.

So I think particularly because we are talking about a very short time frame, we would hope, for any emergency we are a reactive rather than proactive part of the government.

Mr. WOLF. Okay.

Justice KENNEDY. We are satisfied that the judicial branch can continue to function.

Now, it is true that the nine of us are always here for Court sessions and must, by necessity, be here because we are a collegial body.

Mr. WOLF. Okay. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you. Thank you so much.

Let me follow up on that because that was going to be one of my questions. The concern that some folks have is, first of all, we were hit, you know, out of left field with this thing about a so-called shadow government, and based on what thought I have given to it, I don't have a problem with our leaders at that level deciding that something has to be in place.

However, for it to be truly an extension of who we are or a continuation of who we are as a people and as a Nation, what I am grappling with is how do we make sure that all branches of our Government are included?

For instance, one of our greatest complaints was the fact that, if it is true that these folks are going away for periods of time, you wouldn't notice Congressman X missing for 3 weeks. But something has to be done to deal with the fact that the elected body of Gov-

ernment was not represented in that government, and we think definitely that the judiciary should be.

And so while it is true that you are a body that reacts to actions taken rather than initiates them, I know that you have the ability to speak out every so often, you know, in non-official decisions, and I think your advocacy for making sure that there is a judicial branch inclusion in any kind of an emergency is only proper.

Justice KENNEDY. Thank you. I have to tell you, I haven't given it that much thought, in part because I do think that the national dispersion of our districts and our circuits mean that the whole judicial branch is already dispersed.

It is true that with us there is an institutional memory that other judges do not have, and that we think is priceless.

CIVIL LIBERTIES DURING NATIONAL CRISES

Mr. SERRANO. Along those lines, in terms of things you could be involved with, or may not be—you know, most Americans are somewhat confused at times as to whether the members of the Court have the opportunity or the ability to comment on issues that are not necessarily before them prior to them becoming major issues.

So, with that in mind, as I mentioned in my opening statement, one of my greatest concerns is during this period of difficulty in this Nation, where we need to make sure that we protect ourselves and protect future generations, there is a great concern that in other agencies and other departments we may be stretching how we deal with people's civil liberties and people's civil rights.

Is there a role for the Court to play before issues come to you? Is there a role that the Supreme Court or individual Justices can be warning us about, issues they could be warning us about in that area? Or do you feel that that is something you should get involved in at all?

Justice KENNEDY. Probably more of the latter than the former because what we say tends to be attributed to a specific issue and to a point of view.

The Court's principal function in our tradition is to remain open and to give reasons for what we do. And if we were to comment in advance, it might impair that splendid function we have of giving very clear reasons when we do act.

Our jurisprudence also is there for people to consult, and we have had cases, as you know, in World War II on saboteurs, Ex Parte Quirin, 1942—these were when the saboteurs who landed in Long Island and Florida and were tried by a military tribunal. And the Court was open to hear the authority of the commission or of the tribunal to act and ruled on the authority of the tribunal to act.

In the same way with the Japanese war crimes, In Re Yamashita, the Court again said that it had the jurisdiction and responsibility to determine the lawfulness of the tribunal, and it determined it was lawful. And it did not review the substance of its judgment.

In a case one or two terms ago called St. Cyr, INS v. St. Cyr, the Court passed on the question of whether in one of its recent immigration reform acts the Congress of the United States had intended to suspend habeas corpus for a deportee. And as I recall,

this was a case where he had entered a plea bargain some years ago, and the question is whether that conviction would require his mandatory—would permit his mandatory deportation without a hearing. And we said, number one, we had habeas corpus authority—the courts had habeas corpus authority to hear his complaint; and, number two, we found it was not retroactive.

So that kind of jurisprudence is there, and it should be reassuring. And in the Civil War, Ex Parte Milligan said that if the courts are functioning, if they are open, you had to go to the courts.

So those cases can be distinguished. They are not on all fours with everything that is happening today. But the rudiments of the jurisprudence are there, and there is a lot to learn from it.

Mr. SERRANO. Just one more thing on this. All those cases were a result of somebody or some group coming to the Court for an opinion, or the Court decided to speak out on it?

Justice KENNEDY. No, the courts must wait or there is no case. We can only hear a case of controversy. But the fact that we have proclaimed time and again that we are open, that we will in many cases scan the authority of the tribunal, seems to me a very important principle.

Mr. SERRANO. Sure, it invites people to question it then.

COURT AUTOMATION

Justice Thomas, I know that you told us that our computer equipment indicates that we know how useful it is. It seems to me that this is an area where we should be giving you much more support. You gave us somewhat of an overview. How serious is it? How is it hindering your performance, if you will, not your philosophical performance but your ability to do the work you have to do, not being a modern court when it comes to the use of technology?

Justice THOMAS. I think that we can work more effectively. I think that you were able probably to do your job before you all had BlackBerrys. You were able to do your job probably before you had computers. But you know that you can do more, more efficiently, with them and you can communicate with your office and others more effectively when you have the communications equipment. But we are in the same position.

But a concern when we do that is security. The more we communicate, the more easily we do it, the more remote it is, the more security issues we have.

So we are asking just for the personnel and the budget to build that communications and communication environment at the Court and to make it secure so that we are comfortable using it.

I will give you an example of something that is critical. We don't have a backup system built yet. If our systems were to implode, we have got a problem. I think that we all would think that, look, you have got to have complete backup systems or redundant systems so that, when the systems are inoperative, you are unable to perform your duties.

The capacity, the computing capacity is changing. We have got to change with it. The platforms are changing. We can't install the latest operating platforms simply because we don't have the people. We have the people who are capable of doing it, but we don't have

enough people. They are busily just trying to maintain what we have.

We are also trying to keep current. We are behind technologically with simple things like the more effective screens. And we work—I spend most of my time staring into a screen, and we know there is a difference between the older screens and the newer screens. That may not be a necessity, but it certainly makes your life easier to be able to see what you are reading on the screen.

We also are finally getting to the education part of it to make the technology accessible to the members of the Court. We have significant generational differences on that. And the more inaccessible it is, I think the more reluctant the members of the Court are to use the available technology to do their work. We are finally bridging that gap, but in order to do that, we need people.

So what you see here are just—we have a library, for example. We have one of the—probably the finest law library in the world, and we need it to be able to do our work and to not make mistakes, at least not to make mistakes based on inability to have the appropriate research done. And we simply have to bring that technologically up to the standards that we think are appropriate.

So there is nothing here that is saying, look, put us at the cutting edge. What we have here is simply saying let's just make us current so that we can then have a system that we maintain.

I will give you an example of how it helps to do your job. I may have used it in the past. When I arrived at the Court a decade ago, when we had the emergency petitions in the death cases, I found it rather odd that the members of the Court would call their—we would call our clerks, who would read the petitions to us in the middle of the night, so you just simply stayed up or went in the family room and waited for the call. It would be read to us.

Now, on something that important, we know that is kind of a tough way to do it, and sometimes they would read portions of it several times.

Then we moved to the secure fax machines, which helped significantly, because now you can get the documents as they are sent. But now what happens is Cynthia Rapp, who handles this area, simply e-mails it on a secure e-mail system. And I am notified. I have it at my desk at home, and I can read the petitions as quickly as my law clerks can read the petitions. And then I can actually communicate with them electronically.

Similarly, when Justice Kennedy and I a few years ago were in London at a judicial exchange program, I was able to log on in the middle of the night and deal with emergency motions and read the actual documents.

I think it is very important—indeed, I think it is critical now that we come up to speed. We are behind, and there are other courts, as I travel around the country, that are quite a bit ahead of us. And I think it is very important that we not fall behind any more.

Mr. SERRANO. And the $1.6 million that you are asking for will——

Justice THOMAS. The $1.6 million, as I remember, includes the personnel and the equipment that we are going to need. It is $1.55 million just to enhance—to get current on an equipment basis, and

another $200,000 for new personnel in the computer area. These are redundant, these are repeats, in effect, in large part from last year. So none of that is new. And as I said on the Senate side, we rob Peter to pay Paul, but now Peter doesn't have any money, and we are just simply going to fall farther behind. And that is the reality.

Mr. SERRANO. Mr. Chairman, I have one more question.

Mr. WOLF. Sure.

HIRING MINORITIES AS LAW CLERKS

Mr. SERRANO. One of the issues that we discuss every year, and I would just like to know what progress we have made on it, is the issue of hiring of minorities at the Supreme Court as clerks and others. We have discussed it in the past. I would like to know how is that going in terms of the clerks and other professional staff and also what, if any, outreach activities have taken place.

Justice KENNEDY. I think again there is a heightened, conscious awareness of the necessity for us to be inclusive. I know Justice Thomas can affirm from personal experience that when there is a very qualified minority candidate, we all compete to get him or her. Sometimes early hire helps them because they then can plan financially.

There are a couple problems with outreach. As you know, we take from a pool of the circuit clerks, and you have to be careful not to have a finger-pointing exercise. Well, it is the circuit pool. Then the circuit pool says, well, it is the law school pool. And the law school says, well, the colleges aren't sending us enough people.

I think each part of the chain has to be conscious to make this effort.

I talk to law school professors about it all the time, and I have law school professors and some of my former clerks who will identify for me at a pretty early stage a highly qualified minority person.

We want to encourage them to take clerkships. Sometimes people from a somewhat disadvantaged background who do very well in law school will look at what they would make as a clerk on the Court of Appeals and look at what they would make in private practice, and they don't go the clerkship route. So there is sort of a self-selection factor that works against us in that regard.

And, again, if we can have people give informal assurance that, well, they are Supreme Court material and they can maybe be considered, then that persuades them to take the first step and to be a circuit court clerk with the hope that they can come to us, and I think that is what we can do with outreach.

The statistics are not good. In the law schools, the Hispanic population is really underrepresented in law schools. And, in fact, the last time I looked, they had less proportional representation than members of the black community. I don't know why that is. Those are the statistics I have.

So I think all parts of society have to work on this.

Mr. SERRANO. I understand. I can sense from your answer, that we don't have an answer yet to this problem and I will just ask you for numbers. We find out that we haven't done that well. I would just like to close with this comment:

We can point fingers, and we can go back to the law schools and so on. But, you know, when people want to become lawyers and they see that what is available to them is only one aspect of the law, then you may draw less people. If they saw that throughout this society there was more involvement for them, certainly if they saw people or they knew of people clerking or part of the professional staff at the Supreme Court, that might encourage some people. I know it would encourage me if I wanted to be a lawyer, because it would be endless. It would be a vast world out there for me.

So I can sense in your answer that the Court still has not, found a way to deal with this or found a need to deal with it or found the importance of dealing with it. Let me just tell you that it is to me as important to see minorities working in the Court, as it is to see them on the Court itself. And not just with the Court, but we do it other places. We just established a program in the Bronx between Hostos Community College and Columbia University to prepare people for the Foreign Service and for the Diplomatic Corps because it is not enough for me to see General Powell. I need to see other people surrounding him making those decisions in the future.

So I would just hope that every so often you think of that. You know, you have this aura about you, and the picture you present not only of the membership but of the staff is also what people look at in this country, and it is reassuring to them to see that the Court represents in every aspect who we are in this society.

Justice KENNEDY. Thank you.

Justice THOMAS. I think your point was well taken when you made it several years ago, and I think Justice Kennedy didn't intend to leave the impression that there hasn't been change or there hasn't been movement.

The problem, as I said in the past, I think, the word "minority" is too broad, because you do have Asian clerks. Someone who has been in the news over the past few months clerked for Justice Kennedy, Miguel Estrada, who has overcome all kinds of obstacles and is facing an additional one.

There are clerks who are coming to the Court who will fit in the category of the subset of minorities that are problematic in getting to the Court, that is, black and Hispanic. I think that it is going to take time, and I do believe that if they are not in the pool and have not been prepared at the level that we take clerks, it is not going to happen. The kids we are taking are outstanding students, and that is a small pool. And when they appear in the pool, they become very hot commodities. So there is no callousness toward that.

The other thing that I had suggested or indicated in the past was that I don't think that all intellect resides east of the Mississippi or in the Ivy League. I think there are other schools, and you are just as apt to find kids there.

Now, we have to be careful with that because you are sometimes venturing into uncharted waters, but I have had good experience with that.

I do believe that we cannot fabricate what the law schools don't give us. I have found it unfortunate at the law schools I have vis-

ited that many of the kids aren't even informed as to what these opportunities are you are talking about.

When I went to law school, I didn't know there was an opportunity to clerk—not that I would have, because I was under some of the pressures that some of these kids are under now, and that is a debt pressure. You have got to go get a job to repay the loans, and I had a kid and I had a wife who I thought should—we needed to assist in her going to school.

So there were pressures that undermined the sort of luxury of taking 2 more years at significantly lower incomes to clerk. It would have been fun for me if I had known about it, but it would have been expensive for my family.

I think that if we were realistically to look at the number of problems that prevent us from having these higher numbers and be realistic about it, I think that we would find that the reluctance of the members of the Court does not appear among those problems. But I think we do have to be realistic that we cannot create a pool that is not presented to us. We react to that pool. We hire out of a defined pool. But the numbers, I think, that the—I don't like the idea, I find it distasteful to categorize people, but just from observation you can walk through the building, you can see that it does reflect the country fairly well. And there are very talented people there, and I think all the people who come there are talented and should be talented.

It is hard to tell a kid—you know, I think our law clerks make $50,000 a year. The first job upon departure they make over $200,000 a year with bonuses. It is hard to tell a kid, when that kid is facing debt pressures or financial pressures, to forego that kind of income level, a 6-figure income level, to take a job for less.

So I think there is no reluctance. I don't think that there is any bad intention or indifference on our part, and that is certainly reflected in the fact that when we do see minorities, they are quickly taken.

I had the experience of Justice Kennedy just scooping a kid out from under me. I had invited him in, and it just happened to be a week later than he had invited him in. And so that kid was gone.

Now I have another kid that he didn't know about. [Laughter.]

So I didn't play my complete hand.

Mr. SERRANO. Secrets of the Court. I think you have hit on something here that maybe I should focus some of my energies on, telling folks at other levels to open up, to change somewhat the pool.

Let me just close by saying—and I say this with all due respect. This may come as a shock to some people. I also find it distasteful to categorize people, but I find it more distasteful for people to categorize me and exclude me from an opportunity to go somewhere I want to go. And I know there are folks who would love to be around you guys because you can't get better than that. You can't get higher than that. You can't serve your country better than that. So keep in mind that some of these folks, all they want to do is serve their country in the best possible place.

Thank you, Mr. Chairman.

Mr. WOLF. Mr. Cramer.

RUSSIAN JUDICIAL SYSTEM

Mr. CRAMER. Thank you. Thank you, Mr. Chairman.

Welcome back to the subcommittee. I enjoyed your presentation last year.

Justice Kennedy, I am going to focus—I am on the board of trustees of the Center for Russian Leadership Development, and that is under the umbrella of the Open World Division of the Library of Congress. And last week we had our first board of trustees member meeting, and there were Russian judges there. And I understand that you met with those Russian judges and that last summer you were in St. Petersburg for a meeting with judges from developing nations, and that you met with President Putin there as well.

Justice KENNEDY. Yes.

Mr. CRAMER. Could you give us the benefit of that exposure about, in particular, the Russian judicial system, judicial independence, the Russian jury trial system there? What progress are they making?

Justice KENNEDY. After the breakup of the old Soviet Union, I think about 10 years was wasted in drift. And President Putin and one of his top advisers whom I had met made it a major priority to strengthen the rule of law through the judicial structure and the legal structure. And I met with him several times and with Russian judges, and we talked about the rudiments of judicial independence.

This was one—became one of President Putin's top three priorities, and he put through a judicial reform project which, I don't know, tripled or quadrupled the salaries of the judges—take note, please—also, I have to say, fired some of the judges. [Laughter.]

Mr. CRAMER. Would you like us to take note of that, too?

Justice KENNEDY. They now have licensing standards for members of the bar, and he recognized that you simply can't attract investment unless you have a stable, reliable, predictable legal system.

The President was very gracious to invite me and two or three other judges, when we were at the St. Petersburg conference, to come to Moscow, which we did. And we congratulated him for he had done, and said that our resources, to the extent we had time, were always open to him and encouraged him in this course.

I, of course, met with the State Department, and I was one of the first people, I guess, to meet with President Putin after he came into office, and told them of my reactions to him, that I thought he was very committed to this process.

The rule of law lives in the consciousness of a people, and that is where this country is so blessed. And it takes time to establish respect for the rule of law, and if people understand it in a tangible sense the investors feel more secure That is the beginning of the rudiments of the rule of law.

Russia I think is proceeding in the right way to make the legal profession part of its capital infrastructure.

Mr. CRAMER. Who sponsored that conference in St. Petersburg?

Justice KENNEDY. The World Bank.

Mr. CRAMER. And was that a first conference there, or had they gathered——

Justice KENNEDY. Well, I have met with members of the Russian judiciary over a period of some years, when they come to Washington or when I am in Europe in different venues. I have been to Moscow at other times to meet with judges. And I must say they have some remarkable jurists. They are great scholars. They are committed to the law. On some of their courts—they have three different courts, as you know: the Supreme Arbitration Court, the Supreme Court, and the Supreme Constitutional Court. And each one of those has judges of marvelous ability, and we have hosted them when they have come here to the United States. There was a conference at NYU.

So these conferences are ongoing. And they are not any expense to the government, as I recall. I don't think the Government has ever paid for them. But we are very encouraged by what we see.

CONTINGENCY PLAN

Mr. CRAMER. Switching over, your first opportunity since 1814 to hold hearings at alternate locations occurred after the anthrax issue that we were all suffering with. How did that go? And is there a plan for the future that if you have to do that again, you consider it an adequate plan?

Justice KENNEDY. I was not aware that we had the plan, but it was in place. As I indicated earlier, it worked like a Swiss watch. There was no disruption in our calendar schedule. The attorneys were disappointed that they couldn't come to the Supreme Court building itself, and the hearing room was slightly smaller, so not as many spectators could hear.

Mr. CRAMER. How long did that continue?

Justice KENNEDY. We had a full month sitting there, which was 2 weeks of oral argument there, as I recall. And the Court of Appeals personnel couldn't have been more accommodating to us. If the judges of the Court of Appeals felt disrupted, they certainly didn't mention it. They came to hear some of the oral arguments, I noticed. But I think that worked very well.

Justice Thomas said it was one week of hearings.

Mr. CRAMER. One week.

Justice KENNEDY. And the staff is nodding, so we had one week of hearings.

COURT AUTOMATION

Mr. CRAMER. Justice Thomas, your comment earlier about technology and comparing the Supreme Court to other courts around the country that you were behind some of the courts around the country. I am from Alabama and we are way behind. What other court systems around the country are on the cutting edge in the use of technology?

Justice THOMAS. Well, one that is very close here, D.C. Circuit. Our Chief Judge, Harry Edwards, did a marvelous job in moving that system along. And, of course, he is very literate, technologically and otherwise. He is a brilliant man. And he was just one of our—he was just a fabulous chief judge. He is no longer chief judge. But I would say the D.C. Circuit.

I think any judge on that circuit would tell you that it makes a difference in the way that we do our work. I feel much better now

than I did when I first arrived at the Court in just the ability to digest large amounts of information.

Mr. CRAMER. You mean you feel a lot better based on how far you have come with the technology available to you?

Justice THOMAS. That is right. The technology has made it possible to have information at your fingertips all the time. I mean, that is what your BlackBerry does. So if I am up—I usually get up fairly early. Let's say I get up my normal time, at 4:00 or so—I can log on and start working and clear off my desk and download the opinions that have circulated and read them in the morning before I get in my car and come to work.

There is no way at the Court to catch up when you get behind and do your job thoroughly. You have to keep up. You have to develop a system. I didn't know this when I got there. I was used to working at a frenetic pace, you know, running for meetings, looking at budgets, looking at personnel, looking at issues.

The Court is different. You sit and you read. Then you stand and you read. And it is all reading, and you have to digest it. And to do it in a sustained way, you have to have access to information.

I have one of those big L.L. Bean bags that my wife got for me that I think is pretty fancy because it has my initials on it. And I would fill that every evening with documents and carry it home. And I have noticed in the last year the bag is empty, routinely, because I am not lugging big reports, et cetera. I can now download it. My desk is not stacked high like it used to be with files and with draft opinions because they are all on my computer.

So when I get on a plane, I have a secure laptop—it is that big—and I have all of the material that would probably fill 100 of those L.L. Bean bags in that computer. And it has changed the way, the comfort level that I have with processing that much information, and do it in a way that is easily digestible.

Mr. CRAMER. We want to help you continue making that kind of progress.

Thank you, Mr. Chairman.

Mr. WOLF. Mr. Vitter.

LAW SCHOOL DEBT

Mr. VITTER. Thank you, Mr. Chairman.

Justices, thank you for being here. I just have two brief sets of questions. One is a follow-up to Mr. Serrano's discussion, which we have every year, really, regarding clerks in particular.

Has any thought ever been given to some sort of a scholarship program—I am not sure how you would do it legally or ethically, but to allow clerks to get debt forgiven as part of their package deal through some sort of scholarship when they clerk to put them more on par with what they might make or be able to do with regard to that debt in private practice?

Justice KENNEDY. Two things on that. One is the law firms are good in this respect because they will give their clerk who comes to them credit for his first year on the salary scale. In other words, they will pay him as a second-year associate even though he has been there for one year. So that is small thing.

Whether a clerkship qualifies for some scholarships for people that do public service, I am just not sure. There are some—Yale

has a tremendous fund for that. I think it is used mostly for young people that want to go into teaching, and I know Stanford is that way, too. Whether or not it applies to clerks, Congressman, I am just not——

Mr. VITTER. Really, what I am talking about—and, again, I realize there would be all sorts of legal and ethical and other hoops to jump through. What I am talking about is a scholarship that would kick in or be available when you go to your building as a clerk. To forgive debt would be the most obvious need, so that basically their salary, which is modest in the grand scheme of things in terms of other legal opportunities, would essentially be supplemented, at least with regard to the actual debt they are burdened with.

Justice KENNEDY. I am aware of no such program.

Mr. VITTER. Well, I just mention that because that may be a way to make a Supreme Court clerkship immediately more attractive and competitive to someone burdened with debt, who many of these minority students——

Justice KENNEDY. And I think it is important, Congressman, really it probably should be at the circuit level because if there is a clerk in the circuit court, he will come to us. A clerk will come to us for one year and take the salary cut, in part because he enters as a second-year and in part because he or she knows that it is very helpful for their professional career.

Where you have to concentrate is at the circuit level in order to get the pool going.

Mr. VITTER. Well, I think you are right. That is probably where that sort of program might be effective.

In the same vein, have you ever seen any rigorous study that basically tells great law school students how much they gain in terms of earnings at the end of the day through either a circuit court or U.S. Supreme Court clerkships? In other words, in their career I am sure they gain financially enormously at both levels, particularly your level but at both levels. And if that were quantified and publicized in the law schools, that might be useful.

Justice KENNEDY. It might be. I think it would track academic performance generally in large part.

ELECTRONIC FILING

Mr. VITTER. A second brief set of questions. We talked about this last year, and I just wanted a quick update where you think the Court is in terms of electronic filing, which is a subset of this technology issue we are talking about.

Justice KENNEDY. As I have indicated, we took some extraordinary measures in order to get cases up. But so far as electronic filing, I am not sure we are ready for it, but Justice Thomas is really qualified at that.

Justice THOMAS. I think some of the bankruptcy courts are experimenting with electronic filing, but I don't think any of the Federal district courts or courts of appeals are.

As I said last year, during Bush v. Gore, we received a lot of the material, the briefs, electronically. And we do get the emergency motions in the death cases electronically, and they are distributed quickly that way.

I do think, though, that if—I think that is on the horizon. That would just be my guess. And what I am trying to suggest here in building our computer system and our technology area is to anticipate that, that much of our work will be dealt with electronically. And with the anthrax scare, it became clear to us that at least there should be some capacity to have redundant filings so that even though the requirement is that you file a hard copy, there can be some way to get the electronic copies. And I would prefer to have the briefs electronically, quite frankly, because that way I can carry them around much more easily.

I just had one of my people in my office use one of those big mail bins to take some of the materials from the next sitting to my car. That was, what, a floppy disk's worth of material or a CD–ROM worth of material. And it would be much easier to move around.

But I think that is the future, and I think we should just simply anticipate it.

Mr. VITTER. I would encourage that. In most areas of the private world or the business world, that sort of thing isn't in the future. It is the present. And I would encourage that as you explore and develop technology, that you also do that with sort of the consumers, customers, practitioners, clients in mind, which is basically electronic filing, because I think that can have enormous benefit for the Court, for the parties involved, for everyone. Obviously for some initial period, which might be extensive, you couldn't make that mandatory, but it could be an alternative, and I think that would have great benefit.

Justice THOMAS. Well, I have been informed that 85 courts—I misspoke—85 courts are at some stage of electronic filing, and those include 71 bankruptcy courts, 13 district courts, and the Court of International Trade. Of those 85 courts, 33 are already in live operation to some extent or another.

Mr. VITTER. In terms of your comments about your personal work and having so much of the material you need on your computer now, I take it, then, that that doesn't include filings, or is that scanned in? Can you deal with filings on your laptop?

Justice THOMAS. Not now I can't because they are not available. I was in the Bush v. Gore case and——

Mr. VITTER. Right. But apart from those extraordinary situations, you can't?

Justice THOMAS. I don't. We don't have—we may have the capacity to do it, but we don't routinely do it.

Mr. VITTER. Okay. Thank you very much.

Mr. WOLF. Thank you, Mr. Vitter.

I have a series of questions, but we are going to have a vote at 11:30. We will vote and come back if we haven't finished, and I don't think we will.

On electronic filing, I think it should be mandatory. I think you could certainly have a 3-year phase-in period. You could certainly have a requirement whereby it is electronically filed and paper filed. The opportunity to do both for a period of time gives you a little bit of backup.

Most of the people that are filing are from large law firms that certainly have the capability. Very few briefs are filed by a single

person who would not have the ability to file electronically. So I think Mr. Vitter makes a good point.

CONSULTING

Secondly, I think the Court ought to consider having an outside consultant to come in to look at the Court's operations and see what could be and should be done to improve them. It is very difficult for those in Government to change the way they do things. When we mandated telework, the Court is not covered by that mandate, but an amendment that I offered 2 years ago mandated for Federal employees telework 25 percent the first year, 50 percent the second, 75 the third, and 100 percent in 4 years for those employee whose jobs are eligible. The resistance level was unbelievable.

Now the agencies are beginning to accept the program. There is nothing magic about strapping yourself into a metal box and driving on 66 or 95 at 8:15 in the morning when you could be home or with a computer. We would be willing to put the money in the budget have an outside consultant to look at the Court to see how you could streamline the Court's operations. You have consultants that come in with regard to the reconstruction and rehabilitation. When the air-conditioning system breaks down, you don't get out there and fix it. You bring an expert.

So if that would be of interest, I think the committee would certainly be willing to put some money in your budget to allow the court that opportunity. That doesn't mean that you would take every recommendation because you have a unique role in government and you are trying to turn out cases quickly. So if that were an interest, you might want to let us know.

[The information follows:]

Question. Please provide the Committee with your views on hiring an outside automation expert to help the Court evaluate its automation program and provide the Court with recommendations on possible enhancements.

Response. The Court contracted with outside automation experts in the past to get an objective view of the automation program and how it might be improved. In 1992, the National Center for State Courts performed an extensive study of the Supreme Court's data systems approach and organization. The Court found the recommendations helpful in planning and implementing the rapid improvements in automation during the 1990's. We intend to acquire the assistance of an outside automation expert during the upcoming fiscal year. In addition, we are consulting with automation experts from other agencies in the Judicial Branch.

ANTHRAX/MAIL SCREENING

Mr. WOLF. Has anthrax changed the Court's operation very much? Or was that just a temporary thing that you have worked out?

Justice KENNEDY. There is still a mail lag. Even things that are mailed today take longer to get to us than they did before.

Mr. WOLF. What post office does Court mail go through?

Justice KENNEDY. My understanding is it goes to Ohio before it comes to us.

Mr. WOLF. So all your mail is irradiated like ours?

Justice KENNEDY. Yes.

Mr. WOLF. Any sickness reported by employees? We have had people, young people here on the Hill maintain they have been having headaches and different things.

Justice KENNEDY. Not that I am aware of. But we do—as part of the budget request for our off-site facility, we are going to put the mail screening facility off-site. And there is a modern room with the appropriate ventilation and controls and detectors that will be operational this April, in another 45 days.

POLICE PAY PARITY AND OVERTIME

Mr. WOLF. Okay. Your budget requests $871,000 for an increase for the Supreme Court Police to pay overtime and the comparables we talked about with regard to the U.S. Capitol Police. The fiscal year 2002 appropriation did not provide any additional funds for these costs. How are you funding these additional costs this year?

Justice KENNEDY. I am not——

Justice THOMAS. We just reprogrammed. That is a part of what—and postponed certain things. It is what I said about robbing Peter to pay Paul.

Mr. WOLF. So you have robbed Paul. You have actually taken away——

Justice THOMAS. Yes, we——

Mr. WOLF. For the record, you can just tell us, what have you had to pay out for that? You obviously don't have it off the top of your head, but if you can——

Justice KENNEDY. To begin with, we had vacancies. We had a lot of vacancies in the Supreme Court Police for the reason that I indicated, and then the overtime in part made up for that.

In the clerk's and computer office, we have just shifted functions.

Mr. WOLF. Can you tell us what the cost was to the Court?

Mr. DONNELLY. It was about $300,000 a year additional. Annual would be about $750,000 for police overtime and premium pay.

Mr. WOLF. You are asking for $871,000.

Justice THOMAS. Half of that is just the pay parity with Capitol Police, with their increase, and the other half is for the overtime.

PROJECTED OBLIGATIONS FOR MODERNIZATION PROJECT

Mr. WOLF. Okay. Since I took a tour of the Court last year, has anything broken since then? Did the air conditioning break down? Did something happen, or is it just about where it was?

Justice KENNEDY. There were no major failures that we are aware of. Every once in a while we have to get a part, and then the thing was manufactured so long so they can't find the person with the part, but they seem to take care of that. They are resourceful at doing that. But no major breakdowns.

Mr. WOLF. No major breakdowns.

When do you anticipate awarding a construction contract with $63.8 million we were able to provide for the building renovation project?

Justice KENNEDY. The construction contract should be awarded in 2003—or construction should begin in 2003.

Mr. WOLF. So when would the contract be awarded?

Justice KENNEDY. The contract, March of 2003.

Mr. WOLF. So a year from now. Okay. The budget request includes $49.7 million to complete the funding for the project. And as you said, the project would be completed in 2009.

Justice KENNEDY. Yes.

Mr. WOLF. And you really have to tell us how much funding is needed in fiscal year 2003? I am very sympathetic. This is not an adversarial relationship whereby we are trying to hold you up to squeeze every nickel or do anything to create a problem for you. But knowing specifically how much funding is needed in fiscal year 2003, is necessary to appropriate the correct amount in fiscal year 2003? Would some of the funding be obligated in subsequent years?

When you are building a house, you have a drawdown, and you draw from the bank—the builder draws, because you are paying interest on that loan. You are paying interest on that money. And you obviously don't want to draw from the bank to just have it kind of sitting around.

So you really have to think about what is really needed. I don't think we are going to have a change of attitude concerning this project, unless Mr. Serrano and I leave or something happens. But my sense is the Committee has been fairly well united on this.

Also, as you begin to put money into the project, you obviously can't stop this project because then you increase the cost and everything else.

But knowing it is 2009 when the project will be completed and we are taking basically a draw, is it really necessary for this $49.7 million in fiscal year 2003?

Justice KENNEDY. As we indicated last year, how the Committee wants to spread the money is a matter of some indifference, to me, at least, provided we can obligate it by awarding one contract.

Mr. WOLF. Well, I think you can, and a builder or a person who does the work isn't doing this for a rinky-dinky day school. It is the Supreme Court of the United States. They must know they are going to be paid. It would be helpful to know what you really need to continue this project on a stream rather than gathering. For instance, when I was chairman of the Transportation Appropriations Committee, some of the systems would come in and ask for X. Four years later, we would find out that that money hadn't been allocated. It was still sitting there. And there were other rail systems that were ready to move ahead and build.

We now have the FBI asking for Trilogy. They are ready to move ahead. We have DEA asking for things. We have other things moving on. And since you know the Committee is in support of what you are doing, I think it is important to know what you really need. So if you think about that and then you can comment for the record or now if you want to, or your staff can talk to our staff. So keep the stream coming, but still not taking money from another area that you may need or some other person needs.

Justice KENNEDY. We will be glad to submit something on that, Congressman.

[The information follows:]

Question. The fiscal year 2003 request includes $49.7 million to fully fund the building renovation project. The Committee understands that this project will not be completed until fiscal year 2009. How much of the requested $49.7 million is necessary to be obligated in fiscal year 2003 for the project?

Response. We anticipate that approximately $38 million will be necessary for obligations expected during fiscal year 2003. This amount, when combined with the $67 million appropriated for the project during fiscal year 2002, will permit the award of the major construction contract as well as provide for reasonable contingencies that will likely require funding during fiscal year 2003. The contingencies include various types of tests prior to construction as well as spending to address problems and conditions that emerge during actual construction. The remaining $12 million that will not be obligated during fiscal year 2003 will fund similar contingencies that are expected to occur as the construction process continues over several years, as well as the salaries of Architect of the Capitol staff dedicated to the project.

Question. What activities has the Court been unable to fund in order to pay for increased pay and overtime costs for the Supreme Court Police in fiscal year 2002?

Response. During fiscal year 2002, the Court has absorbed the increased pay and overtime costs for the Supreme Court Police by eliminating major projects as well as some training and equipment spending. The Court's planned operations have been disrupted by the combined effect of having to absorb the increased pay and overtime costs for the Police in a year that the budget request was reduced by over $2 million, including funding for additional positions in critical areas. Data Systems staffing is stretched too thin and cannot get to important projects. Existing staff cannot implement and support the Court's Internet network in a timely fashion. We cannot deploy the next PC hardware and software upgrade for the Court that would replace PC's three and four years old and office software that is almost five years old. We have deferred needed improvements to aging computer equipment such as the Docutech machine that is used to produce and distribute draft and final copies of the Court's opinions, as well as many other important Court documents. Because of the age of the Docutech machine (over eight years old), we have developed backup plans in case of a failure. The Office of Data Systems lack sufficient staff and funding resources to conduct adequate disaster recovery planning and testing, which is essential to making sure we can respond in the event of a disruption of operations. Resource constraints forced the cancellation of a planned disaster recovery exercise in February. In addition, we have postponed the upgrade of Police radios, restoration of bronze and brass fixtures, replacement of existing carpet in the public area of the lower great hall, and improvements to telecommunications.

DIALOGUE FOR FREEDOM

Mr. WOLF. On the five FTEs, I think Justice Thomas covered that, and we would hope that we could do that.

Also, I saw that you were doing a project called "Dialogue for Freedom." What is that?

Justice KENNEDY. This is a project of my own—in the wake of September 11th, I felt that the young people in this country wanted to find some answers as to what America stands for. I think we, as members of the legal profession, have some obligation to talk about the values that sustain America and that define its free institutions.

And so I didn't think it should just be a dialogue—I didn't think it should just be a dialogue that members of the Court or the Government engage in. I thought it should be opened to all members of the bar because members of the bar, I think, have an obligation to defend first principles when first principles are under attack.

And so I asked the American Bar Association if they would be willing to participate in the program where lawyers go into high schools around the country and talk to the young people about what the values of freedom really are. And I have been to five high schools——

Mr. WOLF. Where?

Justice KENNEDY. I began at Langley High School, which is four blocks from where I live. And some people said, well, now, these young people might not be able to talk with you at your level. Forget that. These were marvelous young people. They quoted Sopho-

cles. They had read Gandhi. They knew about the writings of John Locke. They knew the Declaration of Independence and the great words of Jefferson: "These truths are self-evident that all men are created equal" and that they "are endowed by the Creator with certain inalienable rights. Among these are life, liberty, and the pursuit of happiness."

And we had a marvelous discussion on what happiness meant in Jefferson's and Washington's time and what it means now, and they were so appreciative to know that happiness for them, for their families meant enrichment through civic contribution. That is what happiness meant to them.

I then went to the School Without Walls where the First Lady was gracious enough to attend the class and to participate with me.

I then went to Stuyvesant High School in New York, which is just a few blocks from the World Trade Center.

I was at Punahou High School in Honolulu, which is a private school, and I was at my old high school in Sacramento, California.

I wanted to see if we could have a format that would be somewhat cohesive, even though the dialogue should sustain itself and generate its own ideas. I have a hypothetical, a law school model, where the high school student is on an airplane that makes an unscheduled stop because of engine troubles, and the high school student finds himself or finds herself in a country where they are criticizing America, and the high school student has to defend American values. And what we are hoping is that on May the 1st, which is Law Day, in high schools around the country lawyers and judges and law professors will engage in discussing these fascinating questions with our young people.

I asked the students what three books they would leave behind in a foreign country, what three films. We are going to have the students collectively submit a list of 15 films, 15 books that they think most well illustrate the meaning of freedom in the American culture and the American history and the American heritage. And I am asking them to have a time chart of 15 dates that they think are the most significant dates in freedom.

The American Bar and I think maybe the American Inns of Court are quite fascinated with this project. I think that on September 11th we lost something, but we also found something. And these young people are so enthusiastic, so eager to grasp the fundamentals of the American democracy, that it has been very heartening to me, Mr. Chairman.

Mr. WOLF. Well, that is good. I don't know that I completely agree with you. I was at Langley about a month ago. I had just gotten back from Afghanistan. I was in Pakistan for 5 days, and we were in Kabul for 2 days. And the kids picked up the vision and wanted to do something. I have also gone into a lot of other schools. The kids are good kids. I have five kids, seven grandchildren. I do worry about some of these things.

These kids are being bombarded with garbage on television and in the movies, the death of a hero, you know. I think it is great that the American Bar Association is doing this project. I think it is great that you are doing it. I think we sell the young people short. I think we ought to be challenging them more for public service. I think President Bush has done the right thing with re-

gard to the Freedom Corps, urging people to participate and be involved.

We have lived in the land of good and plenty. I don't think a lot of people in this country focus on the fact that there is tremendous violation of human rights around the world. I don't think Americans focus on the fact that there are 11 Catholic bishops in jail in China, that the Evangelical Taps Church is being crushed in China, the Buddhists are being plundered in China. They don't hear this and focus on it.

My sense is that really the leadership of this country hasn't spoken out and articulated many of these values, speaking out on behalf of people that are being persecuted, speaking out and taking on some of the tough issues. I see many in political leadership moving just the other way. Quite frankly, States are pushing lotteries in essence to help people and gambling is spreading and there is garbage on television.

So I think partially I commend you for what you are doing, and encourage you to continue. I hope the bar will also continue to work on the project. I think we ought to be challenging children more, the opportunity to make a difference, to participate, to volunteer, to go on mission projects, to be involved and to reach out.

Now I think it is—so I think the more you are doing projects, like "Dialogue on Freedom" the better, and I hope that we can challenge the children and urge them to participate.

I have seen surveys, that say children don't all know the words of the Declaration of Independence, "We hold these truths to be self-evident." In fact, my sense is you could go into a lot of high schools now and say those words, and they wouldn't particularly know where they had come from.

I commend you for this project. I think all of the Justices should do it. I think all of the Members of Congress should do it. We have a great country. Ronald Regan said that the words of the Declaration of Independence, "We hold these truths to be self-evident," were covenants—covenants that we had not only with ourselves but really with the world. And I think the more that people are speaking out and are emboldened on behalf of the persecuted church and on behalf of those who are being discriminated against in this country and all these things, the better off we are. I think we really have to challenge young people.

BOOKS ILLUSTRATING THE MEANING OF FREEDOM

What are the three books they want to leave behind?

Justice KENNEDY. That is a work in process, so far as I am concerned.

Mr. WOLF. Well, one book they ought to leave behind is Robert Bolt's "A Man for All Seasons." Both of you are lawyers. I am sure you have seen the movie.

Justice KENNEDY. That is a great example.

Mr. WOLF. I have Thomas More's picture hanging in my office. Every time I see that movie, it is now granular, it is so old. It is usually on on a Saturday afternoon when it is raining. But Thomas More and Robert Bolt's "A Man for All Seasons" is one.

Also, another great book is Kennedy's book, "Profiles in Courage."

Justice KENNEDY. "Profiles in Courage" is one that they mention often. I have heard everything from Dr. Seuss to Shakespeare, and there is a dynamism. It is true, I think we have been negligent, I think we have been remiss in not teaching our students about the fundamental values that America stands for, and they can't defend those values if they don't understand them. And in the world to come, it has become very clear that America has to make its values known and understood. America is a tolerant country that believes in freedom, and tolerance and freedom are not a threat to anyone. But we have to understand it first before we can explain it to others, and I don't think we have done enough.

Mr. WOLF. I agree, and I was troubled by the poll that I saw 2 weeks ago showing that in the Middle East how few understand that American's are good, decent, honest people. They say we are anti-Muslim, it was America who led the effort with regard to the Muslim community in Bosnia, with regard to Kosovo, with regard to Kuwait. And yet if you looked at the survey, Kuwait—the three books that I would leave behind: one would be the Bible; two would be Robert Bolt's "A Man for All Seasons"; and three would be President Kennedy's book, "Profiles in Courage."

Frankly, I think everyone ought to read those three books. At the end of the stories, none of them really do very well. I mean, the man who had the deciding vote with regard to the impeachment of President Johnson, he never had a good political career. It kind of went down from there for that period of time. But yet looking back on it, they were the people that made this country what it was. So I think Kennedy's book, "Profiles in Courage" is a book I would select.

TELECOMMUTING

The last question I want to ask you is: Does the Court have telework and telecommuting?

Justice KENNEDY. No.

Mr. WOLF. Shouldn't you be looking at that? Because the productivity of people who telework is actually as high, if not higher. There are so many family-friendly personnel policies—flex-time, flex-place, job sharing, two people share the same job, leave—does the Court have leave sharing?

Justice KENNEDY. Yes.

Mr. WOLF. That was a bill that we put in years ago.

Do you have flex-time?

Mr. DONNELLY. In isolated cases where it is appropriate for the office. We do have job sharing.

Mr. WOLF. You do have job sharing. You might want to look at telecommuting. It is particularly helpful if someone has just had a major operation, the opportunity to continue to work during the rehabilitation period. But the studies are showing—and we can share it with you—that telecommuting can be very, very productive. Obviously every job can't be done using telecommuting, but, Justice Thomas, when you get up at 4 o'clock, in essence you are doing a form of telecommuting. And there are new technologies. We had a man bring in the other day a new laptop where you can flip up and see each other. It is basically videoconferencing. You could flip it up and talk to your law clerk and see your law clerk and share doc-

uments whereby you could put the document through and you could both say, now, in paragraph 1 or paragraph 2—so technology is changing. There are people you talk to on the phone and they are sitting somewhere far away, and they sound like they are in their offices.

So I would urge you to look at it at least on a pilot program. The law that is in place today does not cover the Court because obviously it is not our job to set standards for the Court. But it does cover the executive branch, and it is working very well. Kay James has really gotten behind it for the Federal Government. I would urge you to take a look at that.

Justice KENNEDY. We will take a look at it, Congressman.

BOOKS ILLUSTRATING THE MEANING OF FREEDOM

We are going to tabulate the reading list that the high schoolers give us, and I will send you a copy of the tabulation. I am sure "Profiles in Courage" will be on it. "A Man of All Seasons" I hadn't thought about.

Mr. WOLF. When you provide it, I will put it in the Congressional Record.

Justice KENNEDY. Perfect.

Mr. WOLF. Sometimes when I am kind of going through a different phase of where I am, I will go back and read Robert Bolt's book. The book was about More's life, and, of course, the King wanted More to be with him more than he wanted anyone else to be with him. And, of course, More, who loved the law and makes a great case, and yet it ends with—More obviously has his head cut off and loses his life, but in the process wins. Well, it is very, powerful.

Justice KENNEDY. Thomas More is the patron saint of lawyers, was a very good friend of Erasmus, was well acquainted with the writings of humanism at the time, and is really one of the great lawyers, one of the great chancellors in the history of—he was Lord Chancellor of England.

Mr. WOLF. Right.

Do you have anything further?

CIVIL LIBERTIES DURING NATIONAL CRISES

Mr. SERRANO. Again, I want to reiterate the Chairman's desire to help you in any way that we can. We discussed most of the questions I had, and I have a couple more that I will submit for the record because they basically ask your opinion on things, and I keep forgetting I am not supposed to ask you for opinions here. I would love for you to make a couple, but not right here. You don't want your thoughts on cameras in the courtroom later on and so on.

I wish you the best. I wish all of us the best, because I still believe that we are heading down a very difficult road in this country right now. And in the process of doing over the next 3, 4, 5, 6 years overseas what is right and here within this country what is right, I suspect that pretty soon you will be facing actions from groups and people who feel that their civil liberties have been totally thrown out the window. And I told Attorney General Ashcroft, I told Secretary Powell that I don't envy any of us, including myself,

you know, for the decisions we have to make to balance this situation carefully—getting the bad guys, as I say, and at the same time not hurting the good guys.

Right now I can tell you that this is a period of time where people know that we have to stick together and defend our country, if you will. But, increasingly, there is a concern that in the process we may harm our Constitution and our democracy.

So I really wish you the best because when it is all said and done, it is going to be with you folks, a lot of these decisions on how we handle that.

As far as these other mundane things like renovations and so on, we want to help you, and we will help you in any way we can. I can't expect you to make the right decisions if you are not happy with your work. I know I don't function well——

Justice THOMAS. Oh, we are happy where we work. [Laughter.]

Mr. SERRANO. Well, we want you to be happier.

Justice THOMAS. Okay.

Mr. SERRANO. And I want your laptops to become a BlackBerry. You will notice I was working under the bench here. I took care of a lot of business at the same time, and I told a reporter you were doing a great job, both of you. [Laughter.]

Thank you very much. I really wish you all the best. We stand ready to support you. Thank you.

Justice KENNEDY. Thank you very much.

Mr. WOLF. Mr. Serrano raises something, and I think it is important that we have a balance and we be very, very careful. And obviously I know you will do that, and I know the Congress will encourage you to do that.

The other side of the coin, though, is the eyes of terrorism and the vision of terrorism is very difficult. Kabul has been destroyed. Afghanistan is gone. There are other terrorist groups roaming all over the world. Now we are dealing in Yemen and Sudan. Osama bin Laden lived there from 1991 to 1996; 2.1 million people have been killed in the South Sudan. They were in essence at the beginning of this whole wave. The Philippines, the Burnham couple in the Philippines, and perhaps are now soon to be Indonesia, if you read the New York Times on Sunday.

As I told Secretary Powell, I was in Algeria 3 years ago where 100,000 people had been killed. They slit people's throats. We had been in villages where they would go in and cut people apart and pull out the babies. It is a tough, brutal world out there, and many people wish us very evil. And I know Mr. Serrano has gone through the same thing that we have gone through. We had 27 or 28 people from my Congressional district who were killed in the Pentagon. And I believe there are 15,000 people that went through these training camps in Afghanistan. We have only arrested 450. The others have just changed jerseys, but really have not changed their mind. You have to have a balance. We are a great country with diversity. I come from an immigrant family, but the real world is the World Trade Center, the Pentagon, what took place in Pennsylvania, the bombing in Kenya, the bombing in Tanzania; the Khobar Towers, we lost 17 people; the U.S.S. *Cole;* the 241 marines that we all seem to forget about, the 241 Marines that were killed because of the Hezbollah in Iran; the American Embassy in 1983

with 91 or 92 killed; the USAID employee from my district who was thrown out of a plane and his body was jammed into his legs. I asked the Library of Congress for a report—and we put it in the Congressional Record of Secretary Powell's hearings—of all the terrorist activities that they can place. It is very thick.

Think in terms of 9/11. So much has gone on before that. And we are the last best hope for mankind insofar as defending and standing up to terrorism. And I appreciate very much the fact that we—you don't have to comment on anything I am saying—that President Bush has taken action and moved, because my sense is that what the terrorists thought that we were relatively weak, that we were not going to defend ourselves and defend liberty and justice. The American people are good people. When you see the soldiers and the sailors and the Marines that are defending us in Afghanistan, they are really good people.

And so I think it is a balance, but I think we really have to make sure that terrorism does not get a foothold and in the process do precisely what Mr. Serrano says, and I couldn't agree with him more, to make sure that they don't change us in the process of fighting the war on terrorism whereby we become like them and do things that we ought not do.

Mr. SERRANO. But where else do you go as members of the Supreme Court and hear a debate on this issue but here? This is a good place to come. He just told you how he feels, and I agree with him. But your Court had to deal with issues of how we treated Japanese Americans during World War II because we were afraid of Japanese. And I suspect that if we are not careful, in a few years you will be handling a lot of cases about Arab Americans who were born here, whose parents were born here, and Africans who are now Americans or who are born here from folks who came from Africa who were treated in a certain way because of their religious beliefs or whatever, out of a fear that we somehow we were getting the right people when we were curtailing their liberties.

So, to be continued.

Justice KENNEDY. An attack on freedom for its own sake is an attack against all humanity, and the rest of the world has to realize that one of the most beautiful, inspirational aspects about democracy is that it matures. And I asked the high school students if there are some other values that are expressed in Mr. Jefferson's life, liberty, and pursuit of happiness, and I noticed at the State of the Union message, that on the credenza under your desk there are three words carved in the House of Representatives. On the left is "liberty," on the right is "justice," and I said, "What is the word in the middle?" And I gave them nine blank letters, and it is "tolerance."

And this is what the American idea stands for. We accept other people, we accept other beliefs, so long as there is a basic, fundamental respect for human dignity, and that is what we stand for.

Mr. WOLF. With that, we will adjourn. Thank you very much.

QUESTIONS FOR THE RECORD
CHAIRMAN FRANK WOLF

Question: Please describe the process the Court uses to transcribe and distribute oral arguments.

Response: Each October Term the Supreme Court enters into an exclusive contract with a reporting company to produce a written transcript of the oral argument sessions. The Court pays no fee for this service. After delivery to the Court, normally within seven calendar days of the argument, the transcript is made available for sale to the public by the contractor for a fee established by the contract with the Court. The Court loads the transcript of each oral argument onto its web site no sooner than ten workdays after the transcript has been delivered to the Court.

WEDNESDAY, APRIL 17, 2002.

FEDERAL COMMUNICATIONS COMMISSION

WITNESS

MICHAEL K. POWELL, CHAIRMAN

Mr. WOLF. Our hearing will begin. We want to welcome Chairman Powell to his second appearance before the subcommittee, and let me just say as an aside, I appreciate the good job your father is doing, the degree of difficulty, and I think the American people are very, very appreciative. I want to get that on the record.

You will be testifying today regarding the activities in the fiscal year 2003 budget request of the FCC, seeking a total operating budget of $268.3 million, offset by regulatory fee collections of $248.2 million.

We want to hear today about the details of this request, including program increases you have requested for automation and training.

With that, let me just recognize Mr. Serrano. Your full statement will appear in the record. You can go through the whole thing, summarize, or whatever, and then we will have a series of questions.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Chairman Powell, I want to add my comments first for the job you are doing and, secondly, for the job your father is doing. And I found myself in an interesting situation. My son was elected to the city council in New York, and he is chairman of a committee, so he is Chairman Serrano. I am only Ranking Member Serrano. [Laughter.]

You are Chairman Powell, and he is only a Secretary. [Laughter.]

Mr. POWELL. I assure you I never point that distinction out.

Mr. SERRANO. You just showed me how smart you are.

Well, we do welcome you, and we know that your agency now is dealing with so many fascinating areas that speak to the power that our Constitution gives and that our laws give to the airwaves and to the community to use the airwaves. And, of course, from all of us you will hear questions, but I know certainly from Ms. Roybal-Allard and myself, you will hear great concern about minority ownership and the purchase of Telemundo by NBC and what that means for our community and what the future holds under your leadership for our community.

So with that, I welcome you and I look forward to your testimony.

Mr. WOLF. You may begin.

80-619 D-5

STATEMENT OF CHAIRMAN POWELL

Mr. POWELL. Thank you, Mr. Chairman. It is a pleasure to be with you in this intimate setting, which I have had the pleasure of being in before, along with what appear to be 40 of my closest friends. But it is a great opportunity to appear before you because I really have the distinction of reporting on the progress of the Commission with respect to requests we have made to you in the past and to report positively on some of the developments that have occurred in the wake of the last time that we stood before you. I look forward to discussing the FCC's fiscal year 2003 budget.

FCC REORGANIZATION

Last year I appeared before the subcommittee for the first time and made a personal commitment to effectuate fundamental change within the Commission. I guaranteed that the Commission as an institution would complete a thorough self-examination and develop a reform plan designed to make the FCC a more responsive, efficient, and effective organization, capable of facing the technological and economic opportunities and challenges of the new millennium. The Commission delivered on this promise and sent you a reprogramming request for its reorganization 6 months later. We appreciate this subcommittee's rapid consent to our request, and we began the implementation of our reorganization plan just last month.

TRAINING PROGRAMS

I also pledged to enhance the Commission's independent technical and engineering expertise. The Commission, as it promised, dedicated resources to recruiting, training, and retaining a solid technology-oriented workforce under the program we dubbed "Excellence in Engineering." I am proud to report that we have hired 24 mid- and senior-level engineers and 15 entry-level engineers in just that time frame. We have instituted training programs to keep current and future engineers up to date in their profession, and we have improved the environment for engineers by purchasing equipment to facilitate the spectrum management process and to upgrade the Columbia, Maryland, laboratory testing facility. Our ongoing efforts in this regard, coupled with the agency's "FCC University" and "Excellence in Economic Analysis" initiatives hopefully will preserve our existing wealth of FCC staff knowledge and expertise and enhance and extend that collective knowledge well into the new millennium.

AGENCY STREAMLINING

When I first appeared before this subcommittee, I pledged to make the Commission a model of solid management techniques and performance. As such, the Commission moved forward to continue to streamline agency processes and procedures, automate agency processes, provide improved access to agency information, and modernize its information technology infrastructure. During our January 2002 Open Agenda Meeting, the Commission's staff delivered presentations demonstrating the results in backlog reduction and management benchmarks.

Finally, I also vowed that the Commission would use the remainder of its fiscal year 2001 and expected fiscal year 2002 funds to implement its statutory mandates and serve as a constructive and fair independent agency, cognizant of the intent of Congress and dedicated to serving the public interest and consumer welfare. I am confident that the Commission has met these commitments and, in doing so, has raised the standards for serving the public.

CONTINUING CHALLENGES

The Commission has made these achievements, however, against the backdrop of tragic and dramatic national events. The events of September 11th provided us all with an important lesson in the significance of the FCC's portfolio. We know now that our society has developed more than just an appetite for communications services. America is vitally dependent on these services in times of crisis as well as in times of peace. A strong and competitive communications network is essential to a healthy economy, and our Nation depends on both, whether to bolster its ability to defend itself or to communicate in times of normalcy or emergency.

I am unwavering in my commitment to implement the long-term business plan outlined in my full written statement. To effectuate our stated goals, however, the FCC has requested $278,092,000 and 1,975 FTEs for fiscal year 2003. This request includes $9,765,000 to fund the administration's government-wide proposal to fully fund retirement costs in each agency's budget. The Commission's requested operating costs thus are $268,327,000.

FISCAL YEAR 2003 BUDGET REQUEST

This figure in operational costs requested by the Commission for fiscal year 2003 is the minimum needed to allow us to continue the progress made during the past year. In order to achieve our goals and stay abreast of communications developments, the Commission must keep ahead of changes in technology, economics, and the law. Accordingly, we are requesting $15,066,000 for critical programming initiatives. An additional $8,190,000 would be dedicated toward uncontrollable cost increases related to salaries, benefits, and inflationary cost increases for rent and supplies. The administration's request of $9.765 million for retirement costs brings the total budget, again, to $278,092,000. The fiscal year 2003 regulatory fee offset for the Commission would be 89 percent of the proposed fiscal year 2003 budget, making our direct appropriation request from the committee simply 9.5 percent over our total fiscal year budget, or 13.5 percent if one includes the administration's pension cost proposal.

From the perspective of funding Commission objectives, the critical segment of the overall budget is the $15,066,000 dedicated to programmatic initiatives. Of that amount, almost $5 million will be dedicated toward Commission employee training, enforcement, and spectrum management initiatives. Due to national security needs identified since September 11th, the Commission also will spend roughly $1 million to improve internal security and support other security efforts. The remainder of these funds, $9,080,000, will improve information technology critical to supporting program performance initiatives. With these funds, the Commission will im-

prove existing systems to ensure compliance with government-wide standards pertaining to system security, accessibility, and financial management.

This year, Mr. Chairman, you have my personal pledge, as always, to continue driving forward in a patient and a deliberate manner, to handle the expected and the unexpected, from homeland and internal security to biennial reviews, an expected heavy influx of Section 271 long-distance applications that we anticipate for this year, as well as pending major merger reviews, just to name a few. The Commission intends to use its expected funding to continue its campaign to upgrade the facilities, as well as to initiate and complete critical rulemakings. The present request is the minimum amount necessary to continue to capitalize on our past successes and to carry us through the immense challenges of the next fiscal year. Already, fiscal year 2002 has been marked by a tidal wave of new policy and regulatory issues. I expect fiscal year 2003 to be at least as opportune and at least as challenging.

I respectfully request that this subcommittee grant the Commission its full funding request for fiscal year 2003. I thank you for your continuing support, and at this time I would be happy to answer any questions that you might have.

[The information follows:]

TESTIMONY

Of

MICHAEL K. POWELL

Chairman
Federal Communications Commission

Before the

Subcommittee on Commerce, Justice, State, and the Judiciary
of the Committee on Appropriations
United States House of Representatives

On the

Federal Communications Commission's
Fiscal Year 2003 Budget Estimates

Wednesday, April 17, 2002

SUMMARY OF TESTIMONY OF FCC CHAIRMAN MICHAEL K. POWELL

April 17, 2002

The Federal Communications Commission ("FCC") continues its efforts to implement a long-term business plan designed to make it a more responsive, efficient and effective agency, capable of facing the technological and economic opportunities and challenges of the new millennium. As always, the Commission's efforts are guided by its commitment to protect consumer welfare and the public interest.

To effectuate its goals, the FCC has requested $278,092,000 and 1,975 FTEs for Fiscal Year 2003. This request includes $9,765,000 to fund the Administration's government-wide proposal to fully fund retirement costs in each agency's budget. The Commission's requested operating costs are $268,327,000.

The FCC has demonstrated during the past calendar year a commitment to its regulatory purpose. The fundamental mission of the FCC is to implement the Communications Act of 1934, as amended, in a manner that promotes competition, innovation, deregulation, and the availability of high-quality communications services for all Americans.

The Fiscal Year 2002 funds have been, and are continuing to be, used to fund critical infrastructure improvements, especially related to the FCC's information technology needs, and to improving consumer services and reducing regulatory backlogs. The FCC also has dedicated resources to improving its workforce, hiring more engineers, training staff, and providing incentives for talented staff to remain for longer periods of time and serve the public interest. During the past year, the Commission began improvements at the Columbia, Maryland Laboratory facility to upgrade its testing capabilities and install trained personnel to facilitate this process. Most importantly, the FCC has completed a complete self-examination, developed a restructuring plan, and is poised to begin the process of implementing critical reorganization changes.

On January 17, 2002, the FCC sent the cornerstone of its improvement plan to this Committee—a Section 605 Report detailing the reorganization of the Commission. After approval, we began the implementation of the reorganization this past month. The reorganization is more then just a retooling of an old agency—it represents an important step in streamlining the FCC. It is built along four important concepts: (1) a clear substantive policy vision; (2) a pointed emphasis on management; (3) an extensive training and development program; and (4) organizational restructuring.

The FCC has articulated specific areas for policy-making emphasis: broadband deployment, competition policy, spectrum policy, building a foundation for media ownership regulation, digital television transition and homeland security. The Commission's policy emphasis also has a new sense of purpose since September 11, 2001. Everyone has seen the critical importance of a healthy and competitive communications system—both in times of national crisis, and in times of peace. With the funds requested for Fiscal Year 2003, the FCC will continue its important work in ensuring a dynamic regulatory environment that facilitates the development and deployment of new technologies and services for all Americans.

Mr. Chairman, Ranking Minority Member, and Members of the Subcommittee, I appreciate this opportunity to appear before you today to provide you with a report of our work conducted during the past calendar year and to discuss the Federal Communications Commission's ("FCC") Fiscal Year 2003 Budget.

Last year, I appeared before this Subcommittee for the first time and made a personal commitment to effectuate fundamental change within the Commission. I guaranteed that the Commission, as an institution, would complete a thorough self-examination and develop a reform plan designed to make the FCC a more responsive, efficient and effective agency, capable of facing the technological and economic opportunities and challenges of the new millennium. The Commission delivered on this promise and sent you a reprogramming request for its reorganization six months later. We appreciate your rapid consent to our request, and we began the implementation of our reorganization plan last month.

I also pledged to enhance the Commission's independent technical and engineering expertise. The Commission dedicated resources to recruiting, training and retaining a solid technology-oriented workforce under our "Excellence in Engineering" Program. We have hired 24 mid- and senior-level and 15 entry-level engineers. We instituted training programs to keep current and future engineers up to date in their profession. And, we have improved the environment for engineers by purchasing equipment to facilitate the spectrum management process, and to upgrade the Columbia, Maryland Laboratory's testing capabilities. Our on-going efforts in this regard, coupled with the Agency's "FCC University" and "Excellence in Economic

Analysis" initiatives, hopefully will preserve our existing wealth of FCC staff knowledge and expertise and enhance and extend that collective knowledge well into the new millennium.

When I last appeared before this Subcommittee, I pledged to make the Commission a model of solid management techniques and performance. As such, the Commission moved forward to continue to streamline agency processes and procedures, automate agency processes, provide improved access to agency information, and modernize its information technology infrastructure. During our January 2002 Open Agenda Meeting, the Commission's staff delivered presentations which demonstrated substantial improvement in backlog reduction levels and other management benchmarks.

Finally, I also vowed that the Commission would use the remainder of its Fiscal Year 2001 and expected Fiscal Year 2002 funds to implement its statutory mandates and serve as a constructive and fair independent agency, cognizant of the intent of Congress and dedicated to serving the public interest and consumer welfare. I am confident that the Commission has met all of these commitments and, in doing so, has raised its standards for serving the public.

The Commission has made these achievements, however, against the backdrop of tragic and dramatic national events. The events of September 11, 2001, provided us all with an important lesson in the significance of the FCC's portfolio. We know now that our society has developed more than just an appetite for communications services—America is dependent upon these services in times of crisis and in times of peace. A strong and competitive communications

network is essential to a healthy economy and our nation depends on both, whether to bolster its ability to defend itself, or to communicate in times of normalcy.

For Fiscal Year 2003, the Commission is requesting $278,092,000, of which $268,327,000 will be dedicated toward our operational requirements. Although we did not receive full funding for our FY2002 programs, we are appreciative of this Subcommittee's attention to our needs and your recognition of the importance of our programming. Last year's appropriation was an important first step in ensuring adequate funding for the Commission, and we hope that you will agree that our FY2003 funding request is critical to accomplishing our statutory mandates.

This year, you have my personal pledge to continue driving forward in a patient and deliberate manner—to handle the expected and the unexpected; from homeland and internal security to biennial reviews, an expected heavy influx of Section 271 long-distance applications, and pending major merger reviews, just to name a few. The Commission intends to use its expected funding to continue its campaign to upgrade the Agency's facilities, as well as to initiate and complete critical rulemakings. The present request is the minimum amount necessary to continue to capitalize on our past successes and to carry us through the immense challenges of the next fiscal year. Already, Fiscal Year 2002 has been marked by a tidal wave of new policy and regulatory challenges. I expect Fiscal Year 2003 to be at least as opportune and challenging.

FISCAL YEAR 2002: MAXIMIZING AVAILABLE RESOURCES

At the beginning of the last century, innovations and improvements in telecommunications services took years, and sometimes decades. Today, we develop new communications products and services at a more rapid speed then ever before, in an exponential fashion that makes science fiction a matter of science fact within just a handful of years. Looking forward, that makes for policy and management opportunities, as well as hurdles and challenges.

As a consequence, the Commission continues to capitalize on its well-established core competencies, especially honed over the past six years, to eliminate barriers to entry in domestic communications markets; to deregulate where appropriate to promote competition; to vigorously enforce Commission rules so that corporate entities compete fairly; and, to promote competition in international communications markets. Moreover, the Commission continues to build upon the cornerstone principles of the public interest and general consumer welfare to promote access to communications services for all Americans, and to promote heightened consumer education and information.

The Commission must stay abreast of technological advances and be prepared to face the future before the future arrives. To do so, the Commission needs funding to improve its use of internal technology and to develop a highly trained workforce to evaluate communications industry trends. Last year when I appeared before you, I discussed the Commission's critical need to upgrade its infrastructure. I also emphasized our efforts to re-evaluate the Agency and develop a business plan to reform its organizational structure. A well-funded infrastructure and

an efficient organizational structure are intrinsically linked. The overall ability of the Commission to function as an institution is dependent upon the quality of both. When I last testified, we already had made strides toward upgrading information technology and technological resources. Less then a year after my testimony, I sent you a report outlining a significant internal reorganization of the Commission.

The foundation for the Commission's reorganization rests on the shoulders of its staff—a diverse and committed group of people dedicated to utilizing resources to maximum capacity and rebuilding a trim, well-focused organization that meets the needs of America's communications industries and their consumers. The reform and reorganization of the Commission is built along four specific concepts: (1) a clear substantive policy vision; (2) a pointed emphasis on management; (3) an extensive training and development program; and (4) organizational restructuring. The implementation of each of these concepts exemplifies how the Commission utilized its financial resources during the past year, and explains our plans for additional funding in Fiscal Year 2003.

A Clear Policy Vision

I enumerated above a set of policy and management imperatives that will extend the Commission's mission, evolve its operational strategies, and drive further the culture of efficient, effective and responsive performance. First, we articulated a clear policy vision. The Commission's staff also evaluated our activities in these identified issue areas and tied the highlighted policies to the reform of the Commission as an institution. We initially specified several areas for policy-making emphasis: *broadband deployment*, *competition policy*, *spectrum*

policy, *building a foundation for media ownership regulation*, *digital television transition*, and *homeland security*. Although these issues sometimes overlap, their individual significance guides our dedication of resources in the regulatory arena.

Broadband

Recently, I noted that one of the FCC's central policymaking objectives is, and should be, the promotion of efficient, widespread deployment of broadband infrastructure. Recognizing the importance of broadband deployment—a topic of conversation that is extensively discussed here on Capitol Hill, as well as at the Commission, Wall Street, and Main Street—the Commission is taking a concerted, comprehensive approach to bringing regulatory clarity to what is, at best, a murky and confusing policy area. To that end, the Commission has committed significant resources to initiate and consider several proceedings that pointedly address broadband issues. Of course, our actions in this area will be grounded first and foremost in the Act, taking into account the statutory objectives of competition, universal service, and consumer protection.

It is important to emphasize that while we have committed significant resources to initiating or completing various rulemakings, the legal and regulatory issues implicated here have yet to be resolved. But they must be resolved if we collectively intend to facilitate the ubiquitous availability of broadband to all Americans. The Commission welcomes the input of all Americans in our deliberative process—including the opinions of the Members of this Subcommittee and Congress as a whole—as we proceed in developing a regulatory framework for successful broadband deployment.

Competition Policy

Competition is a fundamental and guiding statutory principle under the Telecommunications Act of 1996. It is the root from which most of our policy grows. The Commission has been outspoken in its support for competition, both inter- and intra-modal. More significantly, however, our actions have backed up our words. We recognized that ensuring that competitors have access to those network elements that are necessary to provide competing telecommunications services is only half the battle as the competitive local exchange carrier ("CLEC") community told us that to be useful, network elements must be provisioned in a timely manner. In response to these provisioning concerns, we launched two Notice of Proposed Rulemakings on proceedings on performance standards that begun an effort to simplify performance levels and standards to both clarify obligations and to allow for a mechanism for swift enforcement when those levels and standards are compromised. The Commission has also begun a second analytical look at the regulatory implementation of the Act, through our Triennial Review of Unbundled Network Elements Requirements NPRM, that takes account of market experiences to determine which of our regulations are working to provide a competitive environment for consumers and which are not.

Positive rules to promote competitive entry are meaningless without a credible enforcement effort. Therefore, we have made enforcement a cornerstone of our competition policy. As you will recall, last year we called on Congress to increase dramatically the forfeiture amount allowed under the statute. We eagerly await the fulfillment of this request, and we continue to enforce vigorously our current rules that serve to promote competition. Indeed, we have been diligent in our enforcement efforts, imposing major fines on Bell operating companies

for local competition failures, and augmenting our enforcement staff with top flight litigators.

Moreover, the Commission remains vigilant in its review of Section 271 applications. Since 2001, despite the fact that the roadmap for Section 271 approval was drawn, three Section 271 applications involving four states were withdrawn (and subsequently re-filed), demonstrating the Commission's continued determination in ensuring the competitive checklist is met and local markets are open for competition.

Spectrum Policy

The Commission's first assigned task in 1934 was to manage the spectrum. The same basic principles articulated then continue to exist today. The Commission has an obligation to ensure that spectrum, an important and precious resource, is used wisely, ensuring the broadest public benefit and satisfying urgent public safety needs.

The Commission has acted decisively—utilizing our staff and the spectrum auctions process to follow Congress' mandate that we work toward the rapid deployment of spectrum. During the past few months, we have reallocated the spectrum used for channels 52-59, designated the 4.9 GHz band for public safety purposes, and authorized the use of spectrum for Ultra-Wideband technology. In a major rulemaking completed on December 28, 2001, the Commission reallocated 27 MHz of spectrum transferred from the Federal Government. This spectrum will permit the initiation of new and flexible services—for example, in the fixed satellite service, fixed mobile service, telemetry, and low power radio. In addition, the

Commission has experimented with innovative methods for licensing that encourage private band management within the confines of existing statutory guidelines.

Media Ownership Foundation

The time has come to rebuild the factual foundations that support a contemporary regulatory regime for media ownership regulations. Although the media landscape has changed dramatically since the initiation of many of the Commission's ownership regulations, the long-standing goals of diversity, competition, and localism remain paramount.

As you are aware, the U.S. Court of Appeals for the D.C. Circuit recently vacated some of the Commission's broadcast ownership rules, and has remanded others for our reconsideration. At the heart of the court's concern is the ability of the Commission to justify these restrictions in light of the dynamic changes in today's marketplace.

Long before the recent court decision, however, I expressed concern about the quality of the record the Commission relied on in reaching media ownership decisions. In an effort to shore up this area, I announced the creation of a Media Ownership Working Group on October 29, 2001. This working group is tasked with developing a solid factual and analytical foundation for media ownership regulation. Moreover, they are working to provide an empirical and analytical basis for the Commission to ensure that our regulatory regime in this area actually serves the goals of diversity, localism, and competition in the media marketplace.

It is important to note, however, that the D.C. Circuit's recent decision found that the Act compels the Commission to review its media ownership regulations every two years and to repeal these regulations unless the Commission makes an affirmative finding that the rules are necessary to serve the public interest. To address the court's criticism that we lack a factual foundation for our ownership rules, we must expend a meaningful amount of resources to improve the evidence before us. We cannot afford to sit back and hope the public submits all the information we need to make good decisions. We must be proactive in deciding what questions need to be answered, and then to go out and answer them. That is what I have set up the Media Ownership Working Group to do.

We then need to apply those factual findings to our media ownership rules and determine if the rules as written truly promote competition, diversity and localism, or whether today's media market requires different approaches. I welcome that challenge, but must emphasize that overhauling our knowledge base on media ownership and then re-initializing it every two years hence will require a significant commitment of resources.

In addition to appointing specific FCC personnel to gather empirical information, the Commission has launched a comprehensive examination of rules on multiple ownership of local radio stations and set interim policies to resolve pending radio transfer applications. The Commission also, as recommended by the prior Commission, initiated a proceeding to review the newspaper-broadcast cross-ownership rule. The Commission also began a rulemaking on cable ownership rules last year. In addition, the Commission has proposed new equal employment opportunity rules for broadcast and cable. I believe that by next year, with the

proper allocation of resources within the Commission, I will be able to report on significant beneficial progress in this area.

Digital Television Transition

While broadband deployment and the inherent competitive issues involved rank as the most important communications issues facing America, the economic by-products of digital television ("DTV") are equally important in scope and stature. Television is, after all, a central part of our society and provides our citizenry with essential information and entertainment.

Consequently, the DTV transition and its economic and regulatory implications maintain an important place in the Commission's overall policy-making efforts. In October 2001, I announced the creation of a Digital Television Task Force. This task force has been reviewing the ongoing transition to DTV, making recommendations to the Commission regarding transition priorities, and facilitating discussions among the various parties. Earlier this month, with the task force's assistance, I released a plan seeking voluntary commitments from the major relevant industries to move the transition forward. The plan is designed to avoid the finger-pointing that often characterizes this debate by asking all of the affected industries to accept an equitable share of the burden. While the voluntary plan is not a comprehensive solution to all of the difficult issues raised by the transition to DTV, I am hopeful that, if adopted by the industries involved, it can provide a real boost to the transition in the coming months.

Homeland Security

In response to the events of September 11, 2001, the Commission established a Homeland Security Policy Council ("HSPC"). The formation of the HSPC and its work involves the use of significant resources in an area that we did not consider for budgetary purposes during the Fiscal Year 2002 appropriations process. Like other agencies, we are using our current pool of Full-Time Employees ("FTEs") to cope with the events of September 11, 2001, and we are demanding more of them in handling their regular workload along with new tasks. HSPC is assigned to handle overlapping security issues and respond to specific mission objectives. First, the mission of this group is to assist the Commission in evaluating and strengthening measures for protecting U.S. telecommunications, broadcast and other communications infrastructure and facilities from further terrorist attacks. Second, HSPC assists the Commission in ensuring rapid restoration of U.S. telecommunications, broadcast, and other communications infrastructure and facilities after disruption by a terrorist threat or attack. Third, HSPC assists the Commission in ensuring that public safety, public health, and other emergency and defense personnel have effective communications services available to them in the immediate aftermath of any terrorist attack within the United States.

Emphasis on Management

As an outgrowth of the Commission's self-examination and reform, the Commission has placed a new emphasis on the management of available resources and the creation of tools designed to enhance the operation of the bureaus. We asked all managers to review their internal processes and develop real solutions to existing problems. Specified management initiatives

include: (1) backlog reduction; (2) better use of technology, including a re-designed Internet site; (3) improved productivity; and (4) consolidated and simplified licensing systems.

At our January 2002 Open Agenda Meeting, most Bureau and Office Chiefs reported on their reduction in regulatory backlogs—a matter that has dogged the Commission. We have posted these statistics on the Commission's Internet site (<http://www.fcc.gov>), so that our progress in this area is evident to the industry. One major highlight in this area is the Wireless Telecommunications Bureau. In 1998, they had a 13.12 percent backlog of applications pending for more then a year. By December 2001, that percentage had dropped to 0.24 percent. Likewise, the International Bureau managed to achieve a 55 percent reduction in pending applications for Review and Petitions for Reconsideration, as well as a 56 percent reduction in the number of existing non-routine applications and a 25 percent reduction in existing satellite space station applications.

This past year, the Commission's management maximized improved information technology resources to increase responsiveness to consumers. The FCC's redesigned Internet site is part of our management plan to make the Agency more responsive and transparent. We average approximately 265,000 hits on a daily basis, and we were ranked third overall among federal agencies for Internet site design. At the end of November 2001, the Commission launched a new FCC search engine to improve its Internet site.

In addition to a general managerial emphasis on outreach, the Commission's staff leadership is tasked with improving bureau productivity. For instance, the Commission

instituted comprehensive accounting and reporting reform for incumbent local exchange carriers. And, in an effort to reach out to our core constituencies, the bureaus have all undertaken efforts designed to consolidate and simplify licensing systems. The Commission has proposed new procedures to increase the efficiency of satellite licensing procedures. The Commission also has proposed a uniform system for filing informal complaints. This particular change would promote efficiency and predictability for consumers and service providers.

Training and Development

The Commission's long-term policy objectives require a highly trained staff capable of adapting to technological change and industry trends. Accordingly, the Commission has instituted a range of training and technical initiatives: (1) the "FCC University"; (2) the "Excellence in Engineering" Program to recruit engineers and improve their physical resources; and (3) recruitment and retainment of economic experts, or the so-called "Excellence in Economic Analysis" Program.

Already we have instituted internal training programs in a variety of areas and brought outside experts in to train our staff in various disciplines. The most successful element of this program so far, however, is the FCC's "Excellence in Engineering" Program, initiated during the previous fiscal year and continued with funds in our Fiscal Year 2002 appropriation. Already we have hired 24 mid- and senior-level and 15 entry-level engineers in open FTE positions. We have instituted a special training program to educate and retain our technological experts. We have dedicated a substantial portion of our funding to improving the physical infrastructure used by the engineers for testing and other purposes. At the Columbia, Maryland Laboratory, we have

purchased five new spectrum analyzers and three new signal generators to enhance our ability to adequately measure emissions. As a result of these improvements, we now have the capability to take measurements at 110 GHz instead of the outdated 30 GHz level. We also have dedicated financial resources toward the purchase of equipment designed to measure cellular phone radiation.

Restructuring

Although managerial goals and engineering equipment are essential components of an efficient agency dedicated to high-tech matters, the key to ensuring a well-functioning agency is to create an organizational backdrop that maximizes human and technological resources. On January 17, 2002, the Commission sent the cornerstone of its improvement plan to this Committee—a Section 605 Report detailing the reorganization of the Commission. This past month, we began implementing that reorganization. The Commission's plan is more then a simple retooling of an old agency—it represents an important step in streamlining the Commission. Although there will be no initial budgetary impact from the restructuring, we expect that in years to come, the streamlining approach taken here will pay dividends in efficiency and good management. I have attached to my written testimony a copy of the newly designed organizational chart for the Commission.

We intend to dedicate the bulk of our human resources to continue to move forward in these areas, to make the Agency responsive to consumer and industry demands and to facilitate telecommunications growth and deployment. The best way to accomplish this goal is to ensure adequate funding to purchase necessary equipment, improve our information technology

capabilities, and hire and retain trained technical personnel capable of assisting the Commission in its decision-making process.

FISCAL YEAR 2003: CONTINUING A YEAR OF PROGRESS

It is important to note that all of the reform and restructuring efforts started in Fiscal Year 2001 continue to be limited by the available discretionary funding in Fiscal Year 2002. Currently, 69 percent of the Fiscal Year 2002 appropriation is earmarked for salaries and benefits. Additionally, 29 percent will cover non-discretionary cost increases related to rent and supplies. That amount leaves the Commission with two percent of its total appropriation to implement reform – streamline operations, enhance technical and economic expertise, oversee spectrum management, and provide funds for resolution of ongoing enforcement issues such as cramming and slamming. For this reason, focussing on improving the funding picture in the future—*i.e.*, Fiscal Year 2003—is especially important.

The $268,327,000 in operational costs requested by the Commission for Fiscal Year 2003 is the bare minimum needed to allow us to continue the progress made during the past year. In order to achieve our goals, and stay abreast of telecommunications developments, the Commission must keep ahead of changes in technology, economics, and the law. Accordingly, we are requesting $15,066,000 for critical programmatic initiatives. An additional $8,190,000 would be dedicated toward uncontrollable cost increases related to salaries, benefits, and inflationary cost increases for rent and supplies. The Administration's request of $9,765,000 for retirement costs brings the total Commission Fiscal Year 2003 budget to $278,092,000. The Fiscal Year 2003 regulatory fee offset for the Commission would be 89 percent of the proposed

Fiscal Year 2003 budget, making our direct appropriation request from this Committee 9.5 percent over our total fiscal year budget, or 13.5 percent with the pension costs included.

From the perspective of funding Commission objectives, the critical segment of the overall budget is the $15,066,000 dedicated to programmatic initiatives. Of that amount, $4,986,000 will be dedicated toward Commission employee training, enforcement, and spectrum management initiatives. Due to national security needs identified since September 11, 2001, the Commission also will spend $1,000,000 to improve internal security and support other security efforts. The remainder of these funds, $9,080,000, will improve information technology critical to supporting program performance initiatives. With these funds, the Commission will improve existing systems to ensure compliance with Government-wide standards pertaining to system security, accessibility, and financial management.

In addition to the policy objectives and reform outlined in my testimony, our specific objectives for this funding include:

- Continued expansion of electronic filing and other initiatives to enhance public access and expedite Commission policy decision-making;
- Improved technical and economic expertise of staff;
- Life-cycle replacement of technical monitoring and testing equipment;
- Ongoing infrastructure improvements to Columbia laboratory facility;
- Expeditious and effective response to public requests for assistance and information;
- Enhancement of information technology infrastructure to make it responsive to changes in the industry; and,
- Enable the FCC to improve its homeland security posture.

One of the Commission's main objectives during the next year is to maintain a safe and secure working environment for the FCC's employees and visitors who frequent the Commission. As with most other agencies, the Commission has faced the fallout from

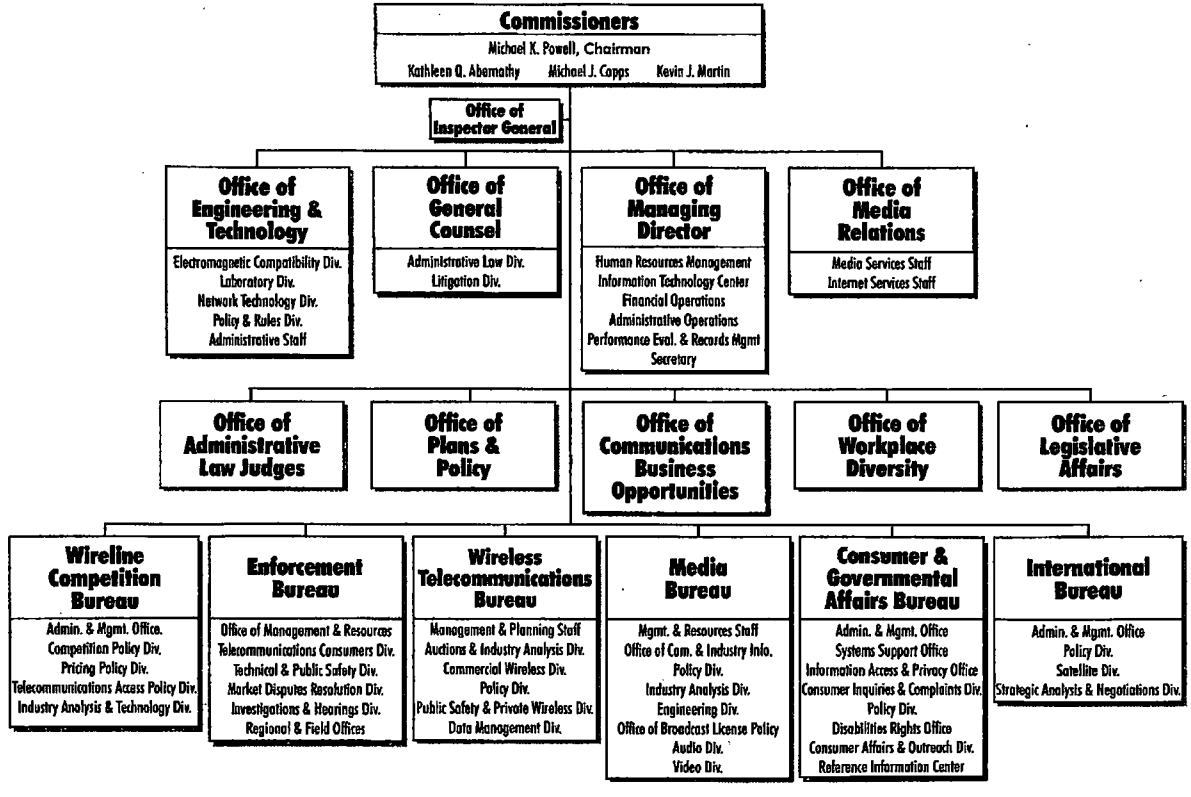
September 11, 2001, with unanticipated costs. This year we must provide enhancements to a variety of activities and programs, including on-site physical security; relocation and processing of mail at multiple off-site locations; and systems upgrades to ensure that our information technology infrastructure has adequate cyber-security safeguards. Although we have $1,000,000 specifically set-aside for these projects in Fiscal Year 2003, the Commission also has requested the use of excess regulatory fees collected in previous years for Fiscal Year 2002 security needs. In addition to receiving full funding, we would appreciate a favorable decision related to this request.

Without adequate support, we will be required to eliminate some of the Commission's programmatic initiatives, or cut back on the implementation of individual programs. I believe that I already have made the hard choices necessary to operate the Commission on as tight a budget as practicable. As I outlined in the first part of my testimony, the infrastructure and manpower initiatives are interconnected to the general health of the agency and the completion of its core mission.

CONCLUSION

I respectfully request that this Subcommittee grant the Commission its full funding request for Fiscal Year 2003.

Thank you. I would be happy to answer any questions this Subcommittee may have.


Commissioners
Michael K. Powell, Chairman
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Network Technology Div.
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Wireline Competition Bureau
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Competition Policy Div.
Pricing Policy Div.
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Office of Broadcast License Policy
Audio Div.
Video Div.
Consumer & Governmental Affairs Bureau
Admin. & Mgmt. Office
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Information Access & Privacy Office
Consumer Inquiries & Complaints Div.
Policy Div.
Disabilities Rights Office
Consumer Affairs & Outreach Div.
Reference Information Center
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Satellite Div.
Strategic Analysis & Negotiations Div.

Mr. WOLF. Thank you very much, Mr. Powell.

FAT-FINGERS DIALING SCAMS

We have a couple questions here, and one I spoke to you briefly about, but let me go into detail. We have a segment that we used at our hearing on the FTC the other day. This segment, which was on the "Today" show, shows just one example of what I would call a scheme to which consumers unknowingly are subjected on a daily basis. It is called the fat fingers dialing scheme, and I wonder if you could take a look at this and see, one, if you do not have the ability to deal with it; two, do you need any new law; and, three, using the bully pulpit, if you will, if there is something that we can do to deal with it. But why don't we begin the segment?

Mr. SERRANO. You will note that there is a picture of another Powell on that screen. That is just a coincidence, right?

Mr. WOLF. I assume it is. [Laughter.]

[Videotape played.]

Mr. WOLF. Do you have any comment on what authority the FCC might have? I am going to get a copy of that and send it to Senator Hollings and Congressman Tauzin. We are also going to send it to the Justice Department, the Criminal Division, and ask them to take a look at it. But I think the FCC, it seems—do you have any thoughts about that or do you have the authority—or do you want to comment?

Mr. POWELL. Certainly I will do my best.

It strikes me that the scheme is very similar to what we have seen on the Internet where people attempt to secure URL addresses that have misspellings or errors in them in the hope—"site-jacking," I think it is referred to, as an attempt to direct you to their site. It is a similar scheme. And, clearly, it seems to me that from the limited facts I can gather from the tape that some form of deception, if not fraud, is involved, which should mean a couple things. First of all, contrary to the reporter's conclusion, I think it probably should be clearly illegal and prosecutable somewhere, particularly by the State regulatory authorities. The report purports to have the call be within—he said his brother calls him from four blocks away, or something, which means it would be an intrastate telephone call—which might run afoul of the State's regulatory commission; in addition, there are consumer fraud actions, which the lawsuit is probably being brought under in that case.

As to the Federal level, I think the FTC—I should not speak for them—is right in the fact that if it is a service provider, a common carrier, they are expressly exempted from pursuing actions in that regard.

With respect to the FCC, I am opining a bit without a clear factual basis, but it could be unlawful under the TOCSIA Act, which we require—when the call is placed from an aggregator, which would be something like a hotel or a pay phone, most dramatically, that the carrier has a legal obligation to brand the service. So, for example, if it is accurate the carrier does not tell the caller what service it has reached, it may be violating the TOCSIA provision and its obligation to provide the brand. And it may also have obligations to explain the rates to the consumer if the consumer asks for them. And it must—if I remember correctly, it has to provide

the consumer an opportunity to hang up the call and not have it completed. At least in the story it looked as if those things were not possible. At least the gentleman's story is that the call came from a pay phone, so that might trigger, given the right factual record, a violation of TOCSIA under our statute.

TOCSIA, though, is far from complete. If you did the exact same thing from your home, it would not reach you at all. That is, the statute did not account for this branding obligation from your home or from other locations other than these aggregator locations. So certainly there would be this big group of fact patterns in which TOCSIA probably would not be implemented, and there would be very limited, if any, FCC authority in those instances.

So, my initial judgment is that there probably are some various jurisdictional holes here that are well worth working together with the FCC and the FTC and the Congress to try to find a better solution for if this is widespread.

Mr. WOLF. What do you suggest, then? We—we are going to send a copy, as I said, to those individuals. If you could have your people meet with the FTC—and perhaps we should do a letter to some State attorneys general, maybe a handful of States where we could get some sense that this is taking place.

Mr. POWELL. I would agree with that. We at times do try to reach out and work with the FTC on issues like slamming and other kinds of consumer issues in which we have had this same issue about common carrier jurisdiction—we try to do things cooperatively.

The other thing which we can do and I can commit to right away is that the Commission has a system that we are proud of in which we issue consumer alerts about scenarios that we think are troublesome and make them available to the public as a way of alerting them to certain dangers associated with them so that at least they have the ability to be a little more vigilant about these difficulties. We certainly could do that as well.

I also could just look more carefully at what evidence we have—I do not think we have ever received a complaint like this one, so we do not have an actual factual experience. But we could also look into the way the laws work and offer whatever advice you would like on that.

Mr. WOLF. Well, if you would do that, I would appreciate it.

INDECENCY IN BROADCASTING

Let me ask you a couple of other policy questions. Another one is on the issue—and it triggers a little bit with the Supreme Court decision that came out yesterday on child obscenity. Last year, I said that the burden on parents to report and complain about indecent material broadcast over the airwaves is too great and that the Commission should consider making it easier for parents, who are stressed now, moms and dads having such a difficult time keeping things together, to protect their children from offensive programming.

One of your colleagues on the Commission has called on radio stations to voluntarily retain tapes of their programming for several weeks after broadcast so that in the event of a complaint, the

FCC would be able to investigate it without placing the burden on parents to provide the programming in question.

The average person certainly doesn't listen to a radio or watch television with regard to having a recorder, so the type of voluntary action could be a great benefit to the individuals.

Do you have some thoughts about what the Commission could do insofar as helping out if there is a situation like this that we know take place so many times? I have read some transcripts and things like that.

Mr. POWELL. Well, a couple points. Commissioner Copps' call for voluntary industry actions has been well responded to by some institutions. I know that Disney in particular is committed to doing so. I note that he did call for it in a voluntary way because we have seen difficulties with mandatory requirements along that line.

But I would also like to emphasize, ever since we had that colloquy, the Enforcement Bureau has looked for ways to make it easier to file complaints. It is important to note that we actually don't require tapes or transcripts per se. What we require is some factual indication that gives us a context because the legal regime requires us to consider it in context. No matter how regretful yesterday's Supreme Court decision may be, it has re-emphasized the importance of a holistic context to those in the Government who pursue these sorts of things.

What we do have a frustration with is we need something from the public or from the factual circumstances that allow us to look at the offensive material in a holistic context. Indeed, many of the bigger-profile cases that we took enforcement action against this year did not include specific recordings or tapes. I think specifically some aspects of the Sarah Jones case did not include tapes from the complaining public. But the complaining individual was able to give us enough of the time and place when it was heard, some of the specifics that they recalled hearing.

If we can get enough to provide for meaningful examination of the purported offending station, that is usually enough. What we had in that case, for example, is enough to go on in terms of putting an investigatory letter before the licensee and saying we have evidence that you may have violated this pursuant to a complaint. We specifically have these allegations and respond. And then in some ways that dialogue produces the record we need to make an informed decision.

So there has been this statement almost consistently that we require tapes, and I just want to state again it is not really accurate. I wish I had more specific suggestions that we could tell the public directly to make it easy. But we have been able to pursue enforcement complaints with not too much from particular individuals if there is enough context.

Mr. WOLF. Are complaints up or down, do you know?

Mr. POWELL. I do not want to guess off the top of my head because I am not positive. My sense is they—well, I should not guess. Our enforcement actions have been up a bit. I mean, we have issued more fines than in past years this last year.

SUPREME COURT DECISION ON CHILD OBSCENITY

Mr. WOLF. A couple other questions, too, and I know—this is an unfair question to a certain degree, but I haven't read the opinion either, other than newspaper reports. But as an attorney, have you read the Supreme Court decision?

Mr. POWELL. I am sorry. I have not had the chance.

Mr. WOLF. Then I won't ask you if you had any sense how successful could the Congress be in crafting a piece of legislation that would meet the test, that would not be 6–3, but would be 9–0 or 7–2, reading some of the dissents and the opinion. But if you haven't read it, I don't think that is a fair——

Mr. POWELL. I have only read the press reports myself, and I think the problem for the Congress always is this question of breadth. And, as I understood it, the Supreme Court found constitutionally offensive the "appears to be" kinds of qualifications that are less precise than apparently what they would like to see. But it is not really my area, and without reading it, I don't want——

Mr. WOLF. Sure. No, I am not asking that.

You might want to—if you can check and let us know, who are some of the best minds on this issue that you know of in the country. You can submit that if you have any thoughts of different law schools——

Mr. POWELL. I will give that thought, and I——

Mr. WOLF. Because I would hope that Congress would try to craft a law that could meet the test, because I think the Court decision could be very devastating in the future.

FCC RULEMAKINGS

On the issue of the Tauzin-Dingell bill, let me ask you this: Some have said that with the proposed rulemakings by the FCC that you are now looking at, that they could potentially have a similar impact on the telecommunications industry as the bill itself. What are your thoughts about that?

Mr. POWELL. My view is that is not entirely accurate, for a very fundamental reason that should be obvious, which is the Commission can only make changes within the statute. The Congress can change the statute. Without question, Congressman Tauzin and Congressman Dingell's bill is an extensive modification of provisions of the 1996 Act itself, provisions that no matter what our inclinations were, we could not change as an administrative agency interpreting that law faithfully.

Now, there are certain actions that we can take within the confines of the statute that could have some of the components of Tauzin-Dingell. I will not try to recite item by item, but I think that sometimes there is an effort to associate our decision or our efforts in this regard as the administrative identical equivalent to that legislation, and I have always believed that that is inaccurate.

Part of what we have most committed to doing is trying to finally clarify what the nature of certain kinds of new and emerging services are within the definitions of the statute. The statute itself lays out certain kinds of services and defines them, and then it defines

quite clearly what the regulatory consequences of each of those definitions are.

There has been some confusion and ambiguity in the marketplace, understandably, that as the new service which has components and attributes of various kinds of services within the definition come into the marketplace, there is an uncertainty about what the regulatory consequences are, in part because there is regulatory uncertainty of what they are. And I think that what we committed to is it has gone on too long with the Commission in, candidly, sort of avoiding the question to give it a clear interpretation of the facts as applied to the statute definitions and say what we think the service is.

Indeed, we have been chastised by some courts because these issues have found their way into courts in the cable context and even in the phone context. And the courts are sitting there saying I do not know which the service is. Is it a telecom service? Is it an information service? And, increasingly, the courts were feeling that the Commission had not yet ruled so they were going to do it.

I personally don't believe the courts are the appropriate place to work through the thorniness of the technology and the facts, and I think that it is our obligation, no matter how controversial, to try to settle in our best judgment what the nature of the service is and let that process play out. And then I think what the regulatory consequences of that are are important, but those questions are far from answered or clear based on our ruling.

The statute itself tries to anticipate and clearly identify what will be the regulatory consequences.

INCREASES FOR TECHNOLOGY AND RETENTION

Mr. WOLF. On the budget, with your increase of 9.5 percent, $9 million for information technology initiatives, including consolidation of licensing systems; also, $7.5 million in program increases last year, including funding for technology initiatives.

What are the results of that money? And can you tell us what kind of success are you having in keeping people? I know you hired those new people, and I want to congratulate you for that. We had the SEC up here today. They now have pay parity because they were losing a lot of people. So how does this all fit in? And are you losing people while you are bringing these people on?

Mr. POWELL. Well, I will start with that question. I am happy and sad, which is, our retention is so far down we are actually having trouble now because we have limited hiring authority left, period. We lost very few individuals last year——

Mr. WOLF. Well, that is a credit to you.

Mr. POWELL. And we are proud of that because we think that is a consequence of making it a better workplace. We think the training initiatives that you gave us money to put into place, which we put a lot into, really improved morale, really improved people's sense of developing in the institution. But our retention is very, very high right now. We are losing dramatically fewer people in the last year than we had in previous years, so much so that it has become an issue on the other side, which is we don't have any more space to make any hirings even when we sometimes think we need

to, because the attrition has been improved so greatly. So I am very proud of that, and that is a challenge I am happy to have.

Mr. WOLF. And that is a tribute, because today the SEC, they had lost about a third of their workforce.

Mr. POWELL. Oh, no, we are not.

Mr. WOLF. People were leaving. And I think in your area many people could leave and go out into the private sector, so that is a good problem to have.

Do you have a relationship with any university? Or where does the advance training take place? Is it on-site?

Mr. POWELL. It is a great program. And, by the way, we have structured it so that your staff can attend things, you personally if you were ever interested. We really wanted to make that a service to people who were in this business and for the Government as well. We do both. Number one, we try to capture the talent within the agency, which is significant, and encourage leaders to be instructors, to take time out of their schedule, to commit to programs, seminars, courses in the context of the curriculum. So we have a component of that. We have gotten a number of universities, including George Washington, Georgetown—the list is actually fairly significant—to commit some professors who would come at no cost to us directly to teach some of these courses.

We also have tapped some of the best technology companies in the country to commit their expertise at times for certain kinds of courses, and they have agreed to do so. So we are just about to put the final touches on, a full, complete course catalogue for our employees, and I am integrating it into the performance evaluation system so that a manager will sit down with an employee and say now let's talk about your training development plan for the next year. We pop open the course catalogue, and we identify what you need to be more proficient in, and we get you scheduled for it. And we have also explored on-line curriculum so that employees can do it at home. Employees can do it at their own pace. Employees can do it over the Internet. And we are pretty excited about that. So, yes, we have tried to take advantage of all of those things, and so far, so good.

Finally, just to give you an indication, our attrition, in 2000—over the last year we lost 142, and the next year we lost only 40.

Mr. WOLF. Forty?

Mr. POWELL. Forty. And years previously, 194, 186, 237, 178, 207, 156.

Mr. WOLF. Well, that is great.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. Let me just pick up very quickly on two items that were discussed before.

First of all, last week at the FTC hearing, the FTC Chairman said that he wanted legislation that would give his agency jurisdiction over consumer protection involving common carriers, especially telephone companies. What do you think of that?

FTC JURISDICTION OVER COMMON CARRIERS

Mr. POWELL. It does not bother me in and of itself. I actually have believed that there are some matters in the consumer area that I think it is a mistake that the FTC does not have jurisdiction

over. But it is a little simpler than it sounds. I would want to carefully talk about as to what, because there is a huge part of the common carrier regulatory screen that includes consumers, which we consider to be a very valuable part of communication policy and would not want to just punt consumer issues in their entirety to the FTC, with due regard for their ability to enforce them, because we think a lot of those concerns are part and parcel of regulatory policy and should not be completely divorced. So we would have to think about exactly where the overlaps and parameters were, but I think there is room, some constructive room for them to have some greater authority in this area for the expertise that is unique to them and not unique to us.

Mr. SERRANO. Based on what the chairman was talking about, Chairman Wolf, and based on your answer now, Mr. Chairman, maybe it is time for an FTC–FCC summit so they can discuss areas where you guys could come out together and ask for legislation that would help the consumer and help you both.

I don't know. I didn't see anybody cheer in the background. [Laughter.]

Maybe we can discuss it with another Powell about that summit. But, anyway, it is something that I think needs to be done, and the lines have to be clarified, because, judging from that report we saw there and some other things, you may be stepping on each other's toes, or in the process of not wanting to do so, the consumer may be denied some very needed help.

Mr. POWELL. Well, we have a good relationship with them. At times we have tried on our own initiative to work together as agencies where we saw holes. Slamming is a really good example. My predecessor worked very aggressively with the FTC to try to find ways to do things jointly in that regard. But there is no question there could be some farther reaching exploration that would include legislation.

My only caution, more as advice to you than with regard to my problem, is that there is a congressional theory, if you will, that exempts a number of areas from FTC reach because they are otherwise in expert agencies, and one might want to consider what the impact is on all of them. I believe they also have limits in transportation, maybe in labor and some other areas. So it is actually part of a bigger question, if you will, about the roles of the expert agencies and the FTC, and I just do not know enough about those other areas.

BROADCAST INDECENCY ENFORCEMENT

Mr. SERRANO. Another issue that you were discussing with Chairman Wolf is the whole issue of monitoring and so on. Both with Chairman Powell and his predecessor, I have always been kind of taken aback at the fact that you only respond to complaints.

Now, I understand that I don't have the solution. You can't assign one person to listen to every radio station in the Nation. But you do respond to complaints, and so the more popular programs probably get more complaints. I have always brought up the case of the Howard Stern Show where there are people, judging from what we know, who do nothing else but listen to that show so they

can complain to the FCC. And, you know, they are offended by talk about sex and whatever on radio, and a number of fines have been levied on that program.

Again, it is all a matter of taste. I am offended by right-wing commentators who think every immigrant should be kicked out of the country, regardless of what kind of job he or she holds and so on. But there is no movement by guys like me to complain to you about them. And then I don't know what it is you would complain about, anyway, since there are no rules that cover that.

I don't know the answer. I just go on the record again saying that I wish there was a way to deal with that issue rather than just based on who complains, because I get the feeling some people will continue to complain and other people will never get any complaints launched against them.

I know, you are not going to comment on that.

Mr. POWELL. I would love to comment if you want me to.

Mr. SERRANO. Sure.

Mr. POWELL. One, I would emphasize it does not take a mass of complaints. We will explore and act, potentially, on a complaint from a single individual. So one listener, no matter what the program or where it is, potentially can precipitate an investigation.

The second thing that I would note is I have thought about this long and hard and still come down to the fact that it needs to be complaint-driven at the moment for lots of reasons. One of them is the nature of broadcasting—you actually have to have personnel and resources in locations all over the country to be listening posts. We cannot hear Los Angeles broadcasts from Washington or those in a remote part of Montana from Washington. You really would need people out there in some way—employees are deputized to be monitoring programming. And if you did not do it, if you did it on a limited basis, I think that we would have a legal vulnerability about the arbitrariness of what markets you are in and your complete elimination of the other one.

Mr. SERRANO. Well, you know, it would be a great, come to think of it, affirmative action program because nobody is listening to Spanish radio in terms of monitoring, and some of the stuff that goes on in the mornings would get a lot of complaints. But that would be another thing.

BROADBAND DEPLOYMENT

Mr. Chairman, last February Congress passed and I strongly supported legislation promoting the deployment of and investment in broadband networks. This is an issue that is of critical importance to many constituents, and many in New York. In fact, a recent study by Corning, a wonderful New York-based company, indicated that fewer rules requiring the telephone companies to unbundle their networks to move to a more free-market approach will actually increase broadband deployment by 31 percent over the next 10 years.

I know that the FCC has undertaken a broadband initiative. Can you give us your thoughts on where you think the FCC is headed? And when can we expect a decision?

Mr. POWELL. Let me start from the back and move forward. We are trying to have significant aspects of the decisions this year, be-

fore the year is over. My usual caveat is we do not control the unexpected events that sap our resources, like mergers and 271 applications, so we may or may not meet that. But that is our internal planning objective.

I think this is a challenging set of issues because it requires some degree of best judgment about the future that is always difficult to do, what will stimulate more, what will not, what will be the anti-competitive consequences.

But I think the Commission's initial view is first it needs to clarify the law that exists. That is, in my opinion, the easiest part, which is while the judgments might be controversial, they will be difficult to wade through, it is something that an agency, I think, has a sacred obligation to do, which is read the law and say whether you think this thing is this kind of widget or a that kind of widget. That part we have been pushing hard to do, and I think that the clarity that will bring in part lowers risk.

I think companies that are out there investing in broadband infrastructure generally are concerned about risk, and that comes from many places, and one of those places is regulatory risk. And there are different kinds. One risk that we are concerned about is we have no idea what they think it is. I think when you say what you think it is, they can at least then evaluate what the obvious regulatory consequences are of that definition. So the clarity point I think is first and foremost in our minds.

From that point on, I think you begin to tackle very specific regulatory issues in the context of that new definition. Probably the most important and the most debated will be what the role is on the wholesale side of an incumbent's obligations to provide inputs to other competitors. One, do they have to do it? Two, if they do it, on what terms and conditions? Which I really think is the billion-dollar question.

And there is no question, depending on where you draw that line, you could screw it up or you could make it a lot better, in my opinion.

I think if you were too aggressive, if you will, too regulatorily aggressive, I think you would run the risk of stifling investment. You would run the risk that large incumbents and others who are building and investing in infrastructure slow or stop. And I would also really emphasize, because I think in this debate people are not always that precise about who we are talking about. I am talking about residential consumers. I am not talking about Ford Motor Company or some of the mid-sized businesses who I think do have a fairly healthy competitive broadband environment, most of whom are wired, and many competitors out there want to compete to serve that market. And I think that is wonderful, and they should continue to try to do that.

But when we say universal service, when we say ubiquity, when we say Americans, I mean Americans in their homes. And I think that it is important that the core infrastructures reach them if many of these economic benefits we talk about are going to be realized.

There is no question in my mind that that includes first off the major infrastructures that are already there. The telephone network reaches homes in America. The cable network reaches most

homes in America. Those networks being upgraded will give our citizens access to at least two significant broadband providers, and that is something we should be pushing to do.

So I think the next set of questions will be the wholesale relationship and at what level should these respective incumbents provide those inputs. And I donot even think that is the hard part as much as I think on what terms and conditions, in a way that is extremely expensive to them to do, or a way that allows them to have reasonable recovery of their costs, because everybody wants to share networks. Very few people want to share the costs, expense, and risk of constructing them.

Mr. SERRANO. Do you think you are moving towards at least advising people what their behavior should be?

Mr. POWELL. I don't think we are there yet. I think the proceedings are honest in their intent to develop the record, which has not been completed and looked at. And I would not want to speak for my colleagues either. But I think we have made no secret that we believe that this is a new service, that it has great potential, and that the regulatory hand should be—I like to say deregulated or unregulated, but the regulatory hand should be reluctant, which means when we are in an area of service that is new and emerging, that the applications have not clearly manifested themselves that are the killer apps that the consumers value. But we are still struggling to see what the right price is and what the inefficient price is. I think that is at a time when Government often is at its worst, if it tries to be very speculative and predictive about how it all—we know how it will unfold so let's started regulating every component of it.

So, yes, I am proud to say that I think that we are approaching it with regulatory hesitancy and conservatism because we really want to understand what it is we are being urged to attach to and how deeply. So it is a lighter touch, but I think not just out of ideological preference. In my opinion, it is part out of the necessary foment that has to go on with innovation and experimentation before we are sure what broadband even is and what the applications are that people want and what they value it as before we are sure we know exactly what the specific terms and conditions should be.

Mr. SERRANO. Thank you. Before I give up my time, Mr. Chairman, let me ask a question that I need to so that when I go home this week I won't get hung from a tree or something.

BASEBALL COVERAGE IN NEW YORK

I understand, Mr. Chairman, your reluctance on principle to bring the FCC into private contractual disputes among carriers. But when my constituents in the Bronx can't watch the Yankee games, we are talking about a genuine crisis here. Cablevision, the local carrier, as you know, refuses to carry the Yankees' new network, YES, Yankee Entertainment and Sports, on its basic package. YES wants the cable company to pay $72 million, about $24 per subscriber. Cablevision says YES is overpriced and it would be unfair to pass the cost on to all consumers. Instead, it decided that those who wanted to sign up for the service could add it as a premium channel. Officials at YES declined, arguing that they need to be on a basic channel to charge higher advertising rates.

The season has started, and if this stalemate continues, about 3 million households in the New York area, including all in the 16th Congressional District, former home of Secretary Powell, will lose access to 130 Yankee games. What can we do about this?

And let me tell you, in the Washington area last Monday, April 1st, I saw the Yankees play the Orioles on local TV, and when I went home to the Bronx, I couldn't watch the Yankees, America's greatest franchise and team. [Laughter.]

Now, I know that it is of great concern to you and the children of P.S. 52, where Danny Almonte is now going to school—and he will probably become the wealthiest person who ever went to that school.

Seriously, this is a problem that no one in the neighborhood—folks on the street can't figure it out, and they are saying to their Congressman and to their State Senator: Can you do something about it? Why are these two people not allowing me to watch these games on TV when I have been doing this all my life?

Mr. POWELL. Well, I do not have a great answer for you because, in part, there is not a clear basis on which the Government can mandate that the cable system carry a particular programmer's network, no matter how valuable that program might be. I am not aware of any provision that would allow me to step in and say, you know, you better get those Yankees on by the end of the week, nor do I think necessarily it would be wise.

One of the things in this dispute—and I do not take any position—is they both are pursuing positions that are not wholly unreasonable. From Cablevision's perspective, at least as I have read about it, they want to carry it. I do not think it is that anybody does not want it on the network. I think it is, again, this terms and conditions issue, which is always critical. There are a lot of sports fans, but their argument is there are a lot of people who are not sports fans either and do not want their bill to go up $1 to accommodate those that are. And if those who are value it, why won't they pay for it on an upper-tier basis like we do for other upper-tier programming?

I am not defending them——

Mr. SERRANO. But their bills went up for CNN and they went up for ESPN. Their bills—they had no choice about those channels. Those channels are in the basic package. I am not knocking ESPN or CNN. But all of a sudden the issue of putting it on is an issue when it wasn't before. Those channels are on, and we all paid for that, and no one said——

Mr. POWELL. Again, I am being more of an observer here than a policy wonk, but, candidly, this is a never-ending battle with cable companies' high-end programs. I assure you that these same battles have gone on with ESPN, and ESPN is often the most egregious example of conflict. The rates that ESPN charges cable systems regularly have drawn out bitter negotiations in an effort to either lower the rates being insisted upon by ESPN or to try to put them on a premium channel. They ultimately reach a deal that they find mutually satisfactory. That is how ultimately it got resolved.

I do not know what else to say other than I think in many ways your statement about the passion of Yankee fans is the best factor

in the whole thing, which is, I think, neither of them can ultimately afford to go too long without satisfying the public appetite for it. And we have seen this before. You know, last year sometime, or maybe it was 2 years ago, in the Washington area the cable system refused to carry Channel 7, I think it was, that was carrying Redskin games. Well, to Washingtonians, that is almost as egregious. And at a point, they almost get to mutually assured destruction, which is, you know, there is going to be a riot here soon if we do not reach a deal. I suspect that they will reach a deal long before you all make your usual surge in the playoffs. [Laughter.]

Boston notwithstanding.

Mr. SERRANO. Let the record indicate, Chairman Powell, that I have ended my questioning, but he ended on a very high note. [Laughter.]

Thank you, Mr. Chairman.

Mr. WOLF. Mr. Vitter.

Mr. VITTER. Thank you, Mr. Chairman.

As an aside, on the issue of the FCC not having authority in this area, I think Representative Serrano would invoke some national security clause to make you take emergency action. [Laughter.]

NORTHPOINT

I have some quick questions. The first is about something we discussed last year which has to do with a new technology company in my neck of the woods, Northpoint Technology. At the hearing last year, I expressed to you my concern that the FCC can create a tremendous disincentive to innovators like, in my opinion, Northpoint Technology when the regulatory process drags on for too long. And we had a general discussion about that. I thought you shared that concern. I am very concerned now, more concerned, because I understand that since last year the FCC has voted on an order that not only calls for a controversial auction, which we talked about, but also dismissed all the applications from Northpoint's affiliates that were filed over 3 years ago.

Again, I really think this is a troublesome example of regulatory action penalizing—dragging on so long and then ultimately penalizing innovators, and it has taken so long that you are rewarding competitors and penalizing the innovator who came up with this. And it also hurts consumers who lack competitive alternatives.

There is a specific provision in the Act, 309(6)(e), that says that the auction requirement cannot be "construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiations, threshold qualifications, service regulations, and other means to avoid mutual exclusivity in application and licensing proceedings."

So I guess my question is what the FCC has done in this proceeding, with that provision in mind, to avoid forcing the Northpoint applicants into an auction and penalizing them for their being ahead of the curve and their innovation.

Mr. POWELL. Well, Congressman, you have me at a slight disadvantage because, contrary to press reports, we have not released a decision on this, and so I am not yet at liberty to really discuss the specifics.

I will confirm to you that an item has been adopted, but it is in its finalization for release and things can change. So I really do not feel comfortable talking about any of the possible specifics, but I am happy to come up and talk to you about them when I can actually get into the substance of what you are concerned about and maybe offer any explanations you would like or would need. But I do not feel comfortable with that at the moment.

We should also be issuing a press statement within a number of days that will provide the outline, at least, and that also may give us the basis for having a conversation.

Mr. VITTER. Beyond that few days, first off, what is the realistic time line on this?

Mr. POWELL. I actually think pretty imminent. The only things that I am aware of holding up release are the kinds of things that should be resolved pretty quickly, and when they are, everything will be ready for release. This is not one where we will vote and 15, 20 days later you are still waiting to see the order, I think. I think it would be fast on the heels of any public announcement of the decision.

Mr. VITTER. Okay. Following up on this hearing, if I could just submit the comment and question to you in writing, and then at the appropriate time, if you and the Commission could follow up, I would appreciate that.

Mr. POWELL. Yes, sir.

Mr. VITTER. Thank you.

700 MEGAHERTZ AUCTION

The second issue is about the 700 megahertz auction that has been delayed, I think six times. This notwithstanding, is it your understanding that the law requires the FCC to go forward with that auction? Do you agree or not that digital TV transition policy and, in particular, the allocation of the spectrum for third generation services are not a point that makes the auction make sense? What are your views on this?

Mr. POWELL. Sure. This is an important issue because I think it is important to first set out the legal obligation. Sometimes this issue is being debated as if it is purely FCC discretion, and I would emphasize that Congress stated quite unequivocally in the 1997 Budget Act and subsequently that you shall auction by dates certain. And I will confess that I have great anxiety about our faithfulness to these legal dates, including the one where we have delayed it six times.

The argument against the legal obligation seemed to be, well, you did it before. Maybe we did not do the right thing before. I do not know. But I do not know that that would be a defense in court against a suit that claimed that we had ignored a direct congressional directive to do something by a date certain.

And the other argument that had been made in favor of past decisions to delay was that, well, everybody wants it delayed and no one will sue you. Even if that is a defensible basis for looking askance at a direct statutory directive, that is not true this time. There are absolutely clear industry players who want the auction to proceed in a timely way and are more than prepared to challenge legally a decision by the Commission to delay an auction.

And we have to take into consideration the defensibility of any such action against such a challenge. And in past delays, we had not really faced that problem because almost everybody was unanimous in its view that the problems warranted the delay.

Now, that said, I have a lot of empathy for the arguments that are being made in favor of delay, but there are some challenges with those arguments. The first is many of the problems that are pointed out are problems that Congress was well aware of when it ordered the auctions, anyway, meaning the digital television transition, which you mentioned. Congress had already established that the transition would go at least until 2006, and I do not think anyone genuinely believes it will be complete even then, given that Congress has qualified that date by saying you have to have 85 percent penetration in America of digital televisions, which nobody believes you will reach that level by 2006.

But even with that in place, Congress still ordered the Commission to auction the spectrum despite the incumbency. It is hard to argue that they were not conscious of that problem and that set of problems when they made that decision. I do not know that I think it was a wise decision, if I can be so candid, but it is the decision the institution made.

It seems to me that many of the arguments that, again, I have some empathy for also are ones that are not likely to be resolved any time soon. The incumbencies of the DTV transition I think are going to occur for many, many, many years to come. I think that some of the other issues surround 3–G are important, but part of a process that does not have a clear end either.

And so I feel a little bit as an institution between a rock and a hard place with regard to the pressure for us to exercise discretion to delay auctions that are statutorily mandated. Again——

Mr. VITTER. I don't want to interrupt or cut you off, but if I could follow up sort of more concretely. Is there something those of us in Congress who have these qualms about the auction being a good idea at this point could do, short of an outright statutory change, that would satisfy the Commission in terms of putting it off? Or is your answer that really the statute is what it says and so, short of changing that now?

Mr. POWELL. Let me say two things. First of all, the bureau rejected the request for an extension, at least, arguably, that matter—and there have been some press reports of CTIA asking the full Commission to consider that decision. So I certainly would not want to prejudge that we would entertain the arguments. I can only speak for myself—we are a membership of four people—whether there is something that would persuade a majority to delay, though time is of the essence. I do not know. But I think it would honestly entertain questions. So whatever represented that view certainly would be considered on the record.

That said, though, I do think—I would be remiss if I was not candid in saying I think the real answer ultimately does have to be a congressional act to overturn a congressional act. The real tension here is that it was a prior Congress' judgment to do it, and as the court will remind me in blistering terms, a letter from a member or several members is not the same thing as a legislative action. And I can not ignore, you know, a promulgated act of Con-

gress even with all the cover in the world at some level from a legal standpoint.

So, you know, it has been a little frustrating because I think prior—I mean, this administration several times has asked for Congress to step in on the auction delay. There is some talk of some members considering statutes. I really do think if that is important, now is the time for that to occur because I think we will run out at the Commission, even if we could find a way on this round, it probably would be the last time before we would find ourselves in the D.C. Circuit trying to explain why we keep ignoring, you know, statutory deadlines.

I have said the same thing—the administration itself has asked in the context of its budget submission for delays of these auctions, making the same arguments. I do not have any quibble with the policy reasons, but I sincerely hope that Congress acts, if that is its choice.

Mr. VITTER. Okay. Thank you, Mr. Chairman. I have two other questions about broadband service deployment. I am going to submit those to you in writing in the interest of time, along with my first question, so that you can follow up on that at the appropriate time.

Thank you very much. I appreciate it.

Mr. POWELL. Thank you.

Mr. WOLF. Ms. Roybal-Allard?

LOW-POWER FM

Ms. ROYBAL-ALLARD. Can you bring us up to date on FCC's process of the applications for low-power FM? My understanding is that the applications from all of the five regions are in and are currently being processed. And in your answer, if you could include what the court decision with regard to former private broadcasters has had on that processing of those low-power FM applications?

Mr. POWELL. Sure. It might be useful for the record for me to submit to you in writing the specific numbers, which I think I could give you—how many we have processed—but we have been very aggressive in processing what we have received, and the last that I recall, quite a number, maybe in the neighborhood of 3,000 applications. I know that five such stations are on the air. I am trying to remember the number we actually have issued, but a fair amount. And they are working full-time to continue to faithfully process the ones that are compliant under the terms of the congressional change.

The court case did throw in a new wrinkle—not necessarily a bad or good one, but definitely something we had to sort of go back and examine. It is kind of vague answer, but as to status, we are still digesting what impact that has on the applications that we have received or did not allow in the open filing windows—or ones that we now might have to allow into the open filing windows.

So I can get you and will get you the specific status in numerical terms very shortly, but I think that the process is going on pretty aggressively, and we have issued quite a few of them.

Ms. ROYBAL-ALLARD. Do you have some time line in which you are going to finalize your assessment of the court decision and what actions you will be taking?

Mr. POWELL. I would not venture a guess at it. I do not think it will take very long. I mean, I think the court was fairly clear in what it was saying, and the reason I am hesitant is that I do not know off the top of my head exactly what the interplay is of a congressional statute that the court finds unconstitutional. Is it immediately void? Or do we have some other administrative process for no longer being bound by it?

It is not something that I anticipate would take long at all, and I do not know that it will have a dramatic effect other than it might precipitate a need to provide an opportunity for filers that we would not have permitted before now to file. My bureaus may kill me—I am speaking out of turn—but that seems to me one of the obvious questions we have to resolve, is whether we have provided a fair opportunity for those kinds of applications that would have statutorily been prohibited before to be filed, and if so, would we have to open another window?

I will try to give you a better sense of the timing but my sense is not that long.

Ms. ROYBAL-ALLARD. Okay. Could you tell us what the status of the Mitre study is? I believe the Mitre Corporation had been hired to develop the testing interference protocol. Has that been developed? And I also think that they were supposed to let out the first contract—I thought it was this month.

Mr. POWELL. Yes. It has not happened yet, but we still think that it will happen this month.

Ms. ROYBAL-ALLARD. Okay. Also, my understanding was that the markets that were going to be tested, that they were looking at about nine markets. And could you tell me if those nine markets have been determined and what criteria was used to pick them?

Mr. POWELL. I am sorry. I do not know off the top of my head the specific criteria that Mitre developed for what markets to select. My recollection is the same as yours, that it is the number of markets. I can verify that, but I don't know the criteria used to pick which markets those actually were.

Ms. ROYBAL-ALLARD. The information is available that you could——

Mr. POWELL. I think so. Let me try and find that out for you to be certain.

Ms. ROYBAL-ALLARD. I would appreciate that.

Mr. POWELL. Mitre is about to let the contract, so I assume that it has progressed to the point of knowing what criteria it used to define the terms of the contract.

Ms. ROYBAL-ALLARD. And if you can't answer this now, perhaps you could provide it for the record with the additional information, but if they have picked nine markets, my question is: With your proposed budget, is that enough money for Mitre to be able to conduct those——

Mr. POWELL. That is a very good question. It may not be. I am trying to remember. It is in the neighborhood of $2.6, $2.8 million that has been identified for that testing.

Our judgment, as I recall, is it that will be enough to initiate the action, and it is our best estimate. But we have been warned and know that as the study continues, depending on how it goes and

what is found, that it may not be enough to bring the whole thing, to a safe landing.

So, we will continue to monitor that, and we will be more than happy to bring it to your attention quickly if we think, in some reasonable time frame that there are going to be insufficient funds to complete the testing.

Ms. ROYBAL-ALLARD. Once you decide that, I would be interested in knowing, for example, if you are going to ask for an increase in the budget or if you are going to have to eliminate some of the markets. I would also be interested in what process would be used to eliminate certain markets.

Mr. POWELL. Sure.

[The information follows:]

NOTE TO THE HOUSE CJSJ APPROPRIATIONS SUBCOMMITTEE CLERK
July 9, 2002

Federal Communications Commission's Fiscal Year 2003 Budget Estimates

Issue No. 1: Current information and data regarding low-power FM ("LPFM") radio service, including specific data on the number of applications and licensees. *See* Colloquy between Chairman Michael K. Powell and Congresswoman Lucille Roybal-Allard, House CJSJ Appropriations Subcommittee hearing transcript, pp. 113-114 (Apr. 17, 20002)

Response: Between June 2000 and June 2001, the Commission held four filing windows allowing for LP 100 applications from all U.S. jurisdictions.[1] Approximately 3,150 applications were received by the Commission, 1,500 of which were filed in the June 2001 window alone. The Commission has disposed of approximately 400 (300 grants and 100 dismissals). Based on the agency's receipt of an application for license, which signifies the completion of construction and almost always the commencement of broadcasts, 35 stations are currently operating.

The Commission's initial focus has been to process acceptable LPFM applications that are not mutually exclusive with other LPFM applications (commonly referred to as "singletons"). To date, the FCC staff has granted 340 of the 870 applications determined to be singletons. It is anticipated that the FCC staff will identify 310 additional singletons and that the processing of these applications will be completed by fall 2002.

After completing the processing of singleton applications, the Commission will turn to the groups of mutually exclusive applications. These applicants will be given an opportunity to enter into settlements in accordance with the Commission's rules. Subsequently, the Commission will select winning applicants from groups that do not settle pursuant to our comparative point system.

In April 2001, the Commission adopted rules implementing the statutorily-mandated third-adjacent channel protection standards and the "pirate" disqualification requirement. *See* In the Matter of Creation of a Low Power Radio Service, MM Docket Nos. 99-25, RM-9208, RM-9242, FCC 01-100, 16 FCC Rcd 8026, *Second Report and Order* (rel. Apr. 2, 2001). At that

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[1] *See* FCC to accept Low Power FM Applications May 30 through June 5, 2000 for Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island and Utah, DA 00-914, *Public Notice* (rel. April 28, 2000); FCC to Accept Low Power FM Applications August 28 through September 1, 2000 for Connecticut, Illinois, Kansas, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, Puerto Rico, Virginia, and Wyoming, DA 00-1697, *Public Notice*, (rel. July 28, 2000); FCC to Accept Low Power FM Applications January 16 through January 22, 2001 for American Samoa, Colorado, Delaware, Hawaii, Idaho, Missouri, New York, Ohio, South Carolina, South Dakota, and Wisconsin, DA 00-2831, *Public Notice* (rel. December 15, 2000); FCC to Accept Window 4 and Window 5 Low Power FM Applications from June 11 through June 15, 2001. Window to Open for proposed facilities in Alabama, Arizona, Arkansas, Florida, Guam, Iowa, Kentucky, Massachusetts, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Texas, U.S. Virgin Islands, Vermont, Washington, and West Virginia, DA 01-904, *Public Notice* (rel. April 10, 2001).

time, the Commission also dismissed 21 "pirate" LPFM applications. However, earlier this year the U.S. Court of Appeals of the District of Columbia Circuit struck down as unconstitutional the "pirate" disqualification provision. *Ruggierro v. FCC*, 278 F.3d 1323 (D.C.Cir. 2002). Subsequently, the Court granted rehearing and vacated the panel decision. The Commission's brief is due on July 31, 2002, and oral argument is scheduled for September 17, 2002 (in approximately eight weeks). The licensing actions that the Commission is currently taking are without prejudice to the dismissed "pirate" applications.

Issue No. 2: Current status of Mitre's LPFM testing activities, including information on the determination of market types, criteria for market location selection, etc. *See* Colloquy between Chairman Michael K. Powell and Congresswoman Lucille Roybal-Allard, House CJSJ Appropriations Subcommittee hearing transcript, pp. 115-117 (Apr. 17, 20002)

Response: To meet the requirements of H.R. 5548, the Commission provided a list of 39 potential LPFM test locations and associated FM channels for inclusion in The Mitre Corporation ("Mitre") Request for Proposal ("RFP") for the Congressionally-mandated LPFM field testing and experimental program. The RFP instructed the bidders to select up to 9 of the 39 potential locations for testing. The potential test locations and channels included in the list, in California, Connecticut, Maine, Minnesota, New Hampshire, Nevada, and Rhode Island, are locations specified in pending LPFM applications not currently eligible for grant because the proposed facilities proposed do not meet the third-adjacent channel LPFM minimum distance separation requirements imposed by Congress. The potential test locations meet the following legislated LPFM test requirements:

1. Proximity to pertinent third-adjacent channel full-service FM stations;
2. Combination of urban, suburban, and rural markets;
3. Proximity to full-service FM stations providing radio reading service for the blind;
4. Proximity to pertinent FM translator station;
5. Includes markets containing minority and small-market FM broadcasters; and,
6. Includes markets with all types of surrounding terrain (flat, hilly, and mountainous).

Issue No. 3: Current evaluation of whether Commission's budget provides enough money to conduct the Mitre's LPFM testing activities. If the evaluation reveals the Commission cannot, what options would the agency pursue, and if it is elimination of test markets, what would be process for determining the market types. *See* Colloquy between Chairman Michael K. Powell and Congresswoman Lucille Roybal-Allard, House CJSJ Appropriations Subcommittee hearing transcript, pg. 117 (Apr. 17, 20002)

Response: Currently, the LPFM field testing and experimental program is on hold awaiting the resolution of Mitre's request for additional contract funding in the amount of $600,000.00

Prior to Mitre's issuance of the LPFM contract RFP, Mitre conducted market research on which to base its estimated cost of the LPFM field testing and experimental program. Mitre submitted its cost estimate for the testing to the Commission, and the agency obligated

$2,193,343.00 for the LPFM field testing and experimental program. Mitre issued the LPFM contract RFP, looking toward awarding the LPFM testing contract on April 26, 2002.

The initial bids that Mitre received in response to the LPFM RFP were twice the cost that Mitre estimated. Mitre then identified areas in the RFP in which it had not carefully specified the testing requirements, refined the RFP requirements, issued a modified RFP, and solicited modified bids from the initial offerors based on the test refinements specified. No potential test locations were eliminated, and no reduction in the amount of testing was specified in the Mitre RFP refinements.

As scheduled, by April 26, 2002, Mitre had completed its evaluation of the modified LPFM contract bids and was prepared to award the LPFM testing contract, but did not do so because the final estimated cost to complete the LPFM testing and experimental program exceeds the $2,193,343.00 already obligated for the contract by approximately $600,000.00. At that time, Mitre notified the Commission of the estimated cost overrun, and requested additional funding of $600,000.00. The Commission's FY 2002 budget does not have sufficient discretionary funding to permit the Agency to support the requested 27 percent increase for this study. As a consequence, the Commission has contacted Mitre to explore design modifications to reduce the overall cost of the project to no more than $2.2 million.

Based on preliminary discussions between Mitre and the Commission, and between Mitre and the tentative contract selectee, the Commission believes the prudent course would be to divide the testing program into two phases, and to defer certain high-cost elements to a second phase. Specifically, Mitre is "reasonably optimistic" that by deferring listener tests and the economic impact assessment the remainder of the project can be completed for $2.2 million. This approach would permit the core interference testing to be completed as designed, *i.e.*, to provide credible, reliable, and defensible findings. In addition, based on these results, it may be possible to modify or eliminate certain phase-two tasks, thus reducing the overall cost of the contract. Mitre has scheduled a July 25, 2002, meeting with FCC staff to discuss these and other issues.

LONG-DISTANCE BILLING

Ms. ROYBAL-ALLARD. I have one final question, and this has to do with something that I raised last year with regard to consumer telephone bills, where some of the local companies were charging $1.50 to provide long-distance billing but were not informing the consumer of that charge; it was just appearing on their bill. And I understand that a petition has been filed by nine consumer groups to give consumers a minimum notice requirement about the new charges.

I am interested in what role the FCC has played in this, if any, and what other steps you may be taking with regard to this issue.

Mr. POWELL. Sure. There are two things we have done in response to our discussion last year. One, we embarked on somewhat of a consumer awareness effort, again, using our consumer alert functions to try to make the public aware of this issue. I think you can find information about that on our website and in our printed materials.

On the more formal side, we put that petition out for public notice. I believe the record on that proceeding closed at the end of March, so we now have a record, and the Commission will consider whether the record demonstrates a need for some minimal notification requirement, and if so, what. So there is a proceeding underway. There is a record that is now at the Commission, and the full Commission will consider whether more formal intervention is warranted in light of what we learn. But that is in its early stage—since the record just closed on that, we are just starting on that formal petition.

Ms. ROYBAL-ALLARD. Okay. Thank you. That is all.

Mr. WOLF. Mr. Latham.

Mr. LATHAM. Thank you, Mr. Chairman, and welcome. A couple items relative to discussions I have had recently with the local volunteer fire department folks relating to their concern about this and brought to light on 9/11; that is, the availability of different frequencies to the emergency responders. Do you have any comments as to whether or not there are going to be more frequencies available for them?

EMERGENCY RESPONSE

Mr. POWELL. Yes, since September 11th we have redoubled our efforts to be committed to understanding the importance of wireless functions in emergency services. And there are any number of things we have done.

Number one, we have created a whole homeland security task force so that those issues get their own intense policy focus in the context of 9–11, and that organization makes specific recommendations.

We have changed allocations in the last year that were going to go for commercial services to make them available to public safety for some of the needs that they have long argued for, including 4.9 gigahertz band of spectrum, 27 megahertz band of spectrum, and some other things that they were anxious to get.

One of the reasons this 700 megahertz issue is very important is a lot of that spectrum is earmarked for uses by public safety.

This is one of the unfortunate consequences of its incumbency because much of it is going to go to those people that you are mentioning who are desperate to get it, but it remains—in some markets will remain unusable as a consequence of the broadcasters still operating in it and creating an interference scenario. Nonetheless, we are trying to find ways to promote early clearing of band so that it is more useful by public safety spectrum.

On a going-forward basis, I think that these issues have taken a firm place in the interagency discussions about third generation and what spectrum should be found and carved out for those purposes and how public safety's needs in the next generation are going to to be satisfied as part of that, too.

I am actually committed to and quite proud of our efforts in this regard. Public safety has always had a difficult row to hoe competing for attention and interest in this regard, and the Commission has always tried to find some support for them. But I think we have now put it on another level. I think we have placed it foursquare at the top of our policy agenda. We have an active discussion of those things every time spectrum issues come up. We actually have taken some pretty constructive actions to get spectrum to them that, candidly, before 9/11 was going somewhere else and now is going to go to those services.

So we can do better. We will keep looking for ways to do better. But the spectrum scarcity problem is a problem for everybody, and it will stay a problem for them. We also have been exploring ways to create more efficient uses of spectrum with public safety, dual-use technologies, ways in which public safety can use commercial systems with priority access, for example, in emergencies. We have explored ways that manufacturers could provide dual-use equipment, software-defined radios that do not have to be programmed to a certain frequency and can dynamically change what we have tried to promote. All of these things I think will one day mature as solutions for public safety as well.

Mr. LATHAM. This probably almost touches on one of my questions about articles suggesting that the Commission has too many lawyers but not too many engineers, do you have any comment on that? Would more engineers or technical people be beneficial?

RECRUITMENT

Mr. POWELL. You are singing to the choir. We have identified the same thing, and that is what I spoke of in my opening remarks. We launched an Excellence in Engineering program a year ago when I took over, and with the stated and direct commitment to improve that technology base.

Nearly 40 engineers in a single year is just unprecedented for a Government institution, and at the most senior levels, including a brand new chief engineer.

That is more—I always get this statistic wrong. They will tell me what the right thing is. But that is something like more than the FCC has hired in 20 or so years, in one year. And I think that is a recognition of the importance of our work, probably also helped by a down economy, I will confess, but we got them nonetheless.

The other thing that you all have helped us with is we finally got money to restore their playground, if you will. Engineers do not

like to do work with equipment that does not work. We are called on constantly for testing—just like the Congresswoman's question pointed out about interference issues that are important to policy, and then we find we do not have the equipment to do the work that is necessary to make an honest judgment.

We have increased our resources and our equipment in that lab dramatically with last year's appropriation, and it is now really something that is an attractive work environment for those engineers. So I think it has gone well, we are trying to make this program a permanent part of the Commission, that it is always building and maintaining proficiency on the technology level. We still need the lawyers. I am one of them. I will not lawyer-bash too much. But the language of this revolution is technological, and if we do not have an independent engineering capability, we are at the mercy of companies teaching us what they do before we decide whether they can do it. It is not a good thing.

Mr. LATHAM. You want to grow up and be an engineer.

Mr. POWELL. I would like to, but that calculus course got me pretty bad. [Laughter.]

Mr. LATHAM. I had my local phone companies in here last week and, in Iowa, as you are probably well aware, I think we have more individual locally-owned phone companies than the rest of the country together. They are concerned that the universal access fund will give way to the cellular phone companies. Is that a concern they should have, that there are people now making claims on the universal access fund?

UNIVERSAL SERVICE

Mr. POWELL. Well, I do not know the specific concern, but this is one area that is almost sacrosanct, I think, as a matter of policy, and certainly at the Commission, we are very vigilant about trying to continue to evolve the competition objectives and the universal service objectives and make the fund what Congress told us it needed to be, which was sufficient to provide for affordable services in every part of the country.

And I think this stuff really can make your teeth fall out, as complicated as it can get at times. You can often get in the weeds about whether this factor or that factor is the right one.

I can tell you this: This is an area that I have never found even a smell of dissent within the Commission to be very conscious and cautious and vigilant about maintaining the sufficiency of those programs in a way that supports rural America and rural carriers. There always will be moments of change, and I think this is one those moments of change, and I think the anxiety with some of the rural carriers is understandable. I do not reject it in any way.

I think that we fully appreciate them and feel confident that some of the migrations we are trying to make are ones that are going to still leave them in a good position and able to serve those areas as they have. And this will get tougher. This will get tougher because more and more technologies are competing for communications services. Wireless is a very legitimate substitute to traditional wire land services, and a lot of people want that, and a lot of people want that to be affordable.

And, for the record, wireless does contribute to the fund. They pay in. Again, I do not—it does not resonate with me what the specific issue they may be raising with respect to them but——

Mr. LATHAM. There may be a different aspect to it.

Just a last question, very, very briefly. We had a hearing last week with the FTC. Who has jurisdiction over alcohol advertising on T.V.?

ALCOHOL ADVERTISING ON TV

Mr. POWELL. I think it is quite clear, without any equivocation, that they have principal jurisdiction over advertising, and I think they would say so, and I think you will find agreements between us in the past in which their primary jurisdiction is emphasized. The only reason the advertising issue gets murky is because the FCC has a very overarching, broad public interest obligation for licensees, and one have at times made plausible arguments that that could breach a broadcaster's responsibility in advertising.

Candidly, the only areas where the Commission has prohibited advertising is only in response to a direct statutory prohibition, like tobacco, for example, which is prohibited. Those are our rules, but there is a statute that directs that that be prohibited, and we just implement the statute.

There are no areas that I am aware of in advertising regulation that we handle on our own motion, that we were not directed to do. The FCC has a general mandate that reaches it all the time.

Mr. LATHAM. Just for my own clarification, sometimes, not being that jurisdiction ever gets blurred around here. [Laughter.]

Anyway, thank you, Mr. Chairman. I appreciate it.

Mr. WOLF. Mr. Cramer.

Mr. CRAMER. Thank you, Mr. Chairman. And, Chairman Powell, welcome back to the subcommittee.

Mr. POWELL. Thank you.

Mr. CRAMER. I am curious. Do you let those lawyers and engineers ever play together?

Mr. POWELL. Yes. [Laughter.]

Mr. CRAMER. If we put them in the same room together, we might solve a lot of——

Mr. POWELL. The point is that in this university—the lawyers have to go to the engineering classes.

Mr. CRAMER. As a lawyer, I cringe at that. But let me thank you for moving out on the recent rulemaking for ultra wide band technology, UWB, as we finally call it, and last year I was anxious with you about what we might do. It is important for the FCC to be responsive, especially to companies that want to bring innovative technologies to the market as soon as possible.

I have a bittersweet reaction to that rulemaking, so sometimes you have to be careful what you ask for, in that you placed extremely tight restrictions on the use of innovative technology. Have you released the rule or the text of the rule itself yet?

ULTRA-WIDE BAN

Mr. POWELL. I do not think we have, Congressman, but I would have to verify that.

Mr. CRAMER. I would assume, if you haven't, it would be soon.

Mr. POWELL. I am positive we have not.

Mr. CRAMER. So I would assume that will be soon that you will release that?

Mr. POWELL. Yes, and the reason an item like this takes a little longer than normal is because it is an item that requires interagency coordination with the administration, and so we wait for their final comments on the draft, which we sort of have an obligation to do. And I know that we just received those. So we are trying to do it as rapidly as possible, but that is why this takes a little longer than some other things might.

Mr. CRAMER. And I understand that some FCC Commissioners have stated that they intend on further UWB rulemaking, say in the next 6 to 12 months. Are you aware of that? Or is there any commitment to any kind of timetable like that?

Mr. POWELL. I am not aware of the specifics of what another one of my colleagues might have said about that, but one of the things that I think that we have considered is that this will be something that we continually evaluate because it was a bloody battle within the Government about the acceptable interference and protection parameters. One of the things we know is that once you do a little, you learn a little, and this is something that we should keep on at some regular intervals. It may nor may not be a rulemaking, but we have to constantly evaluate the science—at least the Commission's position is to continually look for whether those restrictions can be liberalized or whether the arguments that we have heard about unacceptable risks are indeed genuine. I would credit both as possible. But both sides would be honest and admit that there are some gray risk areas in the science that we are not sure of and that it is important to get the service moving and get some real-world experience, and then hopefully we will learn or there will be developers—I say hopefully—that will allow greater liberalization of the limits.

Candidly, we might find that other people were right, that there are some unacceptable limits. I just do not know.

Mr. CRAMER. Well, you touted the public safety uses of the through-wall or ground-penetrating technology, and that has got tremendous potential. But press accounts say that through-wall and ground-penetrating radars can't actually be manufactured within the guidelines set in the recent rule. So I wondered if there had been any consideration of any sort of public safety waiver on UWB technology usage.

Mr. POWELL. Yes. You are taxing me now. I am trying to remember the specific provisions since they are not out yet. But I would love to engage on that when the actual text and the actual final parameters of that are available, because it certainly was not our intent, I can tell you, to shut down in some ways those services. We believed that the judgments we have made in conjunction with the administration would permit viable markets in some of those services.

So I think what we are finding is one of the companies are reacting, first blush, to the press reports about the limits and what they think they are. We have other companies that suggest, you know, things are not as bad as they seem.

There is no question that there probably will be areas where a company will be taxed to make some changes in their original approach, probably, but we think that in a lot of these areas that those will be possible at a relatively modest cost.

Mr. CRAMER. Well, I would hope that there could be enough flexibility in the reaction by the FCC that if there are restrictions that do severely limit public safety applications of that technology, that we at least have a chance to review that and come back and approach it.

Mr. POWELL. I think that is right.

Mr. CRAMER. And so I would look forward to further dialogue with you on that.

I want to switch no to digital TV. Can you describe the plans for our Nation's televisions broadcasters to transition to digital broadcast transmission? In Alabama, there has been a lot of concern on behalf of the broadcasters about the requirement that they use or broadcast a significant number of analog signals until there is a sufficient number of television sets in their market capable of receiving digital signals.

DIGITAL TELEVISION

Mr. POWELL. Yes, there is a lot in that question. In many ways, this is the pressure of, the deal that broadcasters made, which was the agreement to take an additional digital channel and operate two channels in order to facilitate a transition. The transition is necessarily messy because we are going to have a mixed set of viewers for a long time, and at some point we will hit the inflection point, and Congress has said what that would be, which is 85 percent who knows what we will do about those last 15 percent. That will probably be another issue one day.

But the nature of the way the transition was set up was to be providing both sets of services so that the full constituency would have access to programming while we made the transfer. It is a burden on broadcasters because it requires them for some period of time to basically be broadcasting two sets of signals and all the power and cost issues associated with that.

One of the things that that emphasizes is the importance of trying to make that transition as short a period as possible—in other words, as least burdensome as possible. One of the things the Commission has tried to do, we set up last year a DTV task force charged with aggressively trying to find ways to speed the transition in so that we could contribute the progress and lowering some of the burdens. And we did that. We changed the replication requirements, which was part of what was costing broadcasters a lot of money for duplicating the signals. We are told that helps with lowering the burdens and the cost.

Recently, we announced a plan in which we are seeking commitments from cable and other important players in the total industry to make commitments in ways that would facilitate their component so that the transition would go faster. So a simple example would be carriage of some of the programming on cable televisions so that people who have cable televisions will be able to get access to the digital signal, which will at least make it somewhat more cost-effective for a particular broadcaster who will be able to rep-

resent to advertisers that there is a set of people that have access to their signal and they can pull in some revenue for programming to those consumers.

I will not minimize that it is a burden—that there are heavy costs associated with the transition. I think broadcasters generally believe it will be in their interest in the long run to have done it this way. There will be a very rough period in the middle, I think.

Mr. CRAMER. If I could, with the limited time left, broadband deployment in rural areas, can you give us a status update on the FCC's plans for rulemaking dealing with derugulation of broadband services?

BROADBAND RULEMAKING

Mr. POWELL. Sure. We initiated the rulemaking at the beginning of this year, near the end of the last year, in the telephone infrastructure side. That rulemaking is proceeding, so it is sort of in the dormant—"dormant" is the wrong word—period but it is out, and we are awaiting the development of the record to continue to pursue that. That is something, I think, that is on track for being largely completed this year, we hope.

We are doing similar proceedings in cable, part of which were released recently when we defined cable broadband services as information services, which clarifies its regulatory classification. There are more questions in that proceeding, too, about regulatory issues being developed in the record. It, too, is being scheduled in our internal processes as something to be targeted for the end of the year as well.

Mr. CRAMER. Thank you.

Thank you, Mr. Chairman.

Mr. WOLF. Mr. Kennedy.

Mr. KENNEDY. Thank you, Mr. Chairman.

I just want to follow up on a question that was already asked by Chairman Wolf, and that is about the Excellence in Engineering and the Excellence in Economics program having the same success as the engineering program. Do you expect that it will have the same success?

EXCELLENCE IN ENGINEERING

Mr. POWELL. I think it will. We will not necessarily measure it in the same way. We do continue to have fairly good success with hiring, recruiting, and retaining good economists per se.

The real challenge there, as we see it, is driving more thoughtful understanding of economic principles into the general base of the policymakers, that is, the lawyers, really. A lot of us do not have as much comprehensive economic training as we could. Yet more and more, questions of the modern communications marketplace are questions about competitive incentives, economic effects, anti-competitive effects. I mean, I almost believe every communications lawyer needs to be an antitrust lawyer, too, to understand the reality of anti-competitive activity, because we have to sort wheat from chaff. I mean, a good lobbyist can always speculate the worst and always speculate the best. We have to have some grounding in the probability of these things happening.

So the program is designed to bring together our economic assets and researchers and figure out how to drive more consciously that thinking into the rest of the agency, and then to create a guild for them, too. They were scattered across the agency, and now the chief economist really is the individual who reins them all in, makes sure they are developing, makes sure that their work is up to, current standards, et cetera, et cetera. And so our organizational reform created more relationships among the economists as a group instead of them just disparately out in the Commission.

Mr. KENNEDY. When you say bring the resources together, do you consider bringing in the advisory capacity of others to give the expertise that may not be provided indigenously within you group?

Mr. POWELL. Yes. That is a good point. We do do it on occasion, you know, in many, many forms. I mean, sometimes we have en banc hearings where we simply invite economic thinkers or specialists in areas to testify. That is usually just cost-free—sometimes they just present papers.

We really are in a privileged position because the whole world is interested in this future and it is not, quite frankly, that hard to—generate interest if anything, I get more papers over the transom to my office with an economic analysis about something.

The important part is you can advocate economics just like you can law, and you really have to feel confident you have independent thinking as opposed to being dependent on parties. You will have a hard time in America finding telecom economists who are not spoken for by one industry or the other.

Mr. KENNEDY. I wanted you to give me an update on some of the proceedings, if you could, about the regulatory parity between all broadband providers. As you know, 70 percent of the market is the residential broadband market from the cable television industry, and these cable providers don't obviously have the same regulations as some of the regional Bell companies. And as a result, they may be able to move faster in signing up residential customers. Can you give me sort of a feel for, some of the proceedings that are underway impacting this area and what you see?

STATUS OF PROCEEDINGS

Mr. POWELL. My quick answer would be—it kind of goes back to your first question, the same set of proceedings, really. What we tried to do is create several proceedings that in total integrate those types of questions, including that ones you just raised. That is why we try to have them on a contemporaneous in "time schedule" so that we are actually—even though they are distinct proceedings, they are being considered very holistically. We rarely are talking about one to the exclusion of understanding what its implications might be for the other. Those are the big telephone broadband proceedings that I talked to you about including, the cable modem proceeding that is underway. There are other ones that are also phone-specific, like an overview for unbundled network elements—the dominant, non-dominant proceeding.

The cable proceeding is fairly comprehensive, and wireless components are fascinating because they either live in the unlicensed world, are fairly free of reach at the moment, or are caught up in the 3–G sets of issues that are going to require a lot of intergovern-

mental work. Those things are moving along I think quite nicely, and we do not have a comprehensive wireless proceeding, other than the ones we have dedicated to third-generation spectrum.

Mr. KENNEDY. You know, economists believe two or three or more competitors are needed to have real competition. Do you think more are necessary? How many choices should there be available for there to be competition.

Mr. POWELL. Oh, I wish I knew. This is the magic question. I think the answer is not always the same from market to market. Certainly one competitor troubles us. Certainly two is 50 percent better but still has the tendencies that you are concerned about.

Historically, in industries that require fairly significant scale for nationwide provision of services, three is often the—magic number—but I am not going to say it is the end all because I will be quoted as saying you do not need any more than three. Three is when you begin to get comfortable that you have the interplay among competitors that lead to the discipline that you want. I think history in antitrust sort of shows that. But I think there is room for quite a bit more on the national scale, even as high as six. I think that the key is that is not the complete answer because the united States is still a huge country, and there are sub-markets all over the place.

In Washington we have this—I call it "big guy myopia," as if the whole space is the big carriers that come see use us all the time and the big opponents of them that come see us all the time. While we are seeing them there are hundreds and thousands of other companies and technologies and markets going on in neighborhoods all over the place that never get on our radar screen. I always have believed, no matter how significant the large carriers are or are going to be, that there are going to be many, many valuable spaces where entrepreneurial, smaller competitors are very effective and providing very important value-added services. They will not necessarily be doing that in every State of the Union and every market in the Union. There might be some of them in this State or that State or this market or that market. They will be hard for us to digest and take account of because they will be so removed from our perch, it will be hard to comprehend.

But I really believe the markings are there for them to be a part of that, too.

Mr. KENNEDY. Okay. Just finally, I know you responded to Congressman Latham about what you are going to get in terms of more radio spectrum for firefighters in the Homeland Policy Council. But in addition to that, what other things do you hope that you might be able to get with this $1 million, and do you think there should be more money towards this effort:

FCC EMERGENCY RESPONSE CENTER

Mr. POWELL. I think the $1 million you are making reference to is for our own internal security problems. Every Government agency after that date had to take a hard look at its own operation, its own building, its own location, its own systems. Clearly, government-wide there is an effort to harden, if you will, our own security systems. That $1 million that you are referring to I think is our request for that purpose.

Mr. KENNEDY. And how is that going? How is that money being spent?

Mr. POWELL. I think it is—well, we haven't gotten it yet. That is what I am begging you for. [Laughter.]

It is going well, but to be candid, we have some problems, and I mentioned this to Chairman Wolf the other day. We have asked the committee for its indulgence to use excess regulatory fees from past fiscal years to be released to us to spend in this fiscal year because a substantial amount of that is earmarked for this internal security, internal security expenses, and graciously he said he would take a hard look at that. That is very important to us because right now we are starting to run out of funds for the internal security work, unless we get that influx of funds. Then that $1 million is what we anticipate we will need to finish the job as we go into the next fiscal year. But we think that will do it.

Mr. KENNEDY. I was able to visit my 911 facility in Rhode Island not too long ago, and they are trying to figure out how to get redundancy. And I don't know whether—in terms of how much that is going to cost to get prepared and be ready, and I don't know how much you expect it will be for you all to have redundancy in place so that you get more than one location to operate out of.

Mr. POWELL. Yes, that is part of what we have planned for and tried to budget for and we think is fully accounted for in what we have asked for. We are pretty confident that we have a pretty good ability to continue to operate under pretty severe conditions.

You know, it is interesting. Our building sits right across the river from the pentagon, and, trust me, we looked out the back window and saw it all happen and did not particularly cherish our location at the moment, particularly when we are being told there was another plane in the air.

I was very proud of the way our operations worked. I mean, we vacated our building. We made a decision quickly to get out and to continue to run the FCC with virtually no one in the building, and we did. We had people in key locations, and we had the ability to communicate, and we had the ability to keep track, because many companies were asking for emergency authority to do things, and we kept processing those all through the next into the next several days.

So I feel pretty good about our ability to do that, but we could always be a little better.

Mr. KENNEDY. Well, again, thank you for your service, and I look forward to helping, if we can.

Mr. POWELL. Thank you very much.

Mr. WOLF. Are you part of the shadow government? Is anyone from the FCC involved at all? It would seem to me that it would not be a bad idea to have someone—is there anyone involved——

Mr. POWELL. I would not want to publicly talk about everything we do, but yes.

Mr. WOLF. I would think they ought to be.

On the excess fees reprogramming, you submitted a request to reprogram $6.7 million in excess prior year regulatory fees, which we were just talking about. You would propose to use $1.4 million for post-September 11th security needs, off-site mail processing, building evacuation, enhanced guard services.

I think you should have an opportunity to talk about the other because much of the remaining $5.3 million appears to duplicate items in the fiscal year 2003 budget request or is a cost that the FCC could absorb in 2002. And that may not be accurate or that may be different. It would be helpful for you to go into detail now if you want to—that might not be a bad idea—but also to have your staff come on up and sit down. I want to make sure we give you what you need to deal with those issues so that there is not a problem. But there could be a little bit of a difference of opinion.

EXCESS FEE REPROGRAMMING

Mr. POWELL. Well, we do not want there to be a difference of opinion. We have submitted some of the supporting information that we were asked for, but maybe it is more useful just to sit down again and hear what the Committee's specific concerns are and let us address them. I could call our budget director up if you want and we——

Mr. WOLF. No. Why don't you just have them come on up and just sit down.

Mr. POWELL. But we are more than happy to engage on whether there is any redundancies, and if so——

Mr. WOLF. And I know that is important to you because you did raise it, and I want to make sure that we are meeting your concerns.

On the cost of digital television sets, do you have any comments about that?

DIGITAL TELEVISION SETS

Mr. POWELL. Still too high.

Mr. WOLF. Is that anything—how do you see that developing? Also, the so-called set-top converters, effectiveness of.

Mr. POWELL. The TVs start out, like most product cycles, very, very expensive with limited quantity. I think that they took a real surge in the last holiday season and——

Mr. WOLF. What are they now, do you know, roughly?

Mr. POWELL. Well, I would say average $3,000 or so. I think that there are manufacturers about to come up with products that have integrated tuners, that is, do not require a separate set-top box as you were alluding to, that will be under $3,000. I have seen 36-inch RCA sets packaged with separate boxes for less than $3,000. Pretty dramatic improvement over the last 2 years.

The push now is to create more products that have integrated tuners as opposed to requiring separate boxes. Many of the manufacturers have publicly committed that their next manufacturing cycle will have more of that kind of product available.

Informally—and the Consumer Electronics Association probably can speak more directly to this but we definitely see an increase in product line and availability and more choices. If you walk into Circuit City, you certainly will see a healthy component of them.

I think they are dropping on the kinds of curves one would expect to see for a consumer electronics product, and as they understand the manufacturing efficiencies and lower the cost of integrating the components, things have been coming down at a pretty steady rate. That is really important to us because, you know, that

trigger, the congressional trigger, is set and you have got to get them to buy them before you even count against whether there has been a transition.

So part of our plan is to try to convince the consumer electronics industry to step up to the plate even more and commit to more products that will include some integrated components so that consumers will have the full package and that will stimulate set sales, hopefully.

Mr. WOLF. Now, most of those companies are foreign-owned, are they not?

Mr. POWELL. I do not think there is an American television company left in the world.

Mr. WOLF. No, there is not. Emerson I think was the last.

Mr. POWELL. I think that is right.

Mr. WOLF. So is this a problem? How are they in their own countries, in Japan or wherever the case may be?

Mr. POWELL. I do not know for certain off the top of my head, though it is important to note that in places like Europe and Japan they use very different high-definition TV standards. So the product—in many of these places, the product, the television, is a different technological solution than the standard in the United States. You might hear about this as the eight VSB versus COFDM debate. But COFDM standards are used in other parts of the world, and our standard is different in that regard. So, Sony or someone like a Sony manufactures sets for both markets.

There is no question that maybe sets would be cheaper faster if there was a standard that was the same all over the world by making one set of sets. But that genie left the bottle, a long time ago, I think. But they don't seem to be——

Mr. WOLF. Are they ahead of us or behind? "Ahead" is not the word, but is there more digital TV viewing in Japan than there is in the United States?

Mr. POWELL. I am not positive. I think not for Europe. I am fairly confident of that. Japan, just off the top of my head, I am not entirely certain.

They had had a few fits and starts on their own standard. They were the leader initially in high-definition television and pushed the standard very aggressively and that ultimately was unsuccessful, so they had to go back to the drawing board.

Mr. WOLF. I remember that, yes.

Mr. POWELL. In many ways, technologically the United States sort of leaped ahead. People forgot the HDTV originally was analog, not digital. It was in the United States where the breakthrough was made to make them digital. So that led to a stimulation—but in terms of consumer penetration, I just do not know.

Mr. WOLF. The National Do Not Call Registry, the FTC, as you know, is considering it. They are moving ahead. You have oversight of telemarketing by telecommunications companies. How are you working with them on the issue, and how will the program work? And, lastly, if more than one agency has enforcement, how would this do-not-call list be enforced, and how would the violations be punished?

NATIONAL DO-NOT-CALL REGISTRY

Mr. POWELL. I think a lot of those questions are unresolved at the moment. Chairman Muris reached out to us almost immediately when he wanted to do this, and we have been working with them at a informal level in most of this process. It was sort of agreed that, this was really his baby, he wanted to do it. We thought it was a good idea initially but said, look, you have most of the world, and he was proposing to run a database and have the funds to run it, which I do not know much about. But we committed to having our staff work with their staff as they are proceeding and their efforts develop to see how and where there might need to be or merit an FCC counter-response to fill those spaces.

We know that the common carrier area is one where they do not have the jurisdiction that they are concerned about. So what we have done is set up liaison staffs that are working with them as they go through this to see what proposals they will make to the FCC as to what we might do that complements or reinforces their efforts.

I think that the conceptual model is that they basically will, own, operate, fund the database, but they want, in essence, to borrow jurisdictional enforcement from us on those areas where they can not reach them. We probably would have enforcement authority with respect to common carriers because they did not.

Mr. WOLF. Is this unusual to have—it is almost like the DEA giving its drug authority to the Fairfax County——

Mr. POWELL. No, because we would not really give it to them. We would basically attempt, if this all worked out, to mirror their rules in our rules for our limited piece, and we would administer our piece in parallel with their piece.

This is not that uncommon. This has been a consequence of this gap in the jurisdiction for a long time. So slamming rules and other things regularly we have figured out ways to plug the holes through parallel provisions. I think we have done that before. This is a new experiment. We will see if we can make this work as well.

Mr. WOLF. Good. Telework, how may people are teleworking in the agency?

TELEWORK

Mr. POWELL. Well, we are proud that the FCC is largely a model that often is cited. Generally, 100 percent of our employees are eligible, with the exception of some people, receptionists and those who really have to be part of the face of the Commission. It has been offered to virtually everybody; 315 regularly do it, and about 100 do it on an ad hoc or as-needed basis.

Mr. WOLF. Well, that is good.

I am going to see if Mr. Serrano has any other questions. We will have a couple other questions that we will submit for the record. The emergency response center, but we can cover that too for the record.

Just a couple of questions that I had in listening to your testimony. One is the shadow government question. We asked you that.

Two, how familiar are you with the work going on that the Committee funded for the communications system here in the Wash-

ington, D.C., area after 9/11? There was $19 million put in by the Congress for communications in the Washington, D.C., area based on what took place on 9/11. I think the University of Maryland is developing a system. Is anyone from the FCC involved in it at all?

D.C. COMMUNICATIONS SYSTEM

Mr. POWELL. That is new to me. I am not aware of our involvement in that initiative, but that is not to say we are not at some initiative, but that is not to say we are not at some level that I have not been keeping abreast of. I will check that. That is a first for me. I have not heard about that one.

Mr. WOLF. I also heard there was something being developed for governmental agencies that, if something were to happen, every telephone would ring. If something were to happen in a certain area, there would be an automatic ring with a message to all of the emergency response teams, all the hospitals. Is there anything like that taking place, do you know, for this region?

Mr. POWELL. Not that I know of, Congressman. I have only heard this discussed as an idea. I have never heard or seen it pursued in any tangible or formal way. It is the idea sort of a telecom version of the emergency alert system that somehow you could activate the telephone system.

I do not know what the technical issues are involved in that, how viable that is. I do not know that it has proceeded much past general discussions about it. I am not unaware of any efforts specifically in that area. I have said on a lot of these things that, with regard to the intergovernmental security matters. But I don't recall hearing about that being pursued.

Mr. WOLF. What ever happened and when—give me a little history of the Fairness Doctrine, a number of years ago.

Mr. POWELL. The Fairness Doctrine which exists——

Mr. WOLF. Not the Monroe Doctrine. [Laugher.]

It was a little bit after the Monroe Doctrine.

FAIRNESS DOCTRINE

Mr. POWELL. Let's see, I was only 15, so I do not—well, the Fairness Doctrine which existed as a Commission policy for the fair coverage of issues of controversy—I am trying to remember now—had two components, as I recall. The first component was a general obligation to cover controversial issues, sort of vague and undefined, but, a duty to do that. That rarely led to any actions or interplay much because of its vagaries.

The other components were the opportunity to provide people response time for allegations by the station, or someone you had on the station that might have impugned you or covered an issue in some way. Not the same as the equal time rules, that we are familiar with today, but a more general obligation for even regular citizens, not just political candidates.

I think in the 1980s—I am trying to remember the specific dates—maybe mid-1980s—in 1987, the Commission did a very, very extensive report on the Fairness Doctrine to see whether the purported objectives of it were actually effectuated by this rule and policy, and in a large measure concluded that, in the context of the report, indeed it seemed to have some countervailing impacts, such

as that the fear of having to provide those responses were actually chilling speech by many broadcast properties because they would, rather than cover these controversial things and potentially embroil themselves in Fairness Doctrine litigation, they would just choose to back off of them. So there was this real issue about whether the thing was serving its purposes.

This became a very big court case as well, I think, by the name of Syracuse Peace Council at some point in which the court was quite aggressive in challenging the Commission's previous interpretations. The long and the short of it, the doctrine was ultimately repealed because there was a big legal issue about whether it was statutorily mandated or was a Commission rule.

The Commission itself had anxiety about this. They believed it was a Commission rule—it is all coming back. They believed it was a Commission rule——

Mr. WOLF. You mean they actually got Congress being involved?

Mr. POWELL. There you go. That Commission, I think, in their heart believed it was a Commission rule, but there was an issue as to whether it was statutorily mandated. I think that the court answered that question, that it was not statutorily mandated; it was in the Commission's discretion. And in light of the Commission's finding, why does it maintain the rule? It was ultimately repealed.

It became a little bit of a political issue for a while because there was an anger that it should have been statutorily—the interpretation should have been that it was statutory. There was some talk about reviving it as a legislative matter, I think in the very beginning of President Clinton's administration, but it never took root.

So it went away, and there were some corollaries to it, the political editorial rule and the personal attack rule, which remained, interestingly enough, though they were rooted in the same analysis. The D.C. Circuit, after 17 years, ordered the Commission to eliminate them because it continued to refuse to justify why they continued to be valid in light of the repeal.

That is the best I remember it in a nutshell.

Mr. WOLF. When you have consumer alerts or when you make consumers aware, how do you do that? You mentioned that several different times today, and how are they eon in a way that gets to the average person? You talked about doing a consumer alert on this fat fingers issue, how does Mr. and Mrs. Smith living in Des Moines, Iowa, both working and having a hard time keeping things together, find out about it?

ISSUANCE OF CONSUMER ALERTS

Mr. POWELL. It is not easy, but I will tell you what I know we do. There are probably other things.

Number one, we put together a bulletin. This is a copy of one, but we have an actual physical bulletin that we make available upon request, because sometimes—these issues rarely come to us in a vacuum, meaning at our call center we will be getting complaints. We will hear from consumers that have issues, and what will happen is that the consumer alert information will now be available. So our consumer affairs people who are on the phones will then know that we have information related to that concern

that we can make available to a consumer who has an issue that he is concerned about. And we make it available online as well. We have a whole area dedicated to consumer affairs and consumer issues that can easily be checked, fairly regularly, and we try to make known that this is a function that we serve.

The other thing is we sometimes have dialogues with State and local authorities who are closer to consumers in various jurisdictions. A State public utility commission in some ways is very different than the FCC. They really do have a front-line consumer component that is very different than ours. So we often are alerting those Commissions to issues so that they are aware of them, and then let them be aware of our resources. Sometimes those commissions will publish links to our material, or they will ask for written copies, as well as consumer groups who usually are made aware about issues that they advocate on the part of consumers about some of the things that we have done in this regard.

We do not have any way that we know of to do anything like radio advertisements or, we do not do anything like that that I am aware of.

Mr. WOLF. Are they sent out to the press?

Mr. POWELL. I think they are sent out to the press, yes.

Mr. WOLF. I am just thinking about the poor person who does not have the Washington representative office, isn't part of a particular group, isn't part of an organization. How do they—the fat fingers issue, how do they know? So when they know they have that type of a card, they have got to be very careful that they don't make a mistake, just a public interest point of view. Obviously, most people are honest and ethical and most companies, but when you find a case like that, how does the average person know?

Mr. POWELL. I could not pretend for a moment to suggest that from Washington and our building we were able to get to the vast number of consumers out there. What we do try to do is disperse, distribute, and delegate to ever more institutions that are closer and closer, more disaggregated and closer to consumers across the country in the hope that availability makes a difference. Then we try to set up our own call complaint operation so that we can feed them. There is no question that we can not possible reach everyone.

The other thing we have done on occasions—but there are very severe limits on that—is when there are really big issues that we take regulatory action on, sometimes we have bill insert obligations. That is rare, but it has to be foursquare within something that we clearly——

Mr. WOLF. So you can mandate that they put it in?

Mr. POWELL. I am hesitating because, no, not on everything. There are a bunch of Supreme Court cases about rights on bills and what they govern. We sometimes have required, in the context of settling enforcement disputes or through rulemakings that are really specifically directed at Congress, informational material in bills to help consumers understand, particularly if it is bill-related, that this charge exists.

So, yes, we have done that at times. We do not have a general ability to do it, but some instances we do.

Mr. WOLF. I think in two areas, that area where there is consumer fraud and where there is the exploitation of people, being a Republican, very strong free enterprise and all the things that we traditionally talk about in my party, I also think that Government can play a role to make sure that people are not exploited, the poor are not exploited. I think there is an opportunity, as you see those things to move out, when this type of thing or something like this is taking place.

The other area—I was very frustrated when NBC broke with their long-term policy to allow hard liquor ads on television. The report that came out a week and a half ago showing that 1,400 young people die and there are 70,000 date rapes as a result of the drinking on college campuses, and NBC was moving ahead.

Now, to their credit, they rescinded that, and I wrote them a letter and thanked them. I think they are a good network. I happen to watch Brokaw. They do a good job. But I was really disappointed to see that, and I think the good news is, ABC did not join; CBS did not join; Fox News did not join. But everywhere I went in the Government, I got no response. I wrote to a number of agencies. They said, "We can't do anything; we won't do anything."

I got no response from Secretary Thompson at the Department of Health and Human Services, whose agency did this latest report that came out last week. And we had a good voluntary ban in effect. It was voluntary, which I think is purely the best way. If you can do something voluntarily and not have more Government regulation coming in, it is better.

And so I would urge you—and I think you do a good job, too, and I think the Powell family from a public service point of view—nobody will ever be able to say that your family hasn't paid its dues. Both of you could go out and make a lot more money in the private sector than you certainly are doing now and your dad is doing now. I would encourage you, particularly on this area of fraud and scam but also on the area of pornography and things that are coming into homes, not that people are seeking them out but they are just coming in, to really think in terms of there are times that you can use the bully pulpit. The Bible talks basically, the eye is the window to the world, and garbage in, garbage out. And what is coming in uninvited, not asked for, not subscribing, not part of, not getting involved in the First Amendment, if you will, but purely in a person's house. I would urge you to see if there are occasions whereby sometimes the bully pulpit, speaking out on an issue without having a law can sometimes really have a tremendous impact, because most companies want to do the right thing. Most people are honest. I think sometimes when they know, the fact that there will be consequences for going through a red light, generally means even at 3 o'clock in the morning when no one is around, people stop at red lights. And I think knowing that people are watching can go a long way to helping mothers and fathers for the future, their kids. And I know your father, and you can understand this.

So I would encourage you to use the opportunity for the bully pulpit, and you are very capable. It is a powerful position that you have, and there is the passage in Luke, "To whom much is given, much is required." For me, for Mr. Serrano, for all of us who get the opportunity to serve, but particularly in this area of what is

clearly, no question about it, the definition in the Miller case of pornography and community standards and you knew it when you see it.

I think someone in a position of authority—and this is not directed now toward you. Someone has to say this is too much, enough is enough. We as a system, as a Government, have to deal with this. We don't want to get involved in the First Amendment in doing it, but you can't, allow this type of activity to come in whereby mothers and fathers are literally losing control. They are not in the marketplace. This is not a movie that somebody is going to and paying for, and making that choice whereby mom or dad could elect, no, don't go to the mall and see that, okay to go see this, but literally being thrust upon them. I think Government has to be there and be a participant in that debate and not say, that we can't deal with that. Because I can assure you that one side will be very active, they will hire the best law firms in town. Moms and dads, they have no big law firms downtown on K Street, they have no lobbyists. I was a registered lobbyist before I got elected to Congress. They have nobody as their advocates.

And so you become their advocate, and Mr. Serrano becomes their advocate, and I get to be their advocate, and also with the idea that never when all three of us leave these positions, which someday will happen as the time has passed, we never say, "Oh, if I had only spoken out on an issue, I think I could have saved some young people or could have done something that really would have helped on that case."

Unless Mr. Serrano has any last questions, I will yield to him, and I want to again thank you for your testimony and thank you for your service, and we look forward to working with you and trying to help. If your staff can get together with the staff, if you can make the case on that I want to make sure, because budget numbers are tight.

So, with that, I thank you very much, and I recognize Mr. Serrano.

Mr. SERRANO. Thank you. I will be very brief, Mr. Chairman, because in listening to the testimony and waiting for my turn again, I did come up with some questions.

If you notice, I had my Blackberry on, and I wasn't being rude. I was reading about 15 articles on the Venezuela crisis that I am paying a lot of attention to, which prompts a question, interesting how this comes about.

There is an article here saying that in Venezuela, the media is doing a lot of soul searching, the owners of the media outlets, because they participated very strongly in what happened this past weekend. They were President Chavez's biggest opposition. In fact, the media met with the interim President before his ministers were sworn in and as he was dissolving the assembly and the constitution.

Why is this a question for you? Because in the group that met was Univision. And this was not a press conference. This was a meeting of media moguls, if you will, trying to set up a new government.

So my question to you, Mr. Chairman, is, and something I should know: Is Univision an American-owned company or is it a company

owned outside this country with functions inside this country? I really never paid attention to that so I never knew the answer to that. If they are an American-based or -owned or -licensed company, then what the heck were they doing sitting in during a coup in a Latin American country where the military were overthrowing a democratically elected President? That is the only reason I would bring up a question like this, because it is clear——

BROADCAST OWNERSHIP

Mr. POWELL. I would like to check for you, but if they own broadcast properties in the United States that are licensed, they have to be an American company because the statute forbids foreign ownership of a broadcast entity.

Mr. SERRANO. Right. And they own plenty of stations throughout the country, right?

Mr. POWELL. Well, then for those purposes, at least, they must be, an American licensee or have been found to be for that purpose. And I don't know how to answer what purpose they were——

Mr. SERRANO. I understand. So let the record then show, Mr. Chairman, at least that there is one outraged Member of Congress who, as this story unfolds and we find out—not withstanding what anyone thinks about Mr. Chavez, you know, if I had him in front of me, I would give him a hard time about a lot of things he has done. But I certainly would give the military leaders a harder time about trying to overthrow him that way. And I think our Government may be slightly embarrassed soon about what we did or didn't do. But now one thing that sticks out, Univision, the Univision Caracol, and other franchises, but hose are all local. If this is an American company, then I think we have to know that—and please clear that up for me, because I would like to ask them what the heck they were doing in the middle of a coup and what was the role that they intended to play in the next government.

Mr. POWELL. Well, this we will find out for you quickly.

Mr. SERRANO. Thank you.

Very quickly, XM radio, that is the latest toy on the market. I can't wait to get it, unless you are telling me not to get it.

Mr. POWELL. No, I will not. [Laughter.]

Mr. SERRANO. My understanding is I go to Radio Shack or whatever and buy the actual radio, it gets installed in my car, and then I buy the service for under $10 a month or something.

Now, one, is this regulated the same way other radio stations are, if you will, or is what comes through the radio regulated or supervised by you? And, secondly, because Circuit City and those folks can't really explain it to the consumer yet, could you then help us out here? Is it all programmed radio that the XM people put out, or can you actually pick up some live—what is the technological word?—real-time, live stream radio?

SATELLITE RADIO

Mr. POWELL. They are not regulated precisely like a broadcaster because they are, if they are careful to stay within their parameters, an entirely different animal in the sense that they are a satellite company offering satellite services. They are not locally originating broadcast content and broadcasting within a community of

broadcast license. So, they are new thing, unclear exactly how we would characterize them, but almost more like a cable company version or a DBS version of broadcast television. They are similar to a DBS version of radio, if you will.

You describe it correctly. They have a hardware component, $200 or $300, and they have a monthly subscription component. Some of their channels are advertising-supported, as I recall, but they also promote that they have channels that are absolutely advertising-free, because like a cable company, they have subscription revenues, so they are making a value package out of both.

That is not just their programming exclusively. They partner with content providers. I think that they have things like CNN radio, in which they have a partnership with CNN to provide CNN-oriented content. I suspect CNN is doing the development of that content and providing it to XM for distribution.

It can be live in the sense that it is dynamic. I mean, CNN radio might be useless if it could not tell you news events that were going on at the moment. It is not broadcasters sort of locally originated, station——

Mr. SERRANO. I could not pick up a station from L.A., for instance?

Mr. POWELL. No.

Mr. SERRANO. Right.

Mr. POWELL. No, no.

Mr. SERRANO. So there go the Dodger games. [Laughter.]

Mr. POWELL. That is where we are going.

Mr. SERRANO. No, no, that is not where we are going. That is where I used to be. I am in the Bronx now.

Mr. POWELL. No, there are very careful limitations about it crossing over into broadcast spaces.

Mr. SERRANO. Well, I do have other questions, but I will just submit them for the record. Once again, thank you for your testimony. You have been more than patient with us, and just keep doing that, and please find out about Univision. We could be on to a major story here, Mr. Powell.

Thank you.

Mr. POWELL. Thank you.

Mr. WOLF. Thank you very much. The hearing is adjourned.

QUESTIONS FOR THE RECORD
FOR
MICHAEL K. POWELL, CHAIRMAN,
FEDERAL COMMUNICATIONS COMMISSION
April 17, 2002

CHAIRMAN FRANK R. WOLF

Technology Initiatives

Your request includes approximately $9 million for information technology initiatives. This request is in addition to the increase you received in FY 2002 for information technology. Please tell us how FY 2002 funds have been obligated. Does the FY 2003 request include enhancements or expansions to initiatives begun in FY 2002?

What is the Commission's base budget for information technology, including automation initiatives?

Response: The Commission's FY 2002 budget for information technology is $18,318, 055, an increase of $2,137,229 over the FY 2001 base budget. This mostly covers fixed cost increases in contractor salaries and hardware and software maintenance, including $704,000 for a Microsoft Enterprise Agreement that was not in place in earlier years. Essentially, very little funding is available in FY 2002 for system development and upgrades with one exception -- $648,174 is budgeted to upgrade our email and network operating systems that are no longer reliable and are disrupting agency productivity. The FY 2002 IT base budget essentially permits maintenance of all existing systems and services including agency Internet facilities that are accessed over 265,000 times per day, 19 electronic filing and public access systems supporting licensing and other key agency functions, data and voice telecommunications, computer network and desktop systems, and computer help desk and training functions. The FY 2003 request does not include any enhancements or expansions to initiatives begun in FY 2002 although it does support initiatives that were funded in FY 2001. These initiatives include enhancing staff productivity, developing a Consumer Information Management System, consolidating licensing systems, improving the Commission's Internet site, and upgrading several electronic filing systems.

HONORABLE DAVID OBEY

Question 1: Media ownership

The U.S. Court of Appeals, D.C. Circuit, has remanded two and overturned a third media ownership rule in the last few months. In their decisions, the Court has fundamentally challenged the way the FCC does its business, arguing that the 1996 Telecommunications Act imposes a high standard -- a showing that it is "necessary in the public interest" - just to maintain existing rules in the context of a biennial review. The Court has also said that the FCC has failed

to collect the empirical evidence about diversity and competition that is required to justify its decisions about such rules. These decisions came out after the President presented his FY 2003 budget. Will this budget provide the resources needed to meet the high standards the Courts have set?

Response: The Commission's proposed FY 2003 budget should provide sufficient funding to develop the data and analysis aimed at addressing the concerns expressed by the court in its recent decisions on media ownership. This funding supports both internal research and analysis by outside experts. Although the FY 2003 budget was developed prior to the court's issuance of its ownership decisions, I had already committed the Commission to strengthening its knowledge base in the media market so that our evaluation of media ownership policies would proceed with a better factual foundation than in the past. This budget reflects that commitment.

At the same time, however, it should be noted that under one interpretation of *Fox v. FCC*, 280 F.3d 1027 (2002), the standard adopted by the Court might impose substantial additional responsibilities on the Commission and its staff in conducting biennial reviews. If that interpretation is followed, we may need to reassess our needs.

Question 2: Media ownership

The decisions were handed down after you formulated and received approval of your reorganization plan. Will the new organization properly allocate FCC resources to meet the needs of reviewing media ownership regulations?

Response: The merger of the Mass Media and the Cable Services Bureaus into the new Media Bureau will actually work to strengthen the Commission's ability to meet the challenge presented by the recent court decisions on media ownership. The communications industry in the United States is a complex and dynamic sector of the economy that includes the broadcasting, cable television, and DBS providers as major players. By aggregating Commission expertise in these three areas under a single operating Bureau, the Commission will improve its ability to analyze the media market as a whole in developing media ownership policies.

Question 3: Working Group on Media ownership

When you announced the creation of the Working Group on Media Ownership, on October 29th, 2001, you described its purpose as developing the empirical and analytical foundation for the FCC "to achieve its long-standing goals of promoting diversity, localism, and competition in the media." What has the working group accomplished so far and what are its plans for the remainder of the fiscal year and fiscal year 2003?

Response: The Media Ownership Working Group is gathering information on the media market, including: 1) its historical trends in outlet availability and ownership changes; 2) technological developments; and 3) various other measures of competition, diversity and localism that will

help inform our future media ownership decisions. The group is also moving forward with outside experts who will conduct their own studies and submit information to us regarding viewpoint diversity among media outlets and consumers' media usage experience, among other issues. I expect all of these efforts will result in a valuable foundation on which the Commission can then evaluate its media ownership policies. These data gathering efforts will continue through FY 2002 and possibly into FY 2003.

At this point, I anticipate that the Working Group will focus its work on three areas:

1. How do consumers experience the media? It is essential that the Commission put the consumer at the center of our media ownership policymaking. We can do that only if we have a better understanding of how Americans use the various media options available to them. For instance, the Commission would like to know the extent to which various media outlets might be substitutes for one another. Existing FCC ownership rules make assumptions about how consumers substitute among media, but we need better data about the nature of that behavior to ensure that our current rules are based on today's market reality. I expect the ownership group will address these questions both by studying past consumer usage of different media as well as conducting an actual survey of consumer attitudes.

2. How has the media landscape changed over time? We understand that growth in electronic media options at the national level has expanded dramatically, but Americans experience media at the local level, not the national level. Therefore, we need to ask questions such as "What did the media world look like to a resident of a particular market in 1960 versus today? How do those changes compare to the changes experienced by a resident of another market between 1960 and today?" Data such as these will give us valuable context for addressing our media ownership questions.

3. How do media market structures affect output? We intend to take advantage of past rule changes and waivers of our ownership rules to study whether certain market structures affect competition, diversity and localism. For example, I would like to know the extent to which broadcast-newspaper combinations affect viewpoint diversity and competition, as well as any other benefits or costs they have produced. Since there are a number of grandfathered broadcast-newspaper combinations, we will study how they affect the realization of our policy goals.

Question 4: Spectrum Auction/Airadigm Licenses

I want to ask you about Airadigm Communications, a PCS company that serves customers in Wisconsin and Iowa. Airadigm won licenses in an auction in 1996 with FCC financing. It then built out a network and began to provide services. Eventually Airadigm had to file for bankruptcy and stopped making payments to the FCC. The FCC said that its licenses were subject to automatic cancellation. However, because Airadigm was providing service to a large number of consumers, the FCC allowed Airadigm to continue to operate and did not re-auction its licenses. Airadigm then entered into a reorganization plan.

Airadigm filed a petition in January 2000 asking the FCC to formally restore its licenses. In the meantime, Airadigm is operating at a significant loss each month and contends that it cannot turn the situation around until the licenses are formally restored. If the losses go on, Airadigm may be forced to discontinue service. In that case, over 30,000 customers would lose service, including many in rural areas and on tribal lands. Small businesses would have their service disrupted and lose the value of equipment. Airadigm's shareholders, including a Native American tribe, would incur substantial losses.

Without asking you to comment on the pending petition, are there any general conditions under which the FCC would use its public interest authority to restore licenses? How do you protect the customers when a company fails to make its payments to the FCC but has been serving a substantial number of people for a significant amount of time?

Response: The Commission has authority under 303(r) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r) & 154(i), to regulate the use of spectrum in the public's interest, including the power to grant, revoke and modify licenses and permits. The Commission has in certain instances promulgated reinstatement rules, but there is no specific reinstatement rule for PCS. In addition, even where some relief may be afforded, decisions arrived at in individual cases must be justified in terms of the overall policy objectives, to include the auction licensing program.

The Commission is particularly concerned if the failings of a licensee cause disruption of service to customers, and in past cases has issued temporary operating authority to a licensee to help in the transition of its customers. For example, the Commission recently granted an STA (special temporary operating authority) for approximately eight months to allow for the wind down and transition of customers of a carrier whose licenses automatically canceled for non-payment. Similarly, in cases where a license has automatically canceled due to certain violations of the Commission's rules, the Commission has issued an STA to the former licensee to help in the transition of its customers. Thus, the Commission is not without recourse to reduce the amount of harm to the public caused by a licensee's failure to meet its license obligations.

HONORABLE JOSE SERRANO

Univision and Venezuela

"President Hugo Chavez [of Venezuela] has accused parts of the media of helping engineer his overthrow. Media owners acknowledged today that they intensely covered Chavez's fall but largely failed to give enough attention to the protests that helped restore him to power two days later. Media owners met Saturday with the interim president, Pedro Carmona, even before his ministers were sworn in. But as the interim government began to unravel amid military dissension and large pro-Chavez demonstrations, television stations began broadcasting cooking shows and Hollywood movies, leaving much of the country without access to news about the unfolding political events..." Washington Post 4/17

Gustavo Cisneros is among the media owners reputed to have met with the interim leader last Saturday. Cisneros is the head of the Latin American media giant Cisneros Group which owns Venezuela's Venevision and is also the largest shareholder of Univision, owning a 25% interest in the U.S. company. Univision's Chairman and CEO, Jerrold Perenchio, only owns 15% of Univision.

How does a Latin American media group own the largest share of a company licensed to broadcast television in the United States and what is the role of Univision and its owners in the failed Venezuelan coup?

Response: The Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), has been interpreted to permit foreign corporations to hold, at most, a 25 percent indirect equity or voting interest in a broadcast licensee. According to Commission records, A. Jerrold Perenchio, an American citizen, holds a 70.71 percent voting interest in Univision Communications, Inc., while Venevision International Ltd., a Venezuelan corporation, and Grupo Televisa, S.A. a Mexican Corporation, hold 3.15 percent and 2.40 percent voting interests, respectively. Section 310(b)(4) does not prohibit Venevision from being the largest single equity interest in Univision, as long as the total equity held by foreign corporations does not exceed 25 percent of the total capital stock of Univision. Nothing in the Commission's records reveals that the equity interests held by foreign corporations exceeds 25 percent of the total capital stock of Univision. The Commission has reviewed Univision's ownership structure in a recent transaction and found it comports with the Commission's rules. *Univision Holdings, Inc.*, 7 FCC Rcd 6672 (1992); *see also* File Nos. BTCCT-960628ID-960628IN & BTCCT960628IP-960628IV.

The Commission has no information on what role, if any, Univision or its owners played in the recent coup in Venezuela.

NBC/Telemundo

Recently the FCC approved NBC's acquisition of Telemundo but insisted that NBC report regularly on its efforts to divest within 12 months the 3rd station it controls in Los Angeles. Do you also intend to monitor NBC's efforts to continue to serve the Spanish-language community? It seems to me this is a good opportunity to collect the empirical evidence about diversity and competition that the Court of Appeals insisted on.

Response: The Commission did not specifically condition its approval for the NBC-Telemundo merger on NBC's submission of additional information concerning its efforts to continue serving the Spanish-language community. We were satisfied with NBC's representations during the proceeding that it would continue to meet the needs of the Spanish-language community through its operation of the Telemundo stations with their current Spanish-language format.

Studying how NBC's temporary ownership of three television stations in Los Angeles affects competition and diversity might well be a worthwhile effort. However, the effects of that waiver

situation will evolve over time, and the Commission is diligently working to gather information today in response to the court decisions you reference. We are developing an approach similar to the one you suggest, which is to study combinations that exceed our standard ownership limits but currently operate through waivers or grandfathers. We expect this approach will provide us with the same type of diversity and competition information that would have been gathered if we had studied the temporary NBC situation in Los Angeles.

Enhanced-9-1-1

The FCC set standards for technology to permit first responders to locate 9-1-1 callers on wireless phones. Five years ago, the FCC set October 1, 2001 as the date for wireless carriers to begin the process of deploying this new and vital technology. Where do we stand today?

Response: I have been disappointed that the rollout of wireless E911 Phase II, which provides precise location of 911 calls, has been slower than we had hoped. Developing and coordinating the necessary location technologies and public safety infrastructure improvements has proven to be complex. Because five major nationwide wireless carriers were able to demonstrate that not all the pieces were in place to begin rollout for most air interfaces by October 1, 2001, the Commission reluctantly approved waivers allowing them additional time for E911 Phase II deployment, pursuant to specific schedules. The Commission did not act on the relatively late-filed waiver requests by AT&T Wireless and Cingular regarding their Time Division Multiple Access (TDMA) networks, but referred those requests to the Enforcement Bureau for discussions concerning possible consent decrees.

At the same time, I still expect that we will achieve the Commission's primary goal, widespread deployment of this life-saving technology by the end of 2005. The Phase II rollout has begun and is gathering momentum.

To date, Phase II systems have been deployed in the state of Rhode Island for Sprint and Verizon customers and in several counties in Illinois, Indiana, Virginia, and Oregon. Other deployments are expected soon, for example in Houston and Chicago. In addition, wireless handsets with location capability are now available. Over 500,000 location-capable handsets have been sold, and we expect this figure to grow rapidly. For example, Sprint reports that it expects that all the handsets it sells will have location capability by the end of this year.

Much work remains to be done. Wireless equipment manufacturers need to complete the development of the software and equipment needed to compute and report accurate location information. Local exchange carriers need to provide trunks and other facilities to deliver location information and integrate wireless and wireline systems. Local public safety agencies need to upgrade their facilities to receive and use location information effectively. We at the Commission need to continue our efforts to keep this program moving while continuing to encourage the improvement of our public safety communications infrastructure.

Enforcement

For the record, please provide this subcommittee with the total amount of fines the FCC has imposed in fiscal years 1999, 2000, and 2001 and a brief explanation of the apparent large growth in fines.

Response:

	FY 1999	FY 2000	FY 2001
Notices of Apparent Liability (Proposed Forfeiture)	$10,640,500	$4,031,500	$4,711,700
Forfeiture Orders	$264,750	$5,218,500	$7,831,700
Consent Decrees	$0	$12,424,500	$1,918,000

The above table reflects all Notices of Apparent Liability (NALs), consent decrees, and forfeiture orders issued by the FCC during Fiscal Years 1999-2001. In the interest of comprehensiveness, we have not removed NALs that were superseded by a consent decree or forfeiture. Note, however, that we have excluded NALs that were withdrawn or otherwise cancelled by the Commission.

The increased fines imposed by the Commission since 1999 are a by-product of the Commission's enhanced enforcement. In the last few years, the Commission has devoted substantial resources towards increasing the amount and effectiveness of its enforcement efforts. The clearest example of this approach is the creation of the Enforcement Bureau in November 1999. The Commission has found that enforcement is an important complement to its deregulatory and pro-competitive approach—eliminating excess regulation focuses the Commission and industry on compliance with the most significant rules.

HONORABLE HAROLD ROGERS

Chairman Powell:

- We understand that the Commission's staff has been considering WLJC-TV's band- clearing proposal, and those of Paxson Communications, since late last year. With the upper-700 MHz auction scheduled for June 19, can the FCC act on those applications soon?

Response: WHIO-TV, a station potentially affected by interference from WLJC-TV's proposed facility filed an informal objection with the Commission on May 7, 2002. That objection is now under review, and Commission staff anticipates action on the application prior to June 19, 2002.

With respect to Paxson's band-clearing requests, on March 26, 2002, the Commission granted the application for Oklahoma City. The Vineyard Haven, Massachusetts application is awaiting

Canadian clearance. The facilities proposed in the remaining ten applications do not comply fully with the Commission's interference protection rules; that is, the required minimum distance separations between analog TV stations and/or the criteria for protecting DTV service. The Media Bureau afforded Paxson an opportunity to amend its applications either to bring the proposed facilities into compliance with the Commission's technical rules or demonstrate that the stations potentially affected by the proposals will accept interference. Paxson has not yet submitted all of the necessary amendments. In addition, on April 10, 2002, the Association for Maximum Service Television, Inc. filed an opposition to the ten applications and Paxson responded on April 24, 2002. Television stations potentially affected by interference from the Paxson proposals also have filed objections against several of the applications. The staff expects to complete its review of these applications prior to June 19, 2002.

- Does the Commission still view adherence to the analog station mileage separation rules of paramount importance in light of the congressionally mandated DTV transition, which will end analog TV in a few years?

Response: The analog station mileage separation rules continue to be very important to the Commission. For instance, in its band-clearing rule making proceeding, the Commission generally required proposals to relocate analog TV operations into digital or other analog allotments to meet the minimum separations with respect to other analog operations. In addition to stations' maximum permitted antenna height and power, the mileage separations govern the amount of interference between stations. However, the Commission also said that it would consider waivers of the spacing rules on a case-by-case basis. Although the transition to digital television will result necessarily in some loss of analog TV service, the Commission has sought to minimize such loss as stations commence DTV operations. In creating the initial DTV allotment table, minimizing interference to analog and digital TV was of equal importance.

- Is the Commission planning to strictly adhere to those separations in situations such as WLJC-TV's, where the station has shown that it will not cause any more interference to other stations than it would operating on its proposed channel in the DTV mode?

Response: The Commission's rules permit DTV stations to operate with facilities that create *de minimis* levels of interference to analog TV and other DTV service. These levels (a 2 percent reduction in another station's service population, not to exceed a total 10 percent reduction from all stations) were established in the DTV rulemaking proceeding with the general support of broadcasters and at a time when there were no widespread established DTV viewing patterns. The established *de minimis* levels of DTV interference also represent a balancing of the protection of existing analog TV service and the need to provide broadcasters additional flexibility to build DTV stations, thus facilitating the rapid rollout of the DTV service to the public.

As an alternative to strict conformance with the distance separations, in its March 21, 2002 letter to WLJC-TV, the Media Bureau afforded the applicant an opportunity to demonstrate, if

appropriate, that analog TV stations potentially affected by the proposed facilities would not receive any more interference than from fully-spaced stations operating at maximum facilities permitted by the Commission's rules.

- Hasn't the Media Bureau now received all the information it needs, in the form of amendments requested by the staff, to complete the processing of these applications? Will this occur before the June 19 auction or sooner?

Response: The Media Bureau has not yet received all necessary information to act on WLJC-TV's proposal. With respect to the Paxson applications, two of the requested amendments have not yet been filed. The staff anticipates that it is likely that some of the stations potentially affected by interference will file comments on the amendments. Again, it is anticipated that the Commission's staff will be able to complete its review of the applications by June 19, 2002.

- Wouldn't the public interest be best served by granting proposals such as WLJC-TV's, which would give the FCC an opportunity to open a path for widespread upper-700 MHz band clearing by Channel 60-69 TV stations before the June 19th auction?

Response: As a general matter, the Commission has encouraged band-clearing proposals that are consistent with existing interference protection standards, including the analog station spacing requirements, and has stated that it will review requests to waive these requirements on a case-by-case basis. WLJC-TV and Paxson have sought waivers of these requirements, which are currently being evaluated and which have been opposed. In view of the contested nature of these proceedings, it would not be appropriate to comment further on or discuss the merits of the applications.

HONORABLE JIM KOLBE

Rural Wireless E 9-1-1 and CALEA

The economics of providing telephone service to less-populated rural regions has been an ongoing concern as evidenced by the universal service mechanism. These same dynamics affect small, rural wireless carriers that provide E9-1-1 and CALEA requirements. How does the FCC propose to address the high cost versus low cost areas of the country as they relate to important public safety issues on wireless telephone systems?

Response:

Enhanced 911: The Commission's E911 requirements provide significant deployment flexibility to all carriers. For example, carriers are not required to implement E911 in a particular location unless the local Public Safety Answering Point (PSAP) is ready to use the E911 information. In addition, carriers may use a variety of location technologies to comply with the FCC's E911 requirements. Small carriers may choose to use handset-based technologies, which involve less additional network equipment, and potentially lower deployment costs, and also may provide better accuracy in rural areas. Alternatively, they may choose to deploy network-based technologies, as they are not required to begin deployment until they have received a valid request from a PSAP.

With regard to costs, any public financing of wireless E911 is a matter of state and local discretion. In some instances, states have decided to pay for the E911 costs of both public safety organizations and wireless carriers through surcharges on customer bills, and may provide for pooling of these fees, allowing sharing of costs among high and low cost carriers. Of course, because these carriers are not rate-regulated, they can always recover their E911 implementation costs, as they do other costs of doing business, from their end users, in any reasonable manner.

The FCC has recognized special circumstances faced by smaller wireless carriers in other ways. Last October, the FCC allowed these carriers additional time to request E911 waivers and deferred enforcement of the Phase II rules while these waivers are under review. Generally, the smaller, rural carriers are seeking additional time to deploy Phase II location technology.

CALEA: CALEA implementation has also been tailored to minimize the costs on carriers in areas where there may be little public safety benefit. The CALEA statutory scheme in effect divides responsibility for the implementation of CALEA assistance capabilities among three parties:

- Carriers are generally responsible for implementing these capabilities with respect to facilities installed after enactment of CALEA.
- However, upon petition by a carrier or other interested party, the Commission may determine whether provision of these capabilities in post-enactment facilities is or is not reasonably achievable. This determination rests on weighing the costs and benefits associated with eleven factors specified in the statute.
- Where the Commission determines that compliance is not reasonably achievable, or where the facilities were installed pre-enactment, the Department of Justice may choose to pay a carrier for the reasonable costs of providing the CALEA assistance capabilities, subject to appropriation limits.

This structure balances the needs of law enforcement with the abilities of telecommunications carriers, and is flexible enough to accommodate differences between large and small carriers, and metropolitan and rural areas.

Section 107(c) of CALEA provides an additional relief mechanism by permitting carriers to petition the Commission for individual extensions for providing assistance capabilities. To

minimize the burden involved, the Commission has provided that similarly situated carriers may file jointly for relief, or through trade associations.

700 MHz Spectrum Auction

1. It is my understanding that you have scheduled an auction for June 19th of spectrum in the 700 MHz band that is encumbered by broadcast television stations. However, there is currently no mandatory requirement to clear this spectrum for subsequent users – those who would at some point be expected to bid on these channels. In establishing rules for voluntary relocation of broadcasters, has the FCC created a significant obstacle to nationwide availability, which could far better be achieved, for example, if there were more to time to consider your April 4 band clearing plan?

Response: The Commission's voluntary clearing policy was developed in the context of statutory requirements that apply to this spectrum. By way of background, the Balanced Budget Act of 1997 provided that television broadcasters, which currently hold an analog channel and a digital channel, would not have to return their analog channel until 2006 or when 85 percent of households in their market can receive the DTV signals, whichever is later. 47 U.S.C. § 309(j)(14)(A)-(B). Congress mandated that the Commission re-allocate and re-license spectrum in Channels 60-69 for both public safety and commercial use and re-allocate and re-license additional spectrum recovered from broadcasters, which includes Channels 52-59, for commercial use in advance of the final digital conversion. 47 U.S.C. §§ 337 (a)-(b), 309(j)(14)(C)(ii).

In light of the current statutory scheme, the Commission has looked for creative solutions. With respect to channels 60-69, the Commission developed a voluntary clearing policy that is designed to permit broadcasters and new licensees to enter into agreements for the early clearing of the Upper 700 MHz band. The Commission employed a somewhat different approach in the Lower 700 MHz band because different circumstances apply, such as a greater number of incumbent broadcasters and the unique status of incumbents in channels 52-59. Accordingly, with respect to channels 52-59, the Commission declined to adopt any band-clearing rules, and instead will rely on its basic responsibility to consider any regulatory requests related to band clearing in the Lower 700 MHz band on a case-by-case basis, considering all relevant public interest factors. This voluntary clearing policy may facilitate agreements that would make the 700 MHz spectrum available for public safety and other new wireless uses earlier than would be the case if the Commission had not adopted this approach.

2. The Administration sent legislation to Congress requesting that the 700 MHz auction be delayed. It is my understanding that you have pledged to work cooperatively with NTIA on the development of comprehensive spectrum plans and policies and that you created a Spectrum Task Force charged with creating cohesive spectrum management policies. Does proceeding with a June 19th auction undermine these efforts to manage spectrum better?

Response: Taking into account the Commission's authority and its obligations under existing law, the Wireless Telecommunications Bureau recently decided to proceed with the 700 MHz spectrum auctions in the near future. Congress has directed the Commission to recover these bands from their current broadcast uses and to make them available for public safety and other new uses. Congress enacted separate statutory provisions regarding other bands that may be suitable for advanced wireless services and Commission staff is working with NTIA to identify and allocate additional spectrum for such use. Moving forward with the 700 MHz auctions is consistent with the current statutory scheme for those bands and will create new stakeholders that will have an incentive to reach agreements with incumbent broadcasters for the early clearing of the Upper 700 MHz band.

3. In light of the Sept.11 tragedy, it is apparent that we must pay greater attention to the communication needs of the public safety community and improved interoperability between federal, state and local public safety entities. I understand you have initiated a proceeding to improve public safety communications by resolving interference issues in the 800 MHz band. Because the 700 MHz television spectrum scheduled for auction June 19th is adjacent to public safety spectrum, including public safety spectrum in the 800 MHz band, could this spectrum potentially play a role in resolving the interference issues, providing public safety, including federal public safety, with necessary spectrum to implement the type of communications network necessary for our Homeland security efforts? Should we wait to auction the 700 MHz spectrum until a comprehensive approach to resolving these public safety issues are resolved?

Response: A small coalition of commercial entities has proposed re-allocating the 700 MHz spectrum currently designated for commercial uses to public safety to resolve interference problems in the 800 MHz band and to provide additional spectrum for public safety communications. The Commission staff is evaluating this proposal along with the other comments filed in the 800 MHz public safety proceeding. I would note, however, that this proposal would require Congress to change the current statutory mandate from the 1997 Budget Act to auction this spectrum for commercial use and modify the way in which auction proceeds are used. The Commission and public safety users have been working on a comprehensive approach to ensuring the spectrum needs of public safety are met since well before the 1997 Act, which resulted in more than doubling the amount of spectrum allocated to public safety communications. In addition, this spectrum is beset with the same disadvantages as the 24 MHz of 700 MHz spectrum already set aside for public safety use: incumbent television stations preclude use of the spectrum in most large metropolitan areas and there are no agreements with Canada and Mexico for use of the 700 MHz spectrum in the border areas. The prevailing view is that the DTV transition, which would require television stations to vacate the 700 MHz spectrum, will not occur in 2006, as the Congress and the Commission once anticipated.

HONORABLE ALAN B. MOLLOHAN

1) Congress, through the Tauzin-Dingell bill, has begun to consider deregulation of broadband services provided by local telephone companies. What action has the Federal Communications Commission taken to provide this deregulation?

Response: I am aware that the Tauzin-Dingell bill and other broadband legislation are pending before Congress, and want to emphasize that the Commission stands ready to implement any new broadband requirements adopted by Congress. In the meantime, I am committed to implementing faithfully the procompetitive and deregulatory initiatives in the Communications Act.

In developing a comprehensive and forward-looking broadband policy that is grounded in the Communications Act, the Commission faces a particular challenge because of the significant changes in the technology and markets for telecommunications and information services. I believe strongly that broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market. However, the basic elements of the existing regulatory requirements for the provision of broadband services by incumbent local telephone companies were developed initially in a prior era of circuit-switched, analog voice services characterized by a one-wire world for access to communications. This is a very different environment from the one that exists today. Services provided by different communications networks are converging as cable providers, satellite providers and terrestrial wireless networks providers develop new services that are becoming increasingly substitutable for the broadband services provided over the traditional telephone network. At the same time, the provision of broadband services to residential customers is a nascent market, and enormous new investment and innovation will be required if we are to realize the full promise of broadband deployment.

In light of these factors, many of which Congress has recognized in its current consideration of broadband regulations, the Commission has initiated three proceedings that are applicable to incumbent LECs. The *Broadband NPRM* focuses on the appropriate legal and policy framework for broadband access to the Internet over domestic wireline facilities, which are predominantly DSL facilities, but could also include fiber or other wireline technologies in the future. This proceeding will examine whether the Commission's existing tariffing and access obligations for the incumbent LECs' broadband offerings should continue to apply. In the *Incumbent LEC Broadband Notice*, we are examining whether incumbent LECs that are dominant in the provision of traditional local exchange and exchange access service should also be considered dominant when they provide broadband telecommunications services. In the *Triennial UNE Review Notice*, we address, among other things, the incumbent LECs' wholesale obligations under section 251 of the Act to make their facilities available as unbundled network elements to competitive LECs for the provision of broadband services. Again, we are fully committed to adopting policies and rules that implement the requirements in the Communications Act, and we look forward to vigorous comment and analysis of these issues in the records developed in these proceedings.

2) On October 16, 2001, President Bush issued an executive order establishing the Critical Infrastructure Assurance Office (CIAO) within the National Telecommunications and Information Administration (NTIA). The Chairman of the FCC can appoint one person to this board. Has that representative been appointed? Is funding for this position provided through the NTIA budget or FCC's budget?

Response: The October 16, 2001 Executive Order (EO) that you reference is EO 13231, "Critical Infrastructure Protection in the Information Age." This EO created the President's Critical Infrastructure Protection Board (CIPB), comprised of senior government officials. EO 13231 authorized the Chairman of the FCC to appoint one representative to the CIPB. I have appointed Chief of Staff Marsha MacBride as the FCC's representative. The CIPB assignment does not, in relative terms, require a significant time commitment from Ms. MacBride. Her CIPB participation is funded from the FCC's budget, in that her full time salary is already paid from the FCC's budget.

The Critical Infrastructure Assurance Office (CIAO) that you reference was created in May 1998 by Presidential Directive 63 (PDD-63), not by EO 13231. CIPB is tasked, among other things, with coordinating the efforts of CIAO, the FBI's National Infrastructure Protection Center (NIPC), the National Infrastructure Advisory Council (NIAC), and other entities charged with ensuring the protection of information systems for critical infrastructure.

3) What is the status of litigation of the FCC's wireless spectrum auction Number 35?

Response: Two pending cases directly affect Auction No. 35. First, the licenses themselves are directly in dispute in the FCC's Supreme Court case *FCC v. NextWave*, Sup. Ct. No. 01-653. That case is currently being briefed (the FCC filed its brief on May 6, 2002) and will be argued before the Supreme Court in the fall. A decision is expected in 2003. Second, in *Cellco v. FCC*, D.C. Cir. No. 02-1110, Verizon is challenging in the D.C. Circuit the FCC's authority to hold the Auction No. 35 winners to their bids. Verizon claims that the relationship between the auction winners and the FCC is one of simple contract, and the FCC's inability to deliver the licenses within a reasonable time (due to NextWave) has rendered the contract voidable as a matter of law. That case will likely be briefed over the summer and argued in the fall. Verizon is raising the same contract claims, this time seeking damages, in the Court of Federal Claims, under the case *Cellco v. United States*, No. 2-280C.

CONGRESSMAN DAVID VITTER

Question 1:
Mr. Chairman, at last year's hearing, I expressed to you my concern that the FCC creates a tremendous disincentive to innovators, like Northpoint Technology, when the regulatory process drags on for too long. I thought you shared that concern. Now I understand that the FCC has voted on an Order that not only calls for a controversial auction, but the FCC also dismissed all of the applications that Northpoint's affiliates filed over three years ago!

This development is very, very troubling to me, Chairman Powell. Your regulatory action penalizes the innovator and rewards its competitors. It also hurts consumers who lack competitive alternatives.

Section 309(6)(E) of the Communications Act states that the auction requirement cannot be

> "construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means to avoid mutual exclusivity [i.e. auctions] in application and licensing proceedings."

I would like to know what the FCC has done in this proceeding to comply with this provision of the Act and avoid forcing the Northpoint applicants into an auction pursuant to this provision of the law?

Response: It is important to note from the outset that this proceeding is one of the most complex, as well as one of the most contentious, spectrum proceedings the Commission has encountered, and that the Commission has worked very hard to achieve a result that best serves the public interest and is fair to all parties. With respect to the specific decisions to dismiss the terrestrial applications of Northpoint, PDC Broadband Corporation, and Satellite Receivers Ltd. and to conduct an auction of MVDDS licenses, I would have to defer an answer on that issues until the full text of the Commission's decision is released, which should be shortly. I will be sure to have a copy of the decision delivered to you as soon as it is released.

Question 2:
Mr. Chairman, you have spoken of the need to create a minimally regulated space for new broadband services. Do the regulations that currently govern broadband services, such as DSL provided by the Regional Bell Operating Companies, fit your definition of minimal regulation? If not, what does the FCC, under your leadership, intend to do to reduce the extent of regulation for Regional Bell Operating Companies provided broadband services? Am I correct that you have a number of pending proceedings that could serve as vehicles for such regulatory changes?

Response: I am committed to the belief that broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market. The Commission's existing regulatory requirements for the provision of broadband services by the RBOCs were developed for very different circuit-switched, analog voice services that were only available to consumers through one wire installed by their local telephone company. As your question recognizes, we must take a hard look at these existing rules and modify or eliminate them where necessary not only to clarify the regulatory environment for new broadband services, but also to lower the costs and risks associated with deployment of new infrastructure. As I recently told the U.S. Chamber of Commerce, I believe that clearer, more enlightened rules are vital to promote the infrastructure and devices that will bring the power of information to the home of every American.

We have initiated three proceedings specifically applicable to the RBOCs' provision of broadband services. The *Broadband NPRM* focuses on the appropriate legal and policy framework for broadband access to the Internet over domestic wireline facilities, which are predominantly DSL facilities, but could also include fiber or other wireline technologies in the future. This proceeding will examine whether the Commission's existing tariffing and access obligations for the incumbent LECs' broadband offerings should continue to apply. In the *Incumbent LEC Broadband Notice*, we are examining whether incumbent LECs that are dominant in the provision of traditional local exchange and exchange access service should also be considered dominant when they provide broadband telecommunications services. In the *Triennial UNE Review Notice*, we address, among other things, the incumbent LECs' wholesale obligations under section 251 of the Act to make their facilities available as unbundled network elements to competitive LECs for the provision of broadband services. We look forward to vigorous comment and analysis on these issues in the records we develop in these proceedings.

Question 3:
Mr. Chairman, I supported the Tauzin-Dingell bill in the House because I feel strongly that our government needs to do more to spur broadband services deployment to help revive our economy in general and the high tech sector, in particular. I understand that the FCC has a number of pending proceedings that also have the potential to accelerate broadband services. Is the Commission prepared to follow the lead of the House as reflected in the overwhelming vote in favor of Tauzin-Dingell and reduce the level of DSL regulation to encourage faster broadband deployment?

Response: As your question suggests, the Commission is developing a record to analyze the extent to which it should modify or eliminate any existing regulations that are applicable to DSL services in order to accelerate the availability of broadband capabilities. The Commission's primary policy goal is to encourage the ubiquitous availability of broadband to all Americans. This is Congress' vision. Congress specifically set forth this goal when it directed us in Section 706 of the 1996 Act to "encourage the deployment on a reasonable and timely basis" of broadband capabilities to "all Americans" and gave us authority to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment," if necessary. I, and the full Commission, recognize that substantial investment is required to build out the networks that will support future broadband capabilities. Therefore, our policy and regulatory framework will work to encourage the investment and innovation that will bring faster broadband deployment by limiting regulatory uncertainty and unnecessary or unduly burdensome regulatory costs.

The proceedings that I identified in my response to your question above, the *Broadband NPRM*, the *Incumbent LEC Broadband Notice*, and the *Triennial UNE Review Notice*, consider in a unified way the appropriate legal and policy framework for broadband services. In response to your general concern about accelerating the deployment of broadband services, we have already issued the *Cable Modem Declaratory Ruling*, in which we found that cable modem service is an information service, not subject to common carrier regulation. At the same time, we issued an NPRM seeking comment on the overall regulatory implications of this finding.

Questions for the Record
Federal Communications Commission, Chairman Powell
April 17, 2002

CHAIRMAN FRANK R. WOLF

Technology Initiatives

Your request includes approximately $9 million for information technology initiatives. This request is in addition to the increase you received in FY 2002 for information technology. Please tell us how FY 2002 funds have been obligated. Does the FY 2003 request include enhancements or expansions to initiatives begun in FY 2002?

What is the Commission's base budget for information technology, including automation initiatives?

HONORABLE DAVID OBEY

Question 1: Media ownership

The U.S. Court of Appeals, D.C. Circuit, has remanded two and overturned a third media ownership rule in the last few months. In their decisions, the Court has fundamentally challenged the way the FCC does its business, arguing that the 1996 Telecommunications Act imposes a high standard -- a showing that it is "necessary in the public interest" - just to maintain existing rules in the context of a biennial review. The Court has also said that the FCC has failed to collect the empirical evidence about diversity and competition that is required to justify its decisions about such rules. These decisions came out after the President presented his FY 2003 budget. Will this budget provide the resources needed to meet the high standards the Courts have set?

Question 2: Media ownership

The decisions were handed down after you formulated and received approval of your reorganization plan. Will the new organization properly allocate FCC resources to meet the needs of reviewing media ownership regulations?

Question 3: Working Group on Media ownership

When you announced the creation of the Working Group on Media Ownership, on October 29th, 2001, you described its purpose as developing the empirical and analytical foundation for the FCC "to achieve its long-standing goals of promoting diversity, localism, and competition in the media." What has the working group accomplished so far and what are its plans for the remainder of the fiscal year and fiscal year 2003?

Question 4: Spectrum Auction/Airadigm Licenses

I want to ask you about Airadigm Communications, a PCS company that serves customers in Wisconsin and Iowa. Airadigm won licenses in an auction in 1996 with FCC financing. It then built out a network and began to provide services. Eventually Airadigm had to file for bankruptcy and stopped making payments to the FCC. The FCC said that its licenses were subject to automatic cancellation. However, because Airadigm was providing service to a large number of consumers, the FCC allowed Airadigm to continue to operate and did not re-auction its licenses. Airadigm then entered into a reorganization plan.

Airadigm filed a petition in January 2000 asking the FCC to formally restore its licenses. In the meantime, Airadigm is operating at a significant loss each month and contends that it cannot turn the situation around until the licenses are formally restored. If the losses go on, Airadigm may be forced to discontinue service. In that case, over 30,000 customers would lose service, including many in rural areas and on tribal lands. Small businesses would have their service disrupted and lose the value of equipment. Airadigm's shareholders, including a Native American tribe, would incur substantial losses.

Without asking you to comment on the pending petition, are there any general conditions under which the FCC would use its public interest authority to restore licenses? How do you protect the customers when a company fails to make its payments to the FCC but has been serving a substantial number of people for a significant amount of time?

HONORABLE JOSE SERRANO

Univision and Venezuela

"President Hugo Chavez [of Venezuela] has accused parts of the media of helping engineer his overthrow. Media owners acknowledged today that they intensely covered Chavez's fall but largely failed to give enough attention to the protests that helped restore him to power two days later. Media owners met Saturday with the interim president, Pedro Carmona, even before his ministers were sworn in. But as the interim government began to unravel amid military dissension and large pro-Chavez demonstrations, television stations began broadcasting cooking shows and Hollywood movies, leaving much of the country without access to news about the unfolding political events..." Washington Post 4/17

Gustavo Cisneros is among the media owners reputed to have met with the interim leader last Saturday. Cisneros is the head of the Latin American media giant Cisneros Group which owns Venezuela's Venevision and is also the largest shareholder of Univision, owning a 25% interest in the U.S. company. Univision's Chairman and CEO, Jerrold Perenchio, only owns 15% of Univision.

How does a Latin American media group own the largest share of a company licensed to broadcast television in the United States and what is the role of Univision and its owners in the failed Venezuelan coup?

NBC/Telemundo

Recently the FCC approved NBC's acquisition of Telemundo but insisted that NBC report regularly on its efforts to divest within 12 months the 3rd station it controls in Los Angeles. Do you also intend to monitor NBC's efforts to continue to serve the Spanish-language community? It seems to me this is a good opportunity to collect the empirical evidence about diversity and competition that the Court of Appeals insisted on.

Enhanced-9-1-1

The FCC set standards for technology to permit first responders to locate 9-1-1 callers on wireless phones. Five years ago, the FCC set October 1, 2001 as the date for wireless carriers to begin the process of deploying this new and vital technology. Where do we stand today?

Enforcement

For the record, please provide this subcommittee with the total amount of fines the FCC has imposed in fiscal years 1999, 2000, and 2001 and a brief explanation of the apparent large growth in fines.

REP. HAROLD ROGERS

Chairman Powell:

- We understand that the Commission's staff has been considering WLJC-TV's band- clearing proposal, and those of Paxson Communications, since late last year. With the upper-700 MHz auction scheduled for June 19, can the FCC act on those applications soon?

- Does the Commission still view adherence to the analog station mileage separation rules of paramount importance in light of the congressionally mandated DTV transition, which will end analog TV in a few years?

- Is the Commission planning to strictly adhere to those separations in situations such as WLJC-TV's, where the station has shown that it will not cause any more interference to other stations than it would operating on its proposed channel in the DTV mode?

- Hasn't the Media Bureau now received all the information it needs, in the form of amendments requested by the staff, to complete the processing of these applications? Will this occur before the June 19 auction or sooner?

- Wouldn't the public interest be best served by granting proposals such as WLJC-TV's, which would give the FCC an opportunity to open a path for widespread upper-700 MHz band clearing by Channel 60-69 TV stations before the June 19th auction?

CONGRESSMAN JIM KOLBE

Rural Wireless E 9-1-1 and CALEA

The economics of providing telephone service to less-populated rural regions has been an ongoing concern as evidenced by the universal service mechanism. These same dynamics affect small, rural wireless carriers that provide E9-1-1 and CALEA requirements. How does the FCC propose to address the high cost versus low cost areas of the country as they relate to important public safety issues on wireless telephone systems?

700 MHz Spectrum Auction

1. It is my understanding that you have scheduled an auction for June 19th of spectrum in the 700 MHz band that is encumbered by broadcast television stations. However, there is currently no mandatory requirement to clear this spectrum for subsequent users – those who would at some point be expected to bid on these channels. In establishing rules for voluntary relocation of broadcasters, has the FCC created a significant obstacle to nationwide availability, which could far better be achieved, for example, if there were more to time to consider your April 4 band clearing plan?

2. The Administration sent legislation to Congress requesting that the 700 MHz auction be delayed. It is my understanding that you have pledged to work cooperatively with NTIA on the development of comprehensive spectrum plans and policies and that you created a Spectrum Task Force charged with creating cohesive spectrum management policies. Does proceeding with a June 19th auction undermine these efforts to manage spectrum better?

3. In light of the Sept.11 tragedy, it is apparent that we must pay greater attention to the communication needs of the public safety community and improved interoperability between federal, state and local public safety entities. I understand you have initiated a proceeding to improve public safety communications by resolving interference issues in the 800 MHz band. Because the 700 MHz television spectrum scheduled for auction June 19th is adjacent to public safety spectrum, including public safety spectrum in the 800 MHz band, could this spectrum potentially play a role in resolving the interference issues, providing public safety, including federal public safety, with necessary spectrum to implement the type of communications network necessary for our Homeland security efforts? Should we wait to auction the 700 MHz spectrum until a comprehensive approach to resolving these public safety issues are resolved?

CONGRESSMAN ALAN B. MOLLOHAN

1) Congress, through the Tauzin-Dingell bill, has begun to consider deregulation of broadband services provided by local telephone companies. What action has the Federal Communications Commission taken to provide this deregulation?

2) On October 16, 2001, President Bush issued an executive order establishing the Critical Infrastructure Assurance Office (CIAO) within the National Telecommunications and Information Administration (NTIA). The Chairman of the FCC can appoint one person to this board. Has that representative been appointed? Is funding for this position provided through the NTIA budget or FCC's budget?

3) What is the status of litigation of the FCC's wireless spectrum auction Number 35?

CONGRESSMAN DAVID VITTER

Question 1:
Mr. Chairman, at last year's hearing, I expressed to you my concern that the FCC creates a tremendous disincentive to innovators, like Northpoint Technology, when the regulatory process drags on for too long. I thought you shared that concern. Now I understand that the FCC has voted on an Order that not only calls for a controversial auction, but the FCC also dismissed all of the applications that Northpoint's affiliates filed over three years ago!

This development is very, very troubling to me, Chairman Powell. Your regulatory action penalizes the innovator and rewards its competitors. It also hurts consumers who lack competitive alternatives.

Section 309(6)(E) of the Communications Act states that the auction requirement cannot be

> "construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means to avoid mutual exclusivity [i.e. auctions] in application and licensing proceedings."

I would like to know what the FCC has done in this proceeding to comply with this provision of the Act and avoid forcing the Northpoint applicants into an auction pursuant to this provision of the law?

Question 2:
Mr. Chairman, you have spoken of the need to create a minimally regulated space for new broadband services. Do the regulations that currently govern broadband services, such as DSL provided by the Regional Bell Operating Companies, fit your definition of minimal regulation? If not, what does the FCC, under your leadership, intend to do to reduce the extent of regulation for Regional Bell Operating Companies provided broadband services? Am I correct that you have a number of pending proceedings that could serve as vehicles for such regulatory changes?

Question 3:
Mr. Chairman, I supported the Tauzin-Dingell bill in the House because I feel strongly that our government needs to do more to spur broadband services deployment to help revive our

economy in general and the high tech sector, in particular. I understand that the FCC has a number of pending proceedings that also have the potential to accelerate broadband services. Is the Commission prepared to follow the lead of the House as reflected in the overwhelming vote in favor of Tauzin-Dingell and reduce the level of DSL regulation to encourage faster broadband deployment?

WEDNESDAY, APRIL 10, 2002.

FEDERAL TRADE COMMISSION

WITNESS

TIMOTHY J. MURIS, CHAIRMAN

Mr. WOLF. The committee will come to order. I want to thank Chairman Muris for appearing before the subcommittee this morning to discuss the Federal Trade Commission's fiscal year 2003 budget request.

The mission of the FTC is to enforce a variety of Federal antitrust and consumer protection laws. The FTC seeks to ensure that the Nation's markets function competitively and are vigorous, efficient, free of undue restrictions. The FTC also works to protect business and consumers from unfair and deceptive practices.

A few of the issues that are of particular concern to me are the hard liquor advertisements on television and the expansion of gambling on the Internet. I would like to hear what the FTC has been doing to address these issues. I don't know if you saw the study that came out yesterday with regard to drinking on college campuses. 1,400 students die each year as a result of drinking. There are also sexual assaults. It was unbelievable. I never thought the deaths and the degree of the problem so large. The FTC may want to review this study.

In regards to the liquor advertising, I would like to congratulate and thank NBC for reversing their previous decision and deciding not to air these ads on their network. I also want to thank ABC and CBS and Fox for continuing their longstanding ban on hard liquor advertisements. Their decision not to follow suit is validated by the study that came out yesterday. The decision to continue the ban will undoubtedly reduce the incidence of drunk driving by young people, saving lives and keeping families together.

On the issue of on-line gambling and children, we understand that the FTC has found that minors can easily access on-line gambling and are frequently exposed to advertising for on-line gambling on nongambling Web sites. We would like to hear what you are doing to address this problem.

With that, I would just like to recognize Mr. Serrano for any opening comments, and then you can proceed either by reading your entire statement which—I have read—or you can summarize.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Good morning, sir. Those who would want to classify or stereotype conservatives and liberals would say that I am not supposed to make an opening statement that disagrees with anything the chairman said, and we agree especially on this whole issue of advertising liquor on TV. And I would like to add one point to it, to

see how you would respond to it or see if you could do some research on it.

NBC just purchased Telemundo, or is in the process of purchasing Telemundo, which, as you know, is a Spanish television network. Does the behavior they now subscribe to, which the chairman and I approve of, now mean they will also impart that behavior in Spanish, or is that a whole different world? Because I remember years ago we had a situation where, Mr. Chairman, the networks had agreed not to advertise alcohol, but then you were getting live commercials from Mexico and other places, Spanish TV live, where they were doing just the opposite, and there was no voluntary control over that.

So I would like you to comment on that.

Other than that, I really appreciate the work that the FTC does. I know it tackles a lot of very important issues, especially these days. And I have always said the good news is that we have always had a pretty good economy in this country, sometimes a great economy. The bad news is that that opens the door for a lot of people to misbehave, and we have to make sure there are folks who keep an eye on them.

So thank you and welcome.

Mr. MURIS. Well, thank you both very much. Let me briefly summarize my testimony and submit the full statement for the record.

I certainly appreciate the opportunity to be here today to support our fiscal year 2003 appropriations request. I especially want to thank the subcommittee, particularly you, Mr. Chairman, for your strong leadership and support for the FTC in both antitrust and consumer protection.

As you know, we are the only Federal agency with broad jurisdiction in both antitrust and consumer protection over large parts of the economy. We have a very dedicated staff, and I think the FTC's record of protecting consumers is impressive. We are going to continue to build on that strong record.

MISSION

I have said before, many times publicly—and I have been at the FTC now 10 months—the watchword is continuity. We will build and address competition and consumer protection issues with the same expertise and commitment as my predecessor, my long-time friend, Bob Pitofsky.

We have asked for $176,509,000 and 1,074 FTE. I think that will allow us to continue protecting American consumers. Let me just give you a few highlights of our two missions.

FRAUD

First, starting with consumer protection: Fighting fraud, especially on the Internet, remains a key priority. We recently, after September 11, for example, have cracked down on the sale of bogus bioterrorism-related products. We sent warning letters to marketers of these products. Most of the sites have eliminated their claims. The most egregious remaining marketers we have targeted for law enforcement, and we recently announced settlements with marketers of a home test kit for anthrax and an on-line seller of a purported anthrax treatment product.

We are also continuing to be very aggressive about bogus claims for diet supplements that frequently appear on-line and off-line. We announced one of the largest settlements in Commission history a few weeks ago, $60 million, against First Alliance, involving deceptive lending practices in the sub-prime market. We have had many other successes and returned a large amount of money to consumers.

TELEMARKETING FRAUD

Last fall, we had a case involving telemarketing and the misuse of what is called preacquired credit card information against a company called Triad, where we have gotten over $8 million for consumers. We recently received a court order for $39 million against Discount Buying Services, which is the largest Telemarketing Sales Rule order. We are certainly planning many more fraud cases.

We are also working to try to put the career fraudsters in jail. We don't have criminal authority, but we are increasing our cooperation with those who do have criminal authority. Cross-border fraud has become a bigger problem, and we are increasing our efforts, particularly with the Canadians.

PRIVACY

Privacy is a very important area for us. I announced a new privacy agenda last fall, and this year we will spend 50 percent more resources on privacy than we spent last year. We proposed a national Do-Not-Call-List that is in rulemaking right now. We have already received about 40,000 comments.

For the first time, the Commission has proceeded against a company for an inadvertent disclosure of information. A few months ago, we took a settlement against Eli Lilly. Eli Lilly had sent an e-mail containing the e-mail addresses of over 600 individuals taking Prozac. We charged them with not taking proper procedures to protect the information when they promised they would.

SPAM

We are also moving against deceptive spam for the first time. We are the only place in the country that likes to receive Spam. We have over 10,000,000 spam in something we call "the refrigerator" in our computer lab, and for the first time we are looking at those Spam and bringing cases. We brought several rounds of cases and very soon will announce a case particularly pernicious, Mr. Chairman, that involves a spam that promises individuals a free good and, through deception, in four clicks of your mouse, you are on a pornographic Web site being billed to your phone number. And we are stopping that practice.

MEDIA VIOLENCE

We have been particularly vigilant, I think, regarding children. As requested by the committee, we are continuing to monitor the marketing of violent media directed toward children. We issued our third report last December and will issue another this summer.

ONLINE GAMBLING

You mentioned gambling, and I wanted to thank you, Mr. Chairman. You first raised this issue with me last summer, and I am grateful to you for doing so. We conducted what we called a "surf" of on-line gambling sites, and we revealed that minors can easily access on-line gambling. They are also frequently exposed to general use advertisements for gambling on other nongambling Web sites.

We have met with representatives of the gambling industry. We are working to seek corrective action. We have also met with consumer advocates and industry representatives. We are going to launch a consumer and business education campaign warning about the dangers of underage on-line gambling. The industry has also told us they are devising a guide to best practices, which will include clear and conspicuous disclosures of warnings against underage gambling, effective blocking methods, and restrictive placements of industry ads.

ALCOHOL

We are certainly aware of the alcohol situation. I was glad, as a parent in particular, that NBC reversed its course. The Commission has a history of protecting underage consumers in alcohol and other areas, and we are continuing to be vigilant.

ANTITRUST

Our other mission is antitrust, and we are continuing there I think, as well, with the continuity of our predecessors. One thing that has happened is the merger wave has declined. We are still active in the merger area. This fiscal year, so far, we have taken action in 17 merger cases.

With the decline in the merger wave, we are able to return to a more historical balance between mergers and nonmergers in antitrust. We have doubled our nonmerger investigations. Let me mention a few important areas there.

PHARMACEUTICALS

Pharmaceuticals are a very important area. We have had what I call two generations of cases. The first generation involved agreements between branded and generic pharmaceutical companies to keep the generic products off the market. The Commission has three cases in that area, and we have now begun a second generation of cases where the branded companies take steps that we think violate the antitrust laws to keep the generics off the market.

These cases involve very large dollars for consumers. We have a consent agreement that we signed recently that will be made public. We have other investigations under way. We had an excellent result with an amicus brief that we filed in a case where we thought a branded company had abused FDA procedures to keep a generic off the market, and the judge agreed with us.

INTELLECTUAL PROPERTY AND ANTITRUST

We are also having hearings on another important topic, which is to explore the relationship of intellectual property and antitrust.

Our intellectual property system, I think, is one of the foundations of our economy, but increasingly antitrust cases are involving the intersection of intellectual property and antitrust. We are holding a set of detailed hearings in cooperation with the Justice Department and the Patent and Trademark Office, and we will be issuing a report after the hearings.

ANTITRUST

We are also working to make our agency more efficient, for example, by trying to reduce compliance burdens on businesses. As part of that, as part of being more efficient and to reduce the delay in investigations and friction with the Antitrust Division, we entered the so-called "clearance agreement," which I want to talk about briefly because it was quite controversial in my hearings with Senator Hollings.

Just to be very brief, we have two antitrust agencies, the FTC and the Department of Justice's Antitrust Division, which enforce the exact same merger statute that applies the exact same standard. But the law says, when it comes to a specific merger, only one of us can investigate. Well, for decades, the agencies have had a process by which either would not investigate unless the other, quote, "cleared it to them", hence the word "clearance.".

This process has worked very well for most of the history of the two agencies. For example, in the 1980s, when I was at the FTC, there were only about 10 disputes annually. But with the convergence of industries, the process began to break down. There were over 80 disputes annually in the 1990s. There was a great amount of delay and friction. When I arrived at the FTC last June, there had been an investigation that neither side could do for over a year because the two agencies were fighting over who should do it. That was quite contentious.

We resolved it. Our predecessors, Bob Pitofsky and Joel Klein, tried to reach a global clearance agreement, and they failed; we succeeded. I think it is a good government initiative and one that has wide support. We have received letters of support from antitrust officials from the last four Presidential administrations. We have received letters of support from the business community. Several Members of Congress have supported us. And so I think it is the kind of thing where we should spend our resources investigating wrongdoing, not fighting with the Antitrust Division.

That is just a brief summary. I think our role is vital for American consumers. This is my fourth job at the FTC and the third time I have been here. I am an FTC guy. I think it is a great agency, and I think we do excellent work.

I would be glad to answer your questions.

[The statement of Mr. Muris follows:]

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

Before the

SUBCOMMITTEE ON

COMMERCE, JUSTICE, STATE, THE JUDICIARY AND RELATED AGENCIES

of the

COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.

April 10, 2002

I. INTRODUCTION

Mr. Chairman, I am Timothy J. Muris, Chairman of the Federal Trade Commission. I am pleased to appear before the Subcommittee today to testify in support of the FTC's Fiscal Year 2003 Appropriation request.[1]

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.[2] We enforce laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, as well as promote informed consumer choice and public understanding of the competitive process. The work of the FTC is critical in protecting and strengthening free and open markets in the United States.

The FTC's record is impressive. The agency has fulfilled its mission of protecting American consumers by pursuing an aggressive law enforcement program during rapid changes in the marketplace – the past decade saw the largest merger wave in history, the rapid growth of technology, and the increasing globalization of the economy. Through the efforts of a dedicated and professional staff, the FTC has shouldered an increasing workload despite only modest increases in resources. I would like to thank the Chairman and members of the Subcommittee for their continued support of the Commission's mission.

The guiding word at the FTC is "continuity." The agency continues aggressively to pursue law enforcement initiatives, launch consumer and business education campaigns, and organize forums to study and understand the changing marketplace, just as we have done for several years. We will continue to address competition and consumer protection issues in the evolving economy with the same expertise and commitment as before.

Our competition mission continues to reflect the following widely shared consensus: (1) the purpose of antitrust is to protect consumers; (2) the mainstays of antitrust enforcement are horizontal cases – cases involving the business relations and activities of competitors; (3) in light of recent judicial decisions and economic learning, appropriate monopolization and vertical cases are an important part of the antitrust agenda; and (4) case selection should be guided by sound economic and legal analysis, and made with careful attention to the facts. The FTC is primarily a law enforcement agency, and we will continue aggressive enforcement of the antitrust laws within the agency's jurisdiction. The FTC is also an independent expert agency and a deliberative body, and is thus well suited to studying an evolving marketplace and developing antitrust policy – we will continue to hold public hearings, conduct studies, and issue reports to Congress and the public.

Similarly, there is widespread agreement on how the FTC best carries out its consumer protection mission. Twenty years ago, the FTC shifted its emphasis toward more aggressive enforcement of the basic laws of consumer protection. The staple of our consumer protection mission is to identify and fight fraud and deception. The FTC monitors trends and developing issues in the marketplace to determine the most effective use of its resources. The FTC has become the national leader in consumer protection and partners with other law enforcement agencies at the federal, state, local, and international levels to maximize benefits for consumers.

To accomplish our mission in FY 2003, the FTC requests $176,599,000 and 1,074 FTE. These figures represent an increase over the current year of $20,617,000, but no additional FTE. Almost 25 percent of the requested dollar increase would be devoted to comply with proposed legislation requiring all federal agencies to begin funding directly certain retirement and health

benefits. Funding at the requested level would allow the FTC to build on a record of solid achievement on behalf of American consumers.

During FY 2003, the FTC will address significant law enforcement and policy issues throughout the economy, devoting the major portion of its resources to those areas in which the agency can provide the greatest benefits to consumers. This testimony in support of our FY 2003 appropriation highlights program priorities in the FTC's two missions. In the Consumer Protection Mission, we discuss Privacy; Internet Law Enforcement; Health, Safety, and Economic Injury; Media Violence, Gambling, and Children; Globalization; and Consumer Outreach. In the Maintaining Competition Mission, we discuss Merger Enforcement; Streamlining the Merger Review Process; Nonmerger Enforcement; Targeting Resources for Consumer Impact; and Outreach Efforts. The testimony concludes with a brief summary of the FTC's FY 2003 appropriation request.

II. CONSUMER PROTECTION MISSION

A. PRIVACY

During FY 2003, the FTC intends to devote significant resources to privacy protection. Consumers are deeply concerned about the privacy of their personal information, both online and offline. Although privacy concerns have been heightened by the rapid development of the Internet, they are by no means limited to the cyberworld. Consumers can be harmed as much by the thief who steals credit card information from a mailbox or dumpster as by the one who steals that information from a Web site. Of course, the nature of Internet technology may raise its own special set of issues.

The FTC currently enforces a number of laws that address consumers' privacy,[3] and intends to increase substantially the resources dedicated to privacy protection. Our initiatives in this area attempt to reduce the serious consequences that can result from the misuse of personal information and fall into three major categories: vigorous enforcement of existing laws, additional rulemaking, and continued consumer and business education.

1. Privacy Law Enforcement

The FTC will pursue law enforcement efforts in the following areas:

- Enforcing privacy promises, focusing on cases involving sensitive information, transfers of information as part of a bankruptcy proceeding, and the failure of companies to meet commitments made under the Safe Harbor Program to comply with the European Commission's Directive on Data Protection.[4] For example, in January 2002, the FTC accepted a consent order with Eli Lilly & Company to resolve allegations that Lilly violated the FTC Act. According to the complaint, Lilly claimed that it employed measures appropriate under the circumstances to protect the confidentiality of personal information obtained from consumers who visited its Prozac.com Web site, when in fact it did not.[5]

- Enforcing the Children's Online Privacy Protection Act (COPPA),[6] which prohibits the collection of personally identifiable information from young children without their parents' consent. Since 2001, the Commission has brought a number of COPPA enforcement actions resulting in more than $100,000 in civil penalties.[7]

- Bringing actions against fraudulent or deceptive spammers. In February of this year, the Commission launched a crackdown on deceptive junk email, or "spam," and announced six settlements with seven defendants who allegedly continued to send deceptive chain email after being warned that the chain email scheme was illegal.[8] The FTC maintains a special electronic mailbox, uce@ftc.gov, to which Internet customers can forward spam. This database currently receives 10,000 new pieces of spam every day. We will continue to use this mailbox to identify targets for law enforcement action.

- Challenging "pretexting," the practice of fraudulently obtaining personal financial information, often by calling banks under the pretense of being a customer. Last month, the Commission announced settlements in three federal district court actions against information brokers who allegedly engaged in illegal pretexting.[9]

- Enforcing the privacy protections of the Fair Credit Reporting Act,[10] which ensures the integrity and accuracy of consumer credit reports and limits the disclosure of such information to entities that have "permissible purposes" to use the information.

2. Privacy Rulemaking

The Commission is engaged in the following rulemaking activities:

- Considering proposed amendments to the Telemarketing Sale Rule,[11] which were announced in January 2002.[12] Among other things, the proposed amendments would create a national do-not-call list to allow consumers to make one call to remove their names from telemarketing lists. The proposed amendments also would address the misuse of "pre-acquired account information," lists of names and credit card account numbers of potential customers. Misuses include billing consumers who believed they were simply accepting a free trial, or billing consumers for products or services that they did not purchase.

- Completing the current rulemaking on safeguarding consumers' financial information pursuant to the Gramm-Leach-Bliley Act.[13]

3. Privacy- and Security-Related Consumer and Business Education and Outreach

The agency will continue to conduct workshops and other educational activities:

- Training law enforcement officials about identity theft. On March 14, 2002, the FTC, the U.S. Secret Service, and the Department of Justice kicked off a series of training seminars to provide local and state law enforcement officers with practical tools to enhance their efforts to combat identity theft.[14]

- Collecting information about identity theft with the FTC's new ID Theft Affidavit. In February 2002, the FTC joined with several companies and privacy organizations to make available a universal identity theft affidavit that victims of identity theft can submit to creditors. This form will help victims recoup their losses and restore their legitimate credit records more quickly.

- Continuing to explore and monitor the privacy implications of new and emerging technologies through workshops, reports, and other public meetings. In March, the FTC released a summary and update of the proceedings of a workshop sponsored by the Commission titled, "The Mobile Wireless Web, Data Services, and Beyond: Emerging Technologies and Consumer Issues."[15]

- On May 20-21, 2002, the FTC will host a two-day public workshop to explore issues related to the security of consumers' computers and the personal information stored in them or in company databases.[16]

B. INTERNET LAW ENFORCEMENT

The FTC will continue aggressively to monitor the Internet to ferret out frauds and schemes. Since 1994, the early days of the Internet, the FTC has brought 222 Internet-related law enforcement actions against 688 defendants, stopping consumer injury estimated at more than $2.1 billion. These cases often pose novel challenges: tracking anonymous fraud artists, unraveling complex technological schemes, and responding at lightning speed to frauds moving just as rapidly.

A growing number of these high tech schemes exploit the design and architecture of the Internet. A recent example is *FTC v. Zuccarini*, C.A. No. 01-CV-4854 (E.D. Pa., filed Sept. 25, 2001), in which the defendant allegedly used more than 5,000 copycat Web addresses to hijack surfers from their intended destinations to one of his Web sites, hold them captive, and pelt them with a barrage of ads, some of them pornographic. According to the FTC's complaint, the defendant was able to divert consumers who misspelled addresses of popular legitimate sites because he had registered multiple misspelled variations of those sites. Once he had lured consumers to his sites, the defendant "mousetrapped" them by disabling their browsers' "back" and "exit" commands. At the FTC's request, the court enjoined the defendant from continuing these activities. The FTC will seek an order requiring the defendant to disgorge as much as $1 million in ill-gotten gains.

As in past years, the FTC's Internet fraud campaign is combating scams that jump from news headlines – this year, scams that have appeared since September 11th. The FTC, working

with 30 State Attorneys General, the New York Better Business Bureau, the California Department of Health, the FDA, and other federal agencies identified more than 200 Web sites pitching products to protect against, detect, or treat illnesses caused by biological or chemical agents, including anthrax. These products, most of them bogus or ineffective, include herbal remedies for anthrax, air filters, gas masks, and do-it-yourself kits to test mail for anthrax. After identifying these Web sites, the FTC sent warning letters to the operators of 121 sites, and published two consumer alerts to warn the public that fraudsters follow the headlines and tailor their offers to prey upon the public's latest fears. As of March 1, 2002, 62 percent of those warned had dropped the troubling claims from their Web sites, and the FTC continues to monitor the remainder of the Web sites. The FTC brought two law enforcement actions against the operators of Web sites engaging in more egregious practices. In one case, the FTC obtained a federal court order prohibiting a marketer from selling anthrax home test kits.[17] In second, the FTC has issued a consent order prohibiting a vendor from making anthrax cure claims for a colloidal silver product.[18]

Because the Internet transcends national boundaries, future cases increasingly will involve cross-border scams. During the past fiscal year, the FTC, other federal agencies, state agencies and foreign agencies from nine countries participated in "Operation Top Ten Dot Cons." Through this sweep, the largest in FTC history, the FTC and its partners filed 209 actions around the world attacking the top 10 Internet scams, as identified by data received in our consumer complaint database.[19]

C. HEALTH, SAFETY, AND ECONOMIC INJURY

The Commission also will continue to bring law enforcement actions in cases involving consumers' health and safety, and in cases resulting in significant economic injury. Last month, for example, the Commission announced consent agreements in cases challenging allegedly deceptive advertising claims that, as a good source of calcium, Wonder Bread helps children's minds work better and helps children remember things.[20] In a recent case involving significant economic injury, the Commission announced that a group of "buying clubs" had agreed to pay $9 million to settle charges by the FTC and State Attorneys General. The defendants were charged with misleading consumers into accepting trial buying club memberships and obtaining consumers' credit card account numbers without the consumers' knowledge or authorization from telemarketers pitching the buying clubs. Consumers then were enrolled in the clubs and charged up to $96 in yearly membership fees.[21]

In addition, in February 2002 the FTC obtained a stipulated preliminary injunction in a federal district court action against the promoters of "Miss Cleo" psychic services.[22] The FTC's complaint alleges that the defendants misrepresented the cost of services both in advertising and during the provision of the services, billed for services that were never purchased, and engaged in deceptive collection practices, among other things. The FTC estimates that the defendants billed consumers at least $360 million in connection with this alleged scheme.

On March 21, 2002, the FTC announced one of its largest consumer protection settlements ever in a lawsuit challenging alleged "predatory lending" practices by First Alliance Mortgage Company, a California-based home mortgage lender.[23] The settlement, which requires court approval, was entered into by the FTC; the states of Arizona, California, Florida, Illinois,

Massachusetts, and New York; AARP; and class action and individual plaintiffs. The settlement resolves charges that First Alliance violated federal and state laws in making home mortgage loans to customers. Nearly 18,000 borrowers could receive as much as $60 million dollars in compensation under the terms of the settlement.

D. MEDIA VIOLENCE, GAMBLING, AND CHILDREN

The FTC is continuing to monitor violent media directed toward children, and appreciates the strong congressional support we have received on this issue. In a September 2000 report, the agency reported that the entertainment industry targeted advertising and promotion of violent video games, movies, and music to children.[24] We received requests from Congress to take a variety of steps to follow up on this report. In particular, this Subcommittee requested, through report language in the fiscal year 2002 bill, that the FTC continue its efforts in child protection through three related initiatives: consumer research and workshops, an underage shopper retail compliance survey, and marketing and data collection.[25]

In response to these requests, in April 2001 the FTC released a follow-up report outlining improvements in the movie and electronic game industries but finding no appreciable change in the music industry's target marketing practices.[26] The agency released a second follow-up report in December 2001, finding that the movie and electronic game industries had made continued improvements. The December 2001 report also found that the music industry had made some progress in disclosing parental advisory label information in its advertising, but the Commission's review of advertising placement showed that the music industry had not altered its marketing practices since the September 2000 report.[27] The December report also described the results of a second underage shopper retail compliance survey. The FTC will release a third follow-up report

in June 2002. In addition, as requested by this Subcommittee, the Commission's staff is conducting research on appropriate consumer education messages for parents.

The Commission also is working to respond to the language in last year's appropriations bill regarding the marketing of online gambling sites to children. The FTC staff conducted a "surf" of online gambling sites,[28] which revealed that minors easily can access online gambling and frequently are exposed to advertisements for online gambling on general use, non-gambling web sites. As a result, FTC staff met with representatives of the online gambling industry to seek voluntary corrective action and also met with interested consumer advocates. The FTC, in conjunction with industry representatives, will launch a consumer and business education campaign warning about the dangers of underage online gambling. Online gambling industry representatives also have advised FTC staff that they will devise a Guide to Best Practices regarding clear and conspicuous disclosures of warnings about underage gambling prohibitions, effective blocking methods, and restricted placement of industry advertisements.

E. GLOBALIZATION

The FTC will continue to respond to the challenges created by the increasingly global marketplace. First, the FTC will participate in international efforts to craft policies and self-regulatory programs to protect consumers. Second, we will build new international partnerships to tackle cross-border fraud through information sharing and coordinated law enforcement. An example is the FTC's participation in the International Marketing Supervision Network (IMSN), a network of consumer protection and fair trade organizations from more than two dozen countries. The IMSN identifies worldwide enforcement issues, facilitates the sharing of information about cross-border commercial activities affecting consumer interests, and encourages international

cooperation among law enforcement agencies. Another example is econsumer.gov, a joint effort by the United States and fifteen other countries to gather and share cross-border e-commerce complaints.

Third, to meet the challenge of identifying critical consumer issues in the global marketplace, the FTC plans to continue to use its *Consumer Information System*, a consumer complaint database, to identify and target the most serious consumer problems. By sharing fraud complaints with a broad group of law enforcement partners through the secure *Consumer Sentinel* Web site, the FTC enhances the effectiveness of law enforcement agencies across the United States, Canada, and Australia. The FTC also will continue training enforcement officials on how to bring cases involving new technologies. Since FY 2001, the FTC has educated more than 1,750 law enforcement personnel from more than 20 countries, 38 states, 23 U.S. federal agencies, and 19 Canadian agencies on use of the fraud database.

F. CONSUMER OUTREACH

Just as consumer outreach is a key component of the FTC's efforts to protect consumers' privacy, the FTC will continue to place great emphasis on consumer outreach involving fraud and deception. Our consumer education programs provide two key benefits. First, they inform consumers of their rights under various consumer protection laws. Second, they give consumers the information they need to identify and avoid fraud and deception in the marketplace. In FY 2002, the FTC will use national and local media, state and local government agencies, business and consumer groups, and the *ftc.gov* and *consumer.gov* Web sites to reach millions of consumers across the country. The FTC also will continue to reach consumers through its Consumer Response Center and the hundreds of consumer protection organizations that distribute FTC

materials and provide links to the FTC Web site. In FY 2001, the FTC issued 77 publications, distributed more than 5.4 million print publications, and logged more than 9.6 million accesses of its publications on the *ftc.gov* Web site. The FTC also will continue to host workshops to highlight the FTC's activities and resources for Congressional district office staff. By July of this year, the FTC will have held workshops in each of its regional offices for all Congressional district offices.

III. MAINTAINING COMPETITION MISSION

A. MERGER ENFORCEMENT

Merger enforcement will continue as a major focus of the competition agenda for FY 2003. Stopping mergers that lessen competition ensures that consumers will have the benefit of lower prices and greater choice in their selections of goods and services. The recently revised Hart-Scott-Rodino Act ("HSR")[29] filing threshold, coupled with economic conditions during the last fiscal year, reduced the number of reportable filings by approximately two-thirds from their peak. Reported mergers, however, continue to increase in scope, complexity, and size. In FY 2001 alone, the total value of all reported mergers was over $1 trillion. Large, multifaceted transactions – the ones still subject to HSR – are the ones most likely to raise antitrust issues, and typically involve a number of separate product and geographic markets, each requiring analysis.[30] Further, mergers in high tech markets require careful analysis, because new technical issues continue to emerge.

We will devote resources to searching for mergers that are no longer subject to premerger reporting requirements under HSR, but that could be anticompetitive. While the revised HSR filing threshold eliminated the reporting requirement for smaller mergers, it did not change the

substantive standard of legality under section 7 of the Clayton Act.[31] The agency will be alert to smaller mergers that could harm consumers by substantially lessening competition. Since the fiscal year began, the FTC has opened investigations into mergers that were not reportable under the HSR Act, and has issued an administrative complaint challenging one merger that fell below the amended HSR threshold.[32]

Litigation to challenge anticompetitive mergers requires significant resources. While the FTC resolves most merger cases through settlement (this fiscal year we have obtained settlements of ten administrative or court complaints),[33] it is sometimes necessary to litigate challenges to certain proposed or consummated mergers. Since the fiscal year began, the Commission has authorized the staff to file complaints in five merger cases, three of which are in litigation[34] and two of which have settled.[35] The FTC must have the resources and expertise needed to support effective challenges in complex and high-stakes cases to protect consumers from higher prices, limited choices, and thwarted innovation.

B. STREAMLINING THE MERGER REVIEW PROCESS

The FTC has been working with the Antitrust Division at the Department of Justice to establish procedures to make the HSR merger review process more efficient and transparent. The FTC has focused on several areas for streamlining, including:

- **Electronic Premerger Filing.** As part of an overall movement to make government more accessible electronically, the FTC, working with DOJ, will accelerate its efforts in FY 2003 to develop an electronic system for filing HSR premerger notifications. E-filing will reduce filing burdens for businesses and government and create a valuable database of information on merger transactions to inform future policy deliberations.

- **Burden Reduction in Investigations.** The agencies have taken steps to reduce the burden in document productions responsive to requests for additional information under the HSR Act ("second requests"). In response to legislation

amending the HSR Act,[36] the FTC amended its rules of practice to incorporate new procedures. The rule requires Bureau of Competition staff to schedule conferences to discuss the scope of a second request with the parties and also establishes a procedure for the General Counsel to review the request and rule promptly on any remaining unresolved issues.[37] Measures adopted include a process for seeking modifications or clarifications of second requests, and expedited senior-level internal review of disagreements between merging parties and agency staff; streamlined internal procedures to eliminate unnecessary burdens and undue delays; and implementation of a systematic management status check on the progress of negotiations on second request modifications. In addition, we recently have announced that agency staff will participate in a series of discussions with the bar and other interested parties to elicit suggestions on further improvements to the second request process, and to provide information on our investigation procedures.[38]

- **Improved FTC/DOJ Clearance Process.** The achievement of an efficient division of work between the two federal antitrust enforcement agencies has occupied the energies of the Department of Justice and the FTC since the Commission began operating in March 1915. For many years, the two agencies have allocated matters mainly on the basis of their relative expertise. For the most part, this arrangement has worked smoothly. In the last decade, however, the convergence of industries increasingly has blurred the lines between the agencies' historical areas of responsibility. Consequently, clearance disputes have become both more common and, in the case of major clearance disputes, more contentious.[39] On average, from 1982 through 1989, 10 clearance disputes arose each year. In contrast, between 1990 and 2001, the annual number of contested matters has equaled or exceeded 45, and in three years exceeded 100. On average, 83 clearance disputes occurred annually during this period.

- These disputes result in significant delays. Delays averaging three weeks occurred in 24 percent of the matters on which either agency sought clearance from the beginning of FY 2000 through January 28, 2002. Cumulatively, these investigations were delayed by 4,521 business days – more than 17 years. During this time, neither agency could investigate potentially serious allegations of illegal behavior.[40] Recognizing the severity of the problem, FTC Chairman Robert Pitofsky and Assistant Attorney General Joel Klein attempted to negotiate a global clearance agreement for over a year, but could not reach consensus.

- Consistent with his authority,[41] Chairman Muris negotiated a new clearance agreement with Assistant Attorney General for Antitrust Charles James.[42] The new agreement will allocate matters between the two agencies more efficiently, rationally, and predictably. This agreement allocates primary areas of responsibility for antitrust enforcement on an industry-wide basis, and implements expedited clearance dispute resolution procedures. The new agreement will

enhance the quality of antitrust enforcement, and will benefit businesses, consumers, and taxpayers.[43] Moreover, an agreement that allocates primary areas of enforcement responsibility enjoys overwhelming support within the antitrust and business communities.[44] The clearance agreement requires that the agency heads review the allocation of industries in four years to determine whether the goal of efficiently and rationally allocating competition matters is being achieved.

- In response to concerns about the agreement expressed by Senator Hollings, the agencies have provided information on clearance procedures, the historical allocation of matters, and clearance delays. We will, of course, provide any additional information that Congress desires.

C. NONMERGER ENFORCEMENT

The FTC will continue the trend, begun last year, to devote more resources to nonmerger enforcement. In FY 2001, the agency opened 56 nonmerger investigations, more than double the number of such investigations begun in the previous year, when deadline-sensitive HSR merger investigations siphoned away resources allocated for nonmerger work. Thus far in FY 2002, the agency has opened 15 nonmerger investigations. The major focus of our nonmerger work will concern activities among competitors, reflecting the broad consensus in antitrust policy that horizontal arrangements that fix prices or restrict output are the ones most likely to harm consumers.

Efforts in this area are producing benefits for consumers. In February 2002, the FTC settled litigation against American Home Products (AHP) to resolve charges that Schering-Plough Corporation (Schering) illegally agreed to pay AHP millions of dollars in exchange for AHP's agreement to delay introduction of a generic potassium chloride supplement, which would have competed with Schering's branded K-Dur 20, used to treat patients with low potassium, which can lead to cardiac problems.[45] In another recent matter, the agency achieved a settlement

with one defendant in a price-fixing case last fiscal year, and is presently in litigation with the other defendant.[46]

The settlement with AHP marks the third instance in which the FTC has reached a settlement with generic or branded drug manufacturers regarding alleged anticompetitive conduct designed to delay generic entry.[47] A major portion of the American health care dollar purchases prescription drugs, and we will continue our efforts to prevent firms from engaging in anticompetitive practices that raise drug prices. In particular, we will strive to ensure that anticompetitive practices do not delay market entry of generic drugs, which cost less than name-brand pharmaceuticals. We will seek to ensure that protections provided to drug innovators under the Hatch-Waxman Act are not abused to the detriment of consumers. As you know, Hatch-Waxman was designed to increase the flow of new pharmaceuticals into the marketplace by carefully balancing two public policy objectives: encouraging vigorous competition from generic drugs, while maintaining incentives to invest in the development of innovator drugs.

In addition to agreements between makers of brand-name drugs and makers of generics, under which the generic entrant is essentially paid not to compete, the FTC continues to investigate unilateral conduct by branded manufacturers designed to forestall competition. For example, some branded manufacturers list additional patents in the FDA's "Orange Book," often shortly before their original patents expire, which sets the stage for launching patent infringement suits against generic drug firms poised to enter the market. Under Hatch-Waxman, such litigation triggers an automatic 30-month stay on FDA approval of the generic drug. If the listings do not

meet statutory and regulatory requirements, their inclusion in the Orange Book may constitute unlawful restraints on competition.[48]

To uncover whether strategies such as these are isolated examples or represent patterns of anticompetitive conduct, the Commission has undertaken a study, as requested by Representative Henry Waxman, to provide a more complete picture of how generic competition has developed under the Hatch-Waxman Act. The Commission has issued nearly 100 orders to innovator and generic drug companies to obtain documents related to the issues identified through investigations and to identify any other anticompetitive strategies that may exploit certain Hatch-Waxman provisions. The facts obtained through this study may provide a basis for policy recommendations in this area.

D. TARGETING RESOURCES FOR CONSUMER IMPACT

In both its merger and nonmerger programs, the FTC will continue to focus competition resources in sectors of the economy that have a substantial impact on consumers' wallets. Because of the important cost implications for consumers, one critical area is health care. Health related products and services account for over 13 percent of gross domestic product, up from 10.9 percent in 1988.[49] In addition to preserving opportunities for generic drugs to compete, the FTC's enforcement agenda also includes agreements among doctors and other health professionals to restrict competition, codes of conduct containing anticompetitive provisions, and mergers of hospitals and suppliers of health care products.

Another critical sector is energy. Representing a significant portion of the total U.S. economic output, energy is a vital input to virtually all parts of the economy. The FTC has

garnered considerable experience with energy issues over the past two decades, investigating numerous oil mergers and bringing cases in appropriate instances. Recently, the FTC obtained two significant settlements to prevent loss of competition resulting from the Chevron/Texaco[50] and Valero/Ultramar Diamond[51] mergers.[52] To understand current issues involving energy markets, the agency has recently announced that we will hold a second public conference to examine factors that affect prices of refined petroleum products in the U.S. The agency held a preliminary conference on the subject last fiscal year. In addition, the FTC will continue to investigate pricing behavior, where appropriate, in energy markets. In just the past year, we investigated various price spikes or pricing anomalies in petroleum products. Staff also investigated the gasoline price spikes in the aftermath of the September 11th terrorist attacks. Thus far, we have found no evidence of collusive activity in violation of the antitrust laws. Commission investigations nonetheless both have a deterrent effect on wrongdoing and provide the basis for action when anticompetitive practices have occurred.

Yet another sector of the economy involves high tech industries. Our economy increasingly has become more knowledge-based; for some companies, patent portfolios represent far more valuable assets than manufacturing or other physical facilities. Thus, an increasing number of the FTC's competition matters require the application of antitrust law to conduct relating to intellectual property. Both antitrust and intellectual property law share the common purposes of promoting innovation and enhancing consumer welfare. On occasion, however, there have been tensions in how to manage the intersection between the doctrines, as well as questions about how best to spur innovation through competition and intellectual property law and policy. The FTC and DOJ currently are holding a series of hearings on competition and

intellectual property law and policy to help understand the interplay between intellectual property and antitrust law.[53] Issues to be addressed in the hearings include standard-setting, cross-licensing and patent pools, unilateral refusals to deal, proliferation of patents, and the changing scope of patents. In addition to the hearings, we continue to pursue antitrust investigations involving issues concerning intellectual property.

E. OUTREACH EFFORTS

The FTC will continue competition outreach to various constituencies during FY 2003. Among these efforts, the agency strives to increase understanding and awareness of important emerging industries and issues, such as business-to-business (B2B) and business-to-consumer (B2C) electronic commerce. The FTC also increases awareness of antitrust law through guidance to the business community; outreach efforts to Federal, state and local agencies, business groups, and consumers; the development and publication of antitrust guidelines and policy statements; speeches; and publications. The agency will assess the need for additional workshops, and whether its ongoing outreach efforts effectively target audiences and address critical issues in the marketplace.

IV. NEEDED RESOURCES - FISCAL YEAR 2003

To accomplish our mission in FY 2003, the FTC requests $176,509,000 and 1,074 FTE. The increase of $20,527,000 over FY 2002 includes:

- $7,352,000 for base expenses (including pay raises, non-pay inflation, increased rental of space, and increased Consumer Response Center contract costs);
- $5,000,000 for expenses related to generating a National Do-Not-Call List to protect consumers' privacy;
- $3,265,000 for systems support and the increased physical security for staff; and

- $4,910,000 to comply with proposed legislation (to require agencies to pay the full Government share of accruing costs of retirement for current CSRS employees and post-retirement health benefits).

The FTC's FY 2003 budget request is calculated based on using two sources of offsetting collections: an estimated $173,509,000 from HSR Premerger Filing Fees and an estimated $3,000,000 from a new Do-Not-Call fee. The HSR fee estimate is based on a three-tiered filing rate structure mandated by Congress, with an effective date of February 1, 2001. The new Do-Not-Call fee would be assessed, collected, and used to cover the costs of developing, implementing, and maintaining a national database of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers. This new fee structure will be subject to notice and comment as part of a rulemaking process.

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Mr. Chairman, the FTC appreciates your past support and that of this Subcommittee. I would be happy to answer any questions that you and other Members may have about the FTC's budget request and programs.

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[1] The written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or of any other Commissioner.

[2] The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*. With certain exceptions, the statute provides the agency with jurisdiction over nearly every sector of the economy. Certain entities, such as depository institutions and common carriers, as well as at the business of insurance, are wholly or partially exempt from FTC jurisdiction. In addition to the FTC Act, the FTC has enforcement responsibilities under more than 40 additional statutes and more than 30 rules governing specific industries and practices.

[3] *See, e.g.*, Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* (prohibiting deceptive or unfair acts or practices, including violations of stated privacy policies); Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (addressing the accuracy, dissemination, and integrity of consumer reports); Telemarketing and Consumer Fraud and

Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.* (including the Telemarketing Sales Rule, 16 C.F.R. Part 310) (prohibiting telemarketers from calling at odd hours, engaging in harassing patterns of calls, and failing to disclose the identity of the seller and purpose of the call); Children's Online Privacy Protection Act, 15 U.S.C. § 6501 *et seq.* (prohibiting the collection of personally identifiable information from young children without their parents' consent); Identify Theft and Assumption Deterrence Act of 1998, 18 U.S.C. §1028 (directing the FTC to collect identity theft complaints, refer them to the appropriate credit bureaus and law enforcement agencies, and provide victim assistance); Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.* (requiring financial institutions to provide notices to consumers and allowing consumers (with some exceptions) to choose whether their financial institutions may share their information with third parties).

[4] The European Commission's Directive on Data Protection became effective in October 1998, and prohibits the transfer of personal data to non-European Union nations that do not meet the European "adequacy" standard for privacy protection. To bridge different privacy approaches between the U.S. and the EU, and to provide a streamlined means for U.S. organizations to comply with the Directive, the U.S. Department of Commerce, in consultation with the European Commission, developed a "Safe Harbor" framework, which was approved by the EU in July 2000. Companies that self-certify to the Department of Commerce that they comply with the Safe Harbor Principles may be deemed by the EU to provide "adequate" privacy protection under the EU Directive. The FTC will give priority to referrals of non-compliance with safe harbor principles from EU Member States. *See* Department of Commerce's Safe Harbor Website, www.export.gov/safeharbor.

[5] *Eli Lilly & Co.*, No. 012-3214 (Jan. 18, 2002) (consent agreement accepted subject to public comment).

[6] 15 U.S.C. § 6501 *et seq.*

[7] *United States v. American Pop Corn Co.*, No. C02-4008DEO (N.D. Ia., Feb. 28, 2002) (consent decree); *United States v. Lisa Frank, Inc.*, No. 01-1516-A (E.D. Va., Oct. 3, 2001) (consent decree); *United States v. Looksmart, Ltd.*, No. 01-606-A (E.D. Va., Apr. 23, 2001) (consent decree); *United States v. Bigmailbox.com, Inc.*, No. 01-605-A (E.D. Va., Apr. 23, 2001) (consent decree); *United States v. Monarch Servs., Inc.*, No. AMD 01 CV 1165 (D. Md., Apr. 20, 2001) (consent decree).

[8] *FTC v. Boivin*, No. 8:02-CV-77-T-26 MSS (M.D. Fla., Jan. 15, 2002) (consent decree); *FTC v. Estenson*, No. A3-02-10 (DND, Feb. 5, 2002) (consent decree); *FTC v. Larsen*, No. 8:02-CV-76-T-26MAP (M.D. Fla., Jan. 16, 2002) (consent decree); *FTC v. Lutheran*, No. 02 CV 0095 K (RAB) (S.D. Cal., Jan. 18, 2002) (consent decree); *FTC v. Va*, No. 02-60062-Civ-Zloch (S.D. Fla., Jan. 18, 2002) (consent decree); *FTC v. Pacheco*, No. 02-CV-31L (D.R.I., Jan. 22, 2002) (consent decree).

[9] "Information Brokers Settle FTC Charges," FTC Press Release (Mar. 8, 2002), available at <<http://www.ftc.gov/opa/2002/03/pretextingsettlements.htm>>.

[10] 15 U.S.C. § 1681 *et seq.*

[11] *See* Telemarketing Sales Rule, 16 C.F.R. Part 310.

[12] 67 Fed. Reg. 4492 (Jan. 30, 2002).

[13] The Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801(b) and 6805(b), requires the FTC to issue a rule establishing appropriate standard for safeguards to ensure the security, confidentiality, and integrity of customer records and information.

[14] *See* Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. § 1028. This Act makes the FTC a central clearinghouse for identity theft complaints. Under the Act, the FTC is required to log and acknowledge such complaints, provide victims with relevant information, and refer their complaints to appropriate entities (*e.g.*, the major consumer reporting agencies and other law enforcement agencies).

[15] The report is available at <<http://www.ftc.gov/opa/2002/03/wireless.htm>>.

[16] *See* "FTC to Host Public Workshop on Consumer Information Security," FTC Press Release, available at <<http://www.ftc.gov/opa/2002/03/security.htm>>.

[17] *FTC v. Vital Living Products, Inc.*, Civ. No. 3:02CV74-MU (W.D.N.C., proposed consent decree filed with court, Feb. 25, 2002).

[18] *Kris A. Pletschke,* C-4040 (Feb. 22, 2002) (consent order).

[19] The top 10 targeted frauds were: Internet Auction Fraud, Internet Service Provider Schemes, Internet Web Site Design/Promotions (Web Cramming, Internet Information and Adult Services), Credit Card Cramming, Multi-level Marketing/Pyramid Schemes, Business Opportunities and Work-At-Home Scams, Investment Schemes and Get-Rich-Quick Schemes, Travel/Vacation Fraud, Telephone/Pay-Per-Call Solicitation Frauds (including modem dialers and videotext), and Health Care Frauds.

[20] *Interstate Bakeries Corp.*, File No. 012 3182 I (consent agreement accepted subject to public comment, Mar. 6, 2002); *Campbell Mithun LLC*, File No. 012 3182 (consent agreement accepted subject to public comment, Mar. 6, 2002).

[21] *FTC v. Ira Smolev*, No. 01-8922-Civ-Zloch (S.D. Fla., consent decree entered as to all except two defendants, Nov. 28, 2001).

[22] *FTC v. Access Resource Services, Inc.*, No. 02-60226 Civ. Gold (S.D. Fla., stipulated preliminary injunction entered Feb. 20, 2002).

[23] *FTC v. First Alliance Mortgage Co.*, No. SACV 00-964 DOC (MLGx) (C.D. Cal., Stipulation of Settlement and Order Preliminarily Approving Stipulated Final Judgment, Permanent Injunction, and Monetary Settlement filed March 29, 2002).

[24] Federal Trade Commission, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Sept. 2000), available at <<http://www.ftc.gov/reports/violence/vioreport.pdf>>.

[25] Conf. Rpt. on H.R. 2500 (FY 02 appropriations), H.Rep. No. 278, 107th Cong., 1st Sess. 162 (Nov. 9, 2001).

[26] Federal Trade Commission, *Marketing Violent Entertainment to Children: A Six-Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (April 2001), available at <<http://www.ftc.gov/reports/violence/violence010423.pdf>>.

[27] Federal Trade Commission, *Marketing Violent Entertainment to Children: A One-Year Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Dec. 2001), available at <<http://www.ftc.gov/os/2001/12/violencereport1.pdf>>.

[28] Internet "surfs" use new technology to detect and analyze emerging Internet problems.

[29] 15 U.S.C. § 18a, as amended, Pub. L. No. 106-553; 114 Stat. 2762 (2000).

[30] For example, the FTC's settlement agreement in *Chevron Corp./Texaco Inc.*, No. C-4023 (Jan. 2, 2002) (consent order), provided for relief in (1) retail gasoline markets in numerous metropolitan areas in various parts of the country, including Alaska and Hawaii, the western United States (including Arizona, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), and the southern United States (including Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia); (2) marketing of CARB gasoline in California; (3) refining and bulk supply of CARB gasoline for sale in California; (4) refining and bulk supply of gasoline and jet fuel in the Pacific Northwest; (5) the bulk supply of RFG II gasoline into St. Louis; (6) terminaling of gasoline and other light petroleum products in several metropolitan areas in Arizona, California, Mississippi, and Texas, and on four Hawaiian islands; (7) transportation of crude oil from California's San Joaquin Valley; (8) transportation of crude oil in the eastern Gulf of Mexico; (9) pipeline transportation of natural gas in the Central Gulf of Mexico; (10) natural gas fractionating in Texas; and (11) marketing of general aviation gasoline in 14 states (Alaska, Alabama, Arizona, California, Florida, Georgia, Idaho, Louisiana, Mississippi, Nevada, Oregon, Tennessee, Utah, and Washington).

[31] 15 U.S.C. § 18.

[32] *MSC.Software Corp.*, No. D-9299 (complaint issued Oct. 10, 2001) (alleging that a dominant supplier of a popular type of advanced computer-aided engineering software acquired its only two competitors).

[33] This fiscal year, the Commission has issued final consent orders in the following eight merger cases: *Ina-Holding Schaeffler KG/FAG Kugelgischer Georg Schafer AG*, No. C-4033 (Feb. 15, 2002); *Nestle Holdings, Inc./Ralston Purina Co.*, No. C-4028 (Feb. 8, 2002); *Diageo p.l.c./Vivendi Universal S.A.*, No. C-4032, (Feb. 8, 2002); *Chevron Corp./Texaco Inc.*, No. C-4023 (Jan. 2, 2002); *Valero Energy Corp./Ultramar Diamond Shamrock Corp.*, No. C-4031 (Feb. 19, 2002); *Koninklijke Ahold N.V./Bruno's Supermarkets, Inc.*, No. C-4027 (Jan. 16, 2002); *Metso Oyj/Svedala Industri AB*, No. C-4024 (Oct. 23, 2001); *Airgas*, No. C-4029 (Dec. 18, 2001). On March 7, 2002, the Commission accepted subject to public comment a settlement in the matter of *Deutsche Gelatine-Fabriken Stoess AG/Goodman Fielder Ltd.*, File No. 011-0117. In addition, the Commission obtained a consent decree in the matter of Hearst's acquisition of J.B.Laughery. *FTC v. The Hearst Trust*, No. 1:01CV00734 (D.D.C., Dec. 18, 2001).

[34] *MSC.Software, supra* n. 30; *Chicago Bridge Iron Co., Inc.*,Dkt. No. 9300 (complaint issued Oct. 25, 2001); *Libbey, Inc./Newell Rubbermaid, Inc.*, No. 1:02CV00060 (D.D.C., complaint filed Jan. 14, 2002).

[35] *Diageo/Vivendi* and *Deutsche Gelatine-Fabriken Stoess/Goodman Fielder, supra* n. 31.

[36] 15 U.S.C. § 18a, as amended, Pub. L. No. 106-553; 114 Stat. 2762 (2000).

[37] 16 CFR § 2.20. To date, two appeals have been filed under this procedure; both have been completed.

[38] *See* "FTC Initiates 'Best Practices Analysis' for Merger Review Process," FTC Press Release, available at <<http://www.ftc.gov/opa/2002/03/bcfaq.htm>>.

[39] Perhaps the most notable example of industry convergence and resulting clearance disputes concerns electricity and natural gas. Historically, electricity matters have been handled by the DOJ, and natural gas matters have been handled by the FTC. Convergence of these industries has led to contentious clearance disputes. Each merger of an electricity company and a natural gas company has been hotly contested by the agencies. Disputes over these convergence mergers have accounted for approximately 10 percent of all clearance disputes since the beginning of FY 2000. Moreover, to resolve clearance disputes generally, it became increasingly necessary to employ conditions -- such as Chairman Pitofsky's agreement that, in return for receiving clearance to investigate the matter, the FTC would not cite its expertise in AOL/Time Warner as a source of expertise in future clearance disputes.

[40] The number of disputes has decreased somewhat recently, particularly since Chairman Muris and Charles James assumed office last summer and resolved a clearance dispute that had lasted for more than a year. In effect, they declared a cease-fire in the clearance war while attempting to negotiate a peaceful settlement. In any event, the Commission believes that its scarce resources should be spent on investigating allegations of misconduct, and in developing appropriate expertise, rather than in fighting with the Antitrust Division. Moreover, the recent decline in clearance disputes may reflect the recent decline in merger filings. Changing market conditions could lead to an increase in merger filings and, consequently, an increase in clearance disputes.

[41] *See* Statement of Commissioners Orson Swindle and Thomas B. Leary on the Memorandum of Agreement Concerning Clearance Procedures for Investigations (Jan. 18, 2002) (stating that "We are not troubled by the process by which the Agreement was fashioned. Not only was negotiation of the Agreement with Assistant Attorney General James the prerogative of Chairman Muris; it was also simply the most effective way to get the job done. Historically, the agencies employed a procedure for dealing with clearance issues that was based on a case-by-case approach, with the Chairman and the Assistant Attorney General making the ultimate decision when necessary (with little or no involvement by other Commissioners). This long course of interagency discussion and negotiation then established "precedent" for allocating antitrust review responsibilities between the agencies -- a kind of "private law" for the kinds of matters that the Agreement was designed to describe publicly. It is proper that the agency heads were the ones to devise a new arrangement that would have injected greater efficiency and clarity into the allocating system -- a system in which the Chairman, and not other Commissioners, will continue to have operational responsibilities."), available at <<http://www.ftc.gov/opa/2002/01/ftcdojostl.htm>>.

[42] *See* Memorandum of Agreement Between the Federal Trade Commission and the Antitrust Division of the United States Department of Justice Concerning Clearance Procedures for Investigations, available at <<http://www.ftc.gov/opa/2002/02/clearance/ftcdojagree.pdf>>.

[43] *See* Statement of Commissioners Orson Swindle and Thomas B. Leary on the Memorandum of Agreement Concerning Clearance Procedures for Investigations (Jan. 18, 2002), *supra* n.38; "FTC Releases Antitrust Clearance Process Documents," FTC Press Release (Feb. 27, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance.htm>>; and "FTC and DOJ Announce New Clearance Procedures for Antitrust Matters," FTC Press Release (Mar. 5, 2002), available at <<http://www.ftc.gov/opa/2002/03/clearance.htm>>.

[44] *See* Letter from Robert Pitofsky, *et al.* to Timothy J. Muris and Charles A. James (Feb. 4, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance/multiletters.pdf>>; Letter from Roxane C. Busey, Chair, Section of Antitrust Law, American Bar Association, to Timothy J. Muris and Charles A. James (Jan. 23, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance/aba.pdf>>; and Letter from the Business Roundtable, the National Association of Manufacturers, and the U.S. Chamber of Commerce to Timothy J. Muris (Feb. 25, 2002), available at <<http://www.ftc.gov/opa/2002/02/clearance/brt.pdf>>. Of course, most of the signatories to these three letters did not possess detailed knowledge of the recent, industry-specific expertise of the FTC and the DOJ. Accordingly, they could not, and did not, opine on specific allocations between the FTC and the DOJ. Some consumer groups, however, have expressed concerns about the agreement. *See* Jeffrey Chester, Center for Digital Democracy, "FTC-DOJ Clearance Agreement Will Hurt Consumers," available at <<http://www.democraticmedia.org/news/dojclearance.html>>; Letter from Andrew Jay Schwartzman, President and CEO, Media Access Project, to Senator Ernest F. Hollings (Jan. 22, 2002), available at <<http://www.mediaaccess.org/press/hollingsletter.pdf>>.

[45] *American Home Products Corporation,* Dkt. No. 9297 (consent agreement accepted subject to public comment, Feb. 19, 2002). Complaints against Schering and Upsher-Smith are currently before an FTC administrative law judge. *Schering-Plough Corporation, Upsher-Smith Laboratories, Inc.,* Dkt. No. 9297 (complaints filed Apr. 2, 2001).

[46] In September of 2001, the FTC entered into a consent agreement with Warner Communications to resolve charges that Warner and Polygram illegally agreed to fix prices for audio and video products featuring "The Three Tenors." *Warner Communications, Inc.*, No. C-4025 (Sept. 17, 2001) (consent order). The case against Vivendi Universal S.A., the successor corporation to Polygram, is currently before an FTC administrative law judge, Dkt. No. 9298.

[47] The other two cases are *Abbott/Geneva (Abbott Laboratories*, No. C-3945 (May 22, 2000), and *Geneva Pharmaceuticals, Inc.*, No. C-3946 (May 22, 2000) (consent orders)) and *Hoechst Marion Roussel, Inc./Andrx Corp.*, No. C-9293 (May 11, 2001) (consent order).

[48] The FTC recently filed an amicus brief in the *In Re Buspirone Patent Litigation* that addresses some of these issues. The *Buspirone* litigation concerns whether Bristol-Myers Squibb Company ("BMS") violated Section 2 of the Sherman Act by making false filings with the U.S. Food and Drug Administration that caused BMS's newly issued patent to be wrongfully listed in the FDA's Orange Book in order to block generic competition to its branded drug, BuSpar. BMS argued that a claim based on its allegedly improper filing of a patent in the FDA's Orange Book could not proceed because its actions were entitled to immunity under the *Noerr-Pennington* doctrine. The *Noerr* doctrine immunizes genuine petitioning activity directed at persuading government bodies to adopt a particular course of action. In its brief, the Commission argued that Orange Book filings, even when made properly, are decidedly not "petitions." Rather, they are mechanical, informational filings that do not trigger any exercise of legal or discretionary judgment by the FDA and do not call for any agency decision-making. FDA's role in receiving and publishing Orange Book information is simply ministerial. As such, Orange Book filings are akin to tariff filings, which have consistently been held not to constitute immunized *Noerr* petitioning. The district court recently issued a decision on a motion to dismiss in this case that accepted the arguments made by the Commission and squarely held that Orange Book filings are not petitioning under *Noerr*. *In Re Buspirone Patent Litigation*, MDL Dkt. No. 1410, 2002 U.S. Dist. LEXIS 2625 (S.D.N.Y., motion to dismiss granted in part and denied in part, Feb. 14, 2002). The Commission's amicus brief is available at <<http://www.ftc.gov/os/2002/01/busparbrief.pdf>>.

[49] Katharine Levit *et al.*, "Inflation Spurs Health Spending in 2000," 21 *Health Affairs* 172 (Jan-Feb 2002).

[50] *Chevron Corp./Texaco Inc.*, No. C-4023 (Jan. 2, 2002) (consent order).

[51] *Valero Energy Corp./Ultramar Diamond Shamrock Corp.*, No. C-4031 (Feb. 19, 2002) (consent order).

[52] Additionally, in recent years, the agency has achieved significant settlements, requiring divestitures of oil fields, refineries, pipelines, and gas stations to prevent loss of competition resulting from the Exxon/Mobil and BP/ARCO mergers. *Exxon Corp./Mobil Corp.*, No. C-3907 (January 26, 2001) (consent order) and *BP Amoco p.l.c./Atlantic Richfield Co.*, No. C-3938 (Aug. 29. 2000) (consent order).

[53] *See* FTC/DOJ Hearings to Highlight Further Business and Economic Perspectives on Competition and Intellectual Property Policy," FTC Press Release (Mar. 12, 2002), available at <<http://www.ftc.gov/opa/2002/03/ftcdojhearing.htm>>; FTC/DOJ Hearings to Highlight Business and Economic Perspectives on Competition and Intellectual Property Policy," FTC Press Release (Feb. 15, 2002), at <<http://www.ftc.gov/opa/2002/02/ipsecond.htm>>; "FTC/DOJ Hearings to Focus on the Implications of Competition and Patent Law and Policy," FTC Press Release (Jan. 30, 2002), at <<http://www.ftc.gov/opa/2002/01/iphearings.htm>>; "Muris Announces Plans for Intellectual Property Hearings," FTC Press Release (Nov. 15, 2001), at <<http://www.ftc.gov/opa/2001/11/iprelease.htm>>.

Mr. WOLF. Sure. Thank you, Mr. Chairman.

I have a number of questions, and we are going to show you the video that I mentioned to you, but before I do, on the letters on the merger agreement, could you share those letters with the committee? The letters from the four previous Chairman, please?

Mr. MURIS. Yes, sir.

[The information follows:]

February 4, 2002

Charles A. James
Assistant Attorney General for Antitrust
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Timothy J. Muris
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Gentlemen:

In the United States, two separate agencies -- the Antitrust Division of the Department of Justice, which is part of the Executive Branch, and the Federal Trade Commission, which is an independent agency -- have largely co-extensive authority to enforce the antitrust laws. As a result, to avoid duplication of effort and unnecessary burden of business, it is important that there be an efficient process for determining which agency will carry out any particular investigation and then enforce the law.

Historically, the division of responsibility and authority between the two agencies has been based on the recent experience of each agency in investigating practices and transactions in particular sectors of the economy, and the need not to interfere with an investigation or oversight of a decree already ongoing in the other agency. Generally the arrangement has worked well.

Nevertheless, there are instances when it is unclear which agency should investigate a particular matter. The most challenging of these involve mergers or joint ventures between parties from different sectors of the economy where each agency has valuable past experience and where each can legitimately claim involvement or familiarity with one of the merging firms. Because of the dynamic nature of the economy and globalization of trade, these "convergence mergers" have increased significantly in recent years.

When it is unclear which agency would be most efficient in reviewing a particular transaction, there is often a delay -- on average less than two weeks but sometimes as much as 30 days -- while the proper assignment of the matter is worked out. These delays potentially impair effective antitrust enforcement and can be costly or otherwise harmful to the parties involved.

As we understand the current proposal to modify the clearance process, it would clarify historical allocations of industries and products between the agencies, and introduce clear procedures for processing those few matters that do not clearly fall within existing allocations. These are desirable objectives and could be a real contribution to good government.

We want to be clear that we take no position on whether the assignments and reassignments in the draft proposal are appropriate in light of the past experience and expertise of each agency and the future of effective antitrust enforcement. But as individuals formerly responsible for federal antitrust enforcement, we applaud this effort at clarification of areas of responsibility between the two agencies.

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/s/
John M. Nannes

As we understand the current proposal to modify the clearance process, it would clarify historical allocations of industries and products between the agencies, and introduce clear procedures for processing those few matters that do not clearly fall within existing allocations. These are desirable objectives and could be a real contribution to good government.

We want to be clear that we take no position on whether the assignments and reassignments in the draft proposal are appropriate in light of the past experience and expertise of each agency and the future of effective antitrust enforcement. But as individuals formerly responsible for federal antitrust enforcement, we applaud this effort at clarification of areas of responsibility between the two agencies.

Joel I. Klein	Robert F. Pitofsky
Sanford M. Litvack	James F. Rill
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John M. Nannes	Terry Calvani

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MAR. 1. 2002 7:15PM NO. 157 P. 2/3

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SAM BROWNBACK, KANSAS
MITCH McCONNELL, KENTUCKY

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

March 1, 2002

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Charles James
Assistant Attorney General for Antitrust
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Timothy Muris
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Gentlemen:

We write concerning the proposed agreement between the Justice Department and the Federal Trade Commission regarding the division of responsibility between the two agencies for other antitrust matters (what is commonly referred to as the "Clearance Procedure" for antitrust investigations).

We fully share with you the goal of enhancing the efficiency of the merger review process and reducing wasteful and potentially time-consuming bureaucratic contests regarding which agency reviews a particular merger or acquisition. The unique system under which both the Justice Department and FTC share responsibility for merger review and for antitrust enforcement generally makes the implementation of clear rules for quickly determining which agency is responsible for a specific matter of the highest importance.

The need for reform of the present Clearance Procedure is highlighted by your agencies' recent experience. Since the beginning of fiscal year 2000, it has taken an average of 17.8 business days to resolve the 136 matters in which both agencies asserted jurisdiction over the same transaction. We understand that, if the proposed new Clearance Procedure had been in effect, the agencies would have resolved an average of 90% of these matters within two days, and 100% of

them within ten days.

Significant delays in deciding which agency is to review a matter can be harmful to antitrust enforcement, can impose unacceptable burdens on the parties affected, and can be contrary to the public interest. With respect to merger review, under the Hart-Scott-Rodino Act, either the Justice Department or FTC must decide within thirty days of a pre-merger filing whether to request additional information (the so-called "Second Request"). If the antitrust agencies do not submit their Second Request, the transaction may proceed to closing. Extended delays caused by clearance contests rob the agencies of crucial time for investigation during the initial 30-day period and create a environment in which flawed or hastily drafted Second Requests are made simply to preserve the agency's ability to investigate the transaction. Unresolved clearance disputes are also harmful in non-merger antitrust matters, where these quarrels cause uncertainty for the affected companies and harm consumers when they delay investigations of possible competitive problems.

Your proposed agreement has the potential to greatly improve this situation. It is designed to streamline and clarify the clearance procedure and to provide strict time limits for the resolution of disputes between the two agencies. We realize that the proposed agreement's industry allocation has been a source of conflict – regarding whether it is based on an accurate assessment of agency expertise and whether some level of agency "competition" over these issues is healthy – but we fully support your goals and agree that it is in the public interest to reduce the potential for wasteful conflicts and bureaucratic infighting between the agencies.

Thank you for your attention to this matter.

Sincerely,

HERB KOHL
Chairman, Subcommittee on
Antitrust, Business Rights, and
Competition

MIKE DeWINE
Ranking Member, Subcommittee on
Antitrust, Business Rights, and
Competition

Mr. WOLF. I know this will be an issue of contention, and I would like to learn as much as I possibly can about it. I noticed in reading your testimony and the testimony of others that there was a dissension by two Commission, one was very brief, and the other was a little more detailed.

If you could, provide the subcommittee with an explanation in writing on how this clearance agreement is helpful.

If you can make the most honest presentation of why you think this is a good agreement for consumer protection.

[The information follows:]

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

For Release: March 5, 2002

FTC and DOJ Announce New Clearance Procedures for Antitrust Matters

Memorandum of Agreement Allocates Industry Sectors Between Agencies

The nation's two federal antitrust enforcement agencies, the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ), today announced that they have entered into a new agreement concerning clearance procedures for merger reviews and other antitrust matters. The Memorandum of Agreement overhauls the clearance process and for the first time formally allocates primary areas of responsibility, on an industry-wide basis, between the FTC and the DOJ. The agreement does not purport to limit the jurisdiction of either agency.

FTC Chairman Timothy J. Muris and Assistant Attorney General Charles A. James explained that the clearance system needed to be overhauled to arrest the trend toward more frequent and time-consuming clearance disputes that delay the initiation of investigations, and to allow the agencies to concentrate expertise and resources to investigate more effectively.

The agreement [http://www.ftc.gov/opa/2002/02/clearance/ftcdojagree.pdf], originally scheduled to be announced on January 17, 2002, was put on hold when there was a Congressional request to review its terms. In response to this request, during the last six weeks the FTC and the DOJ have provided extensive data and information concerning clearance procedures, delays imposed by clearance disputes, and the historical allocation of matters between the two agencies.

The FTC and the DOJ remain firmly convinced that the agreement will in fact reduce the time spent on clearance disputes, and thereby allow both agencies to enforce the antitrust laws more effectively.

"This agreement will improve our law enforcement efforts," said Charles A. James, Assistant Attorney General in charge of the DOJ's Antitrust Division. "Allocating industry sectors in a more rational manner will enable the Department to investigate more efficiently possible anticompetitive conduct affecting consumers and will provide greater certainty to the business community, all of which is good for consumers."

The FTC/DOJ clearance process was formally established in 1948; refinements were implemented in 1963, 1993, and 1995. The traditional methodology for allocating matters between the agencies has emphasized historical experience in addressing specific commercial sectors. As the boundaries that separate individual sectors have blurred in the face of rapid technological change, and as deregulation measures have allowed firms to diversify, this clearance methodology has begun to break down. In

a growing number of important economic sectors of mutual concern to the FTC and the DOJ, the effectiveness of the experience-based allocation methodology that has anchored past clearance agreements has diminished significantly.

"We see this agreement as a means of increasing the effectiveness, efficiency, and cooperation of our agencies' law enforcement activities," stated Muris. "The new clearance process will enable the agencies to determine much more quickly which agency will handle the matter, and therefore to begin and conclude investigations sooner. Consumers will benefit from the more efficient use of taxpayer money. This agreement is a good government initiative, and good government benefits everyone."

Muris and James pointed out that delays in resolving clearance disputes can result in uncertainty and increased costs for businesses, and in increased harm for consumers when possible competitive problems remain unaddressed during the clearance process. Clearance disputes have caused significant delays in both merger and non-merger antitrust enforcement efforts, and have redirected scarce agency resources away from substantive investigations. Before either agency begins an investigation, it must obtain clearance from the other agency.

An analysis of clearance delays released by the FTC on February 28, 2002, indicates that, since the beginning of fiscal year 2000, the 136 matters in which the agencies formally contested clearance took an average of three and a half weeks to resolve [http://www.ftc.gov/opa/2002/02/clearance/cleardelaystats.htm]. In another 164 matters during this period, clearance took more than one week to resolve, although no formal clearance dispute occurred. On average, these 300 matters - 24 percent of all matters for which clearance requests were filed during this period - imposed delays of three weeks. In some instances, clearance disputes have delayed investigations for several months. Under the terms of the agreement announced today, more than 80 percent of these 300 matters would have been resolved within two business days.

Muris and James agreed that even if the clearance process worked without friction, a more rational distribution of responsibility was needed. Citing design and production of automobiles and trucks as an example, the agency heads noted that these related areas of activity traditionally have been split between the FTC (cars) and the DOJ (trucks). The agreement adopted today implements a more sensible arrangement that makes the best use of the agencies' resources by combining cars and trucks under the FTC's umbrella of product groups. Numerous similar groupings appear in the agreement's industry allocations.

For example, the agreement allocates media and entertainment, an area in which both the FTC and the DOJ have experience, to the DOJ. [http://www.ftc.gov/opa/2002/03/clearance/tme.htm] Muris noted, "The agreement allocates primary responsibility for antitrust enforcement in the media and entertainment industry to the DOJ, because its expertise in this area far outweighs that of the FTC. A comparison of the relative expertise of the agencies within specific sectors of this industry further demonstrates that the DOJ is better situated to conduct these investigations. For example, the FTC's expertise in multi-channel video distribution programming - including cable and satellite - is more limited than the DOJ's. Although the FTC has investigated numerous cable transactions, most of its expertise in this area is too old to count in the clearance dispute process. In any event, the majority of the FTC's cable investigations involved only horizontal issues, and did not present the complex vertical issues raised by media mergers in the last few years."

The agreement allocates to the FTC airframes; autos and trucks; building materials; chemicals; computer hardware; energy; grocery manufacturing; the operation of grocery stores; healthcare; industrial gases; munitions; pharmaceuticals and biotechnology; professional services; the operation of retail stores; satellite manufacturing and launch vehicles; and textiles.

The agreement allocates to the DOJ aeronautics; agriculture and associated biotechnology; avionics; beer; computer software; cosmetics and hair care; defense electronics; financial services, insurance, and stock, option, bond, and commodity markets; flat glass; health insurance; industrial equipment; media and entertainment; metals, mining, and minerals; missiles, tanks, and armored vehicles; naval defense products; photography and film; pulp, paper, lumber, and timber; telecommunications services and equipment; travel and transportation; and waste.

Other provisions of the agreement address:

- the development of a clearance manual that will be posted on each agency's Web site;
- the maintenance of a common database to track Hart-Scott-Rodino filings and clearance matters;
- the designation of a dedicated clearance officer at each agency;
- weekly meetings and reports to review the clearance process and ongoing matters;
- expedited time frames for review, together with "negative option" provisions that prompt each agency to act quickly on clearance disputes or forfeit those matters to the other agency;
- clearly designated levels of review for clearance disputes;
- provisions for obtaining input from a neutral evaluator in the rare instances in which the agencies are otherwise unable to resolve a clearance dispute; and
- ongoing review of the agreement, and specifically the allocation of industries.

Letters received in recent weeks from former antitrust enforcement officials, the Chair and Ranking Member of the Senate Judiciary Committee's Antitrust Subcommittee, the Section of Antitrust Law of the American Bar Association (ABA), [http://www.ftc.gov/opa/2002/02/clearance/aba.pdf] and the business community (The Business Roundtable, the National Association of Manufacturers, and the U.S. Chamber of Commerce), [http://www.ftc.gov/opa/2002/02/clearance/brt.pdf] reflect broad and bipartisan support for the effort to improve the clearance process by allocating primary responsibility for industries in which both agencies have expertise. For example, a joint letter to Muris and James from Senators Herb Kohl (D-WI) and Mike DeWine (R-OH), respectively the Chairman and the Ranking Member of the Senate Judiciary Committee's Antitrust Subcommittee, acknowledges the "need for reform of the present Clearance Procedure" and states that the agreement "has the potential to greatly improve [the existing] situation." [http://www.ftc.gov/opa/2002/03/clearance/kohldewine.pdf]

Likewise, a letter signed by 11 former heads of the nation's antitrust agencies from the last four Administrations - Terry Calvani, David A. Clanton, Joel I. Klein, Sanford M. Litvack, A. Douglas Melamed, James C. Miller, III, John M. Nannes, Robert F. Pitofsky, James F. Rill, Charles F. Rule, and John H. Shenefield - characterizes the effort to "clarify historical allocations of industries and products between the agencies, and introduce

clear procedures for processing those few matters that do not clearly fall within existing allocations" as "desirable objectives" that could be "a real contribution to good
government."

Mr. MURIS. Yes, sir.

Mr. WOLF. We are going to show you a video.

I encourage you to be aggressive in cracking down on those who are ripping off the consumer—and we are going to show you one case in the video.

I would urge you to be more aggressive, cracking down on those you think are taking advantage of consumers; and at the same time, I encourage you to be flexible and to be a little less aggressive with honest companies. That balance is very, very difficult, and you are going to see an example on this video which I think has to be addressed.

And there was a person from the FTC quoted saying, "you don't have the authority to deal with this issue." Well, this is really a consumer protection issue. So if you don't have the authority, someone from the administration has to tell us who has the authority, or somebody from the administration has to raise their hand and say, I am going to accept the responsibility for being active in this area.

I have a couple of questions we will ask you on alcohol advertising. The frustration that I had, as a Republican, as a conservative Republican, and as a strong supporter of the administration. I wrote letters to people in the administration. Now, we have had an anthrax problem, and I mean that seriously, because the mail is not very good. I am still getting Christmas cards.

Mr. MURIS. Yes, sir.

Mr. WOLF. And, honestly, I never heard from anybody in the administration. I wrote Secretary Thompson and asked him to speak out, to use the bully pulpit, and that is your ability to use the bully pulpit. I never heard from Thompson. Never even got a letter from the Deputy Assistant Secretary for External Affairs at the Department, who just said, your letter is here and somebody is looking at it.

Yet the report that came out yesterday about the alcohol problem on college campuses, 1,400 people dying and sexual assaults. Not just somebody breaking a glass or breaking a banister, but death. Where was the Department?

So I think on this issue and other issues we just cannot lie in the grass if it is not our responsibility and say, okay, it is not mine, with the idea that somebody else will see to it. Leadership means someone has to lead and come forward.

I sense the issue on the video may not be completely yours. We are going to raise the issue with Chairman Powell of the FCC. But I would hope the administration would say, if they think this is a serious problem, if it is all true—and of course this is just a news report, and there may be some questions about it—I cannot make a judgment now. But somebody should say, okay, we are going to step forward, we ought to at least call a group together and deal with the issue.

With that, let us show you this. This was on NBC, I mean the Today Show, sometime last week.

[Video shown.]

Mr. WOLF. I would like to get your comments on it, because I think it is representative of the whole consumer protection issue.

If you are going to tell us what you plan to do to address this issue. This is not meant as any criticism of the FTC. As you know, I think the agency has to see who should be responsible. If the rapid change of technology means there is no one out there that has any ability, then somebody has to move forward and say, we are going to move into this area and seek legislation and come to the Commerce Committee, or whatever committee has jurisdiction.

With that, I would hear your response.

COMMON CARRIER EXEMPTION

Mr. MURIS. I want to make clear, for the record, to the Commerce Committee that I have been pushing that we should have jurisdiction in this area. So I want to make sure that this was your idea and that I didn't use this as an opportunity.

Mr. WOLF. Just for the record, I called you out a minute before the hearing to tell you we were showing this.

Mr. MURIS. Correct.

Mr. WOLF. I didn't want to surprise you; I don't think that is appropriate. And I was not here to embarrass you or to aggressively grill you, so I didn't know this was an area you wanted to get involved in.

Mr. MURIS. Absolutely. I have been pushing. I made a major speech a few weeks ago where I said that we need jurisdiction in this area.

What happened is, when we had one phone company, it made sense not to have the FTC involved. Our statute says we cannot investigate common carriers, and in the era of one phone company, that probably made sense.

In the era now, where you have all these long-distance companies and all these consumer—potential consumer protection problems, to exclude the expert agency in fraud and deception, I think, does not make any sense. So that is why I called for jurisdiction.

And if this is true, and I obviously don't know if it is true, but if this is true, it is exhibit A as to why the FTC should have jurisdiction.

Mr. WOLF. Now, what would the process for that be? Would it be to work with OMB?

Mr. MURIS. Sure. Obviously, the administration would be a key player in any legislative issue.

Mr. WOLF. My sense is, probably no one in the administration knows this is going on. I didn't know it was going on until the other day. But now that we all do, what is the process for addressing this issue?

Mr. MURIS. I think the process is that, having spoken to the authorizers, we need to try to move legislation that would remove that lack of jurisdiction that we have. I made that recommendation publicly.

Mr. WOLF. Well, will you pursue it?

Mr. MURIS. Yes, sir.

Mr. WOLF. And let the committee know what you are doing?

Mr. MURIS. Yes, sir, it is one of our priorities.

Mr. WOLF. We will get a copy of the video and send it to Mr. Tauzin and Mr. Hollings.

Mr. MURIS. Yes, sir.

Mr. WOLF. On the issue of intellectual property, we understand the FTC and the Antitrust Division have been conducting hearings to examine the relationship between antitrust law and intellectual property rights.

What is the purpose of those hearings and what have you found?

INTELLECTUAL PROPERTY AND ANTITRUST HEARINGS

Mr. MURIS. We found, Mr. Chairman, increasingly, antitrust cases occur at the intersection of antitrust issues and intellectual property. Because we have had several cases in that area, we thought it would make sense to step back in a nonadversarial setting, deal with the people in the Patent and Trademark Office, deal with leaders in industry, in the intellectual property bar and in the antitrust bar, and have hearings to try to discuss some common ground and common issues.

I think, as I stated, our intellectual property system is the crucial foundation of the strength of our economy, but you can have situations where intellectual property is misused and in ways that violate the antitrust laws. And for us to really make sure we are applying our laws in an appropriate way, I think these hearings will be very helpful. We are just in the middle of the hearings now.

Mr. WOLF. When are they? Where are they? How many hearings? Who has been there?

Mr. MURIS. Well, we started, I think it was in the middle of February that we had our first session. We had three former heads of the Patent and Trademark Office, myself, Bob Pitofsky, and the president of Yale University, who is leading a study for the National Academy of Sciences on intellectual property issues. We have held a series of hearings in Washington.

We went out to the University of California at Berkeley, because obviously there is that whole Silicon Valley area and then northern California and other parts of the country there are high-tech leaders. What we are doing is having sessions with industry leaders to talk about how they use intellectual property and the kinds of antitrust problems that they might see. We have had sessions with academics. We have had practice sessions with lawyers. We are having continued hearings.

We will try to wrap those hearings up in the next few months, and then I think we will take a little while to try to digest what we have. We will probably have a few more days of hearings, maybe in September, and then we will try to issue a report probably early next year.

I think a long-standing function of the Commission has been not to do just law enforcement, but to address public policy issues through reports, and that is our purpose here. Because of the growing number of cases that involve the intersection, we thought it was appropriate to step back and try to talk about the issue in a big picture sense.

Mr. WOLF. Well, the committee is going to have a hearing 2 weeks from now. On intellectual property, we would like to be kept informed of your effort.

Do you have any hearings scheduled here for Washington?

Mr. MURIS. Yes, we have quite a few hearings.

Mr. WOLF. If you can let the subcommittee know the days and dates, I would appreciate it.

Mr. MURIS. Sure.

[The information follows:]

February 6:
Welcome and Overview of Hearings

2:00 p.m.

FTC - Room 432

Timothy Muris, Chairman, Federal Trade Commission

Charles James, Assistant Attorney General for Antitrust, Department of Justice

James Rogan, Under Secretary of Commerce for Intellectual Property and Director of the U. S. Patent and Trademark Office

The Honorable Pauline Newman, U.S. Court of Appeals for the Federal Circuit

Robert Pitofsky, Professor of Law, Georgetown University Law Center, and former Chairman of the Federal Trade Commission

Q. Todd Dickinson, Howrey, Simon, Arnold & White, and former Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office

Gerald Mossinghoff, Oblon, Spivak, McClelland, Maier & Neustadt, and former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks

Richard Gilbert [PDF 128K], Professor of Economics, University of California, Berkeley, and former Deputy Assistant Attorney General for Antitrust, Department of Justice

Richard Levin, President, Yale University

Transcript of February 6, 2002 Proceedings [PDF 149K]

February 8:
Foundational Issues in Patents and Antitrust

9:00 a.m. - 12:30 p.m.

Concurrent Sessions

These sessions will lay the foundation for all future hearings discussions. They will provide essential background information and identify critical issues.

Patent Law for Antitrust Lawyers (FTC - Room 432)

Scott A. Chambers [PDF 239K], Arnold and Porter, Adjunct Faculty Member at Georgetown Law Center and The George Washington University Law School

Lawrence M. Sung [PDF 51K], Assistant Professor, University of Maryland School of Law

John R. Thomas [PDF 16.7M], Associate Professor, The George Washington University Law School

Transcript of February 8, 2002, Proceedings,Patent Law for Antitrust Lawyers [PDF192KB]

Antitrust Law for Patent Lawyers (FTC - Room 332)

William E. Kovacic [PDF 9M], General Counsel, Federal Trade Commission

Willard K. Tom [PDF #1 17M] [PDF #2 5M], Morgan Lewis & Bockius

Transcript of February 8, 2002, Proceedings, Antitrust Law for Patent Lawyers [PDF184KB]

February 20:
Economic Perspectives on Intellectual Property, Competition and Innovation (FTC - Room 432)

9:30a.m. - 12:30p.m.

These sessions will explore what economic learning reveals, and does not answer, regarding the relationships between intellectual property

and innovation, and between competition and innovation.

Intellectual Property and Innovation

Wesley M. Cohen, [PDF 35K] Professor of Economics and Social Science, Carnegie Mellon University

Robert E. Evenson, Professor of Economics, Yale University

Edmund W. Kitch, Joseph M. Hartfield Professor of Law, University of Virginia School of Law, and Visiting Professor, Georgetown University Law Center (Spring 2002)

James A. Langenfeld, [PDF 18K] Director, LECG, LLC.

Maureen A. O'Rourke, Professor of Law, Boston University School of Law

Transcript of February 20, 2002, Proceedings, Competition & Intellectual Property Law & Policy in the Knowledge-Based Economy [PDF 318KB]

2:00 p.m. - 4:30 p.m.

Competition and Innovation

Shane Mitchell Greenstein, [PDF 62K] Elinor and Wendall Hobbs Professor of Management and Strategy, Northwestern University, Kellogg School of Management

Margaret E. Guerin-Calvert, [PDF 8.7M] Principal, Economists, Inc.

Joshua Lerner, [PDF 16.7M] Professor of Investment Banking, Harvard Business School

Stan Liebowitz, [PDF 251K] Professor of Managerial Economics, The University of Texas at Dallas, School of Management

Philip B. Nelson, [PDF 264K] Principal, Economists, Inc.

Janusz Ordover, Professor of Economics, New York University

Lawrence White, [PDF 24K] Arthur E. Imperatore Professor of Economics, New York University, Leonard N. Stern School of Business

February 25-28: Economic Perspectives and Real-World Experiences with Patents

With the support of the Competition Policy Center and the Berkeley Center for Law & Technology of the University of California at Berkeley, all sessions will be held in the Wells Fargo Room, Cheit Hall, Haas School of Business, 2220 Piedmont Avenue, University of California, Berkeley.

Daily sessions will focus on business and other testimony regarding the "real-world" experience with patents and competition, as well as explore economic and business perspectives on intellectual property, competition, and innovation.

February 25

1:00pm - 4:30pm:

Economic Perspectives on Intellectual Property, Competition, and Innovation

Opening Speech
Mozelle W. Thompson, Commissioner, Federal Trade Commission

Ashish Arora, Visiting Associate Professor of Economics, Stanford University, and Associate Professor of Economics and Public Policy, Carnegie Mellon University

Kenneth Arrow, Nobel Memorial Prize and Joan Kenney Professor of Economics Emeritus, and Professor of Operations Research Emeritus, Stanford University

Richard J. Gilbert, Professor of Economics, University of California, Berkeley

Mark Lemley, Professor of Law, and Director, Berkeley Center for Law & Technology, University of California, Berkeley

Daniel L. Rubinfeld, Robert L. Bridges Professor of Law, and Professor of Economics, University of California, Berkeley

Howard Shelanski, Acting Professor of Law, and Director, Berkeley Center for Law &

Technology, University of California, Berkeley

Hal R. Varian, Dean, School of Information Management and Systems, and Professor, Haas School of Business and Department of Economics, University of California, Berkeley

February 26

9:00am - 12:30pm: **Economic Perspectives on Intellectual Property, Competition, and Innovation**

John H. Barton, George E. Osborne Professor of Law, Stanford University Law School

Bronwyn H. Hall, (attachment) Professor of Economics, University of California, Berkeley

Robert P. Merges, Wilson Sonsini Goodrich & Rosati Distinguished Professor of Law and Technology, and Director, Berkeley Center for Law and Technology, University of California, Berkeley

Suzanne Anderson Scotchmer, Professor of Economics and Public Policy, University of California, Berkeley

Robert D. Stoner, Vice President, Economists, Inc.

David J. Teece, Mitsubishi Bank Professor of International Business and Finance, University of California, Berkeley

2:00pm - 4:30pm: **Business Perspectives on Patents: Biotech and Pharmaceuticals**

David W. Beier, Partner, Hogan & Hartson, Counsel to Biotechnology Industry Organization

Lee Bendekgey, General Counsel and Executive Vice President, Incyte Genomics

Robert Blackburn, Vice President, Chief Patent Counsel, Chiron Corp.

David J. Earp, Vice President, Intellectual Property, Geron Corp.

Michael K. Kirschner, Vice President Intellectual Property, Immunex Corp.

Ross Oehler, Vice President, U.S. Patent Operations, Aventis Pharmaceuticals Inc.

February 27

9:30am - 12:30pm: **Business Perspectives on Patents: Software and the Internet**

Yar R. Chaikovsky, General Counsel, Zaplet, Inc.

Bradford L. Friedman, Director of Intellectual Property, Cadence Design Systems, Inc.

R. Jordan Greenhall, Chief Executive Officer, Divx Networks

Joshua Kaplan, President and Chief Executive Officer, Intouch Group, Inc.

Robert H. Kohn, Vice Chairman, Borland Software Corp.

Paul Misener, Vice President, Global Public Policy, Amazon.com

David C. Mowery, Milton W. Terrill Professor of Business, University of California, Berkeley

James Pooley, Partner, Milbank, Tweed, Hadley & McCoy

2:00pm - 5:00pm: **Diverse Perspectives on Patents**

Greg Aharonian, Editor, Internet Patent News Service

Luis Mejia, Senior Associate, Office of Technology Licensing, Stanford University

John Love, Director for Cryptography and Security Technology Center, United States Patent and Trade Office

Rick D. Nydegger, Shareholder, Workman, Nydegger & Seeley

John Place, Executive Director, Center for Internet and Society, Stanford University Law School

Carl Shapiro, Transamerica Professor of Business Strategy and Professor of Economics, Haas School of Business, and Director, Institute of Business and Economic Research, University of California, Berkeley

Robert P. Taylor, Partner, Howrey Simon Arnold & White, LLP

David J. Teece, Mitsubishi Bank Professor of International Business and Finance, University of California, Berkeley

Les J. Weinstein, Partner, Squire, Sanders, & Dempsey

February 28

9:00 am to 9:30 am: **Independent Inventor Perspective on Patents**

Lawrence J. Udell, Executive Director, Intellectual Property International, Ltd.

9:30am - 11:30am: **Economic and Other Perspectives on Patent Standards and Procedures**

Joseph Farrell, Professor of Economics, University of California, Berkeley, and Chair, Competition Policy Center

Justin Hughes, Visiting Professor of Law, University of California, Los Angeles

John Love, Director, Technology Center 2100, United States Patent and Trade Office

Robert P. Merges, Wilson Sonsini Goodrich & Rosati Distinguished Professor of Law and Technology, and Director, Berkeley Center for Law & Technology, University of California, Berkeley

1:00pm - 4:00pm: **Business Perspectives on Patents: Hardware and Semiconductors**

Robert Barr, Vice President, Worldwide Patent Counsel, Cisco Systems, Inc.

Peter N. Detkin, Vice President, Legal and Government Affairs and Assistant General Counsel, Intel Corporation

Stephen P. Fox, Associate General Counsel and Director, Intellectual Property, Hewlett-Packard Company

Bronwyn H. Hall, Professor of Economics, University of California, Berkeley

Julie Mar-Spinola, Chief Litigation and Intellectual Property Counsel, Atmel Corporation

Joel Poppen, Director, Patent Litigation and Licensing, Micron Technology, Inc.

Desi Rhoden, President and Chief Executive Officer, Advanced Memory International, Inc.

Frederick J. Telecky, Jr., Senior Vice President and General Patent Counsel, Texas Instruments

March 19-20:

Business and Other Perspectives on Real-World Experience with Patents

Similar to the Berkeley sessions, these sessions will focus on testimony regarding "real-world" experience with patents and competition.

March 19
(FTC - Room 432)

9:15 am - noon: **Diverse Perspectives on Patents**

Lynn J. Alstadt, Shareholder, Buchanan Ingersoll and Adjunct Professor, Duquesne University

F. M. Ross Armbrecht Jr., President, Industrial Research Institute

Makan Delrahim, Republican Chief Counsel, Senate Committee on the Judiciary

Joanne M. Hayes-Rines, Vice President, United Inventors Association

Brian Kahin, Visiting Professor & Director, Center for Information Policy, University of Maryland

James Love, Director, Consumer Project on Technology

Ronald Myrick, Chief Patent Counsel, General Electric; President-Elect, American Intellectual Property Law Association

Cecil D. Quillen, Jr., Senior Advisor, Cornerstone Research
Additional Material: ***Simplification & Reform*** ©1993

1:30 - 4:45 pm:

Business Perspectives on Patents: Biotech and Pharmaceuticals

Robert A. Armitage, Vice President and General Patent Counsel, Eli Lilly and Company

Monte R. Browder, Senior Intellectual Property Counsel, Ivax Corporation

Barbara Caulfield, Executive Vice President and General Counsel, Affymetrix, Inc.

David Coffin-Beach, President, Torpharm, Inc.

Gregory J. Glover, Partner, Ropes & Gray, Counsel to Pharmaceutical Research and Manufacturers of America

Nancy J. Linck, Senior Vice President, General Counsel and Secretary, Guilford Pharmaceuticals

Rochelle K. Seide, Partner, Baker Botts, LLP

Edward A. Snyder, Dean and Professor of Economics, University of Chicago Graduate School of Business

March 20:
(FTC - Room 432)

9:30 am - noon:

Business Perspectives on Patents: Hardware and Semiconductors

George B. Brunt, Senior Vice-President, General Counsel and Secretary, Alcatel USA

Daniel McCurdy, President and Chief Executive Officer, ThinkFire

Richard L. Thurston, [***Statement***] Vice President and General Counsel, Taiwan Semiconductor Manufacturing Company, Ltd.

Harry Wolin, Vice President of Intellectual Property, Advanced Micro Devices, Inc.

Gary Zanfagna, Associate General Counsel for Antitrust, Honeywell International

Rosemarie Ziedonis, Assistant Professor of Management, The Wharton School of the University of Pennsylvania

1:30 - 4:00pm:

Business Perspectives on Patents: Software and the Internet

Edward J. Black, President and CEO, Computer & Communications Industry Association

Dan L. Burk, Julius E. Davis Professor of Law, University of Minnesota Law School

R. Lewis Gable, Partner, Cowan, Liebowitz & Latman, P.C.

Scott Sander, President, Chief Executive Officer and Co-Founder, SightSound

Technologies

Mark Webbink, Senior Vice President and General Counsel, Red Hat, Inc.

Additional sessions will be held at the FTC, Room 432, during April and May, as indicated below. The panelists for these sessions will be announced as further information becomes available. Topics and dates for concluding sessions in June will be announced at a later time.

April 9-11:

Economic and Other Perspectives on Patent Standards and Procedures

These sessions will explore economic and other perspectives, and the approaches that they suggest, regarding patent standards and procedures.

April 9:
(FTC - Room 432)

9:30 a.m. - 12:00 p.m.: **Cross-Industry Perspectives on Patents**

Dean Alderucci, Chief Counsel of Intellectual Property, Walker Digital

Timothy D. Casey, Partner & Chairman of Intellectual Property and Technology, Fried, Frank, Harris, Shriver & Jacobson

Les Hart, Vice President of Intellectual Property, Harris Corporation

Nancy J. Linck, Senior Vice President, General Counsel and Secretary, Guilford Pharmaceuticals

Mary U. Musacchia, SAS Institute, Counsel to the President/CEO and Director, Government Relations & Public Policy

Richard Stallman, President, Free Software Foundation

April 10:
(FTC - Room 432)

9:30 a.m - 12:30 p.m.: **Substantive Standards of Patentability**

2:00 p.m. - 4:30 p.m.: **Patenting Procedures, Presumptions, and Uncertainties**

Introductory Speaker: ***Kenneth M. Frankel*** (Finnegan, Henderson, Farabow, Garrett & Dunner), speaking on behalf of the American Intellectual Property Law Association

Panelists:

Mark D. Janis, Professor of Law, University of Iowa College of Law

Salem M. Katsh, Partner, Shearman & Sterling

Jay P. Kesan, Assistant Professor of Law, University of Illinois College of Law

F. Scott Kieff, John M. Olin Senior Research Fellow in Law, Economics, and Business, Harvard Law School, and Associate Professor, Washington University School of Law

Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office

Roger W. Parkhurst, Partner, Parkhurst & Wendel, L.L.P., and President, American Intellectual Property Law Association

Arti K. Rai, Assistant Professor of Law, University of Pennsylvania Law School

Suzanne Andersen Scotchmer, Professor of Economics and Public Policy, University of California, Berkeley

John R. Thomas, Associate Professor of Law, The George Washington University Law School

April 11:
(FTC - Room 432)

9:30 a.m. - 12:00 p.m.: **Patentable Subject Matter - Business Method and Software Patents**

Mark D. Janis, Professor of Law, University of Iowa College of Law

Brian Kahin, Visiting Professor & Director, Center for Information Policy, University of Maryland

Jeffrey R. Kuester, Partner, Thomas, Kayden, Horstemeyer & Risley

Jeffrey P. Kushan, Partner, Powell, Goldstein, Frazer & Murphy LLP

Rick D. Nydegger, Shareholder, Workman, Nydegger & Seeley

John R. Thomas, Associate Professor of Law, The George Washington University Law School

Robert Young, Chairman, Center for Public Domain, and Chairman, Red Hat, Inc.

2:00 p.m. - 4:30 p.m.: **Patent Criteria and Procedures - International Comparisons**

Kenneth J. Burchfiel, Partner, Sughrue Mion, PLLC

Mark D. Janis, Professor of Law, University of Iowa College of Law

Stephen B. Maebius, Partner, Foley & Lardner

Rick D. Nydegger, Shareholder, Workman, Nydegger & Seeley

Robert L. Stoll, Administrator for External Affairs, United States Patent and Trademark Office

John R. Thomas, Associate Professor of Law, The George Washington University Law School

April 17:
(Great Hall, Department of Justice Main Building)

"This session will be held in the Great Hall of the Department of Justice's Main Building, located at 950 Pennsylvania Avenue, N.W., Washington, DC. The general public and press are invited to attend. However, for security purposes, notice of your intention to attend the hearings and your date of birth must be given to the Department at least 24 hours in advance of the hearing date. This information should be provided to Kathleen Leicht of the Antitrust Division via e-mail at kathleen.leicht@usdoj.gov, or telephone at (202) 514-7018. Interested persons will not be admitted to the Main Justice Building without advance notice.

Visitors must enter the Main Building at the 950 Pennsylvania Avenue entrance and are required to show two forms of identification, one of which must contain a photograph. Please allow sufficient time to permit getting through the security procedures. Seating will be on a first-come, first-served basis."

Patent Pools and Cross-Licensing: When Do They Promote or Harm Competition?

Participants in this session will discuss the benefits and competitive concerns of business arrangements in which multiple parties hold related intellectual property rights.

9:00 a.m. - 11:30 a.m. and 1:00 p.m. - 4:30 p.m. **Patent Pools and Cross-Licensing: When Do They Promote or Harm Competition?**

Robert Potter, Chief, Legal Policy Section, Antitrust Division--Opening Remarks

Garrard R. Beeney, Partner, Sullivan & Cromwell

Jeffery Fromm, Senior Managing Counsel, Hewlett-Packard Company

Baryn Futa, Manager and Chief Executive Officer, MPEG LA

Peter Grindley, Senior Managing Economist, LECG, Ltd, London

Christopher J. Kelly, Special Counsel, Litigation Department, Kaye Scholer LLP

James Kulbaski, Partner, Oblon Spivak McClelland Maier & Neustadt, P.C.

Josh Lerner, Jacob H. Schiff Professor of Investment Banking, Harvard Business School

David McGowan, Associate Professor of Law, University of Minnesota School of Law

M. Howard Morse, Partner, Drinker, Biddle & Reath, LLP

Joshua Newberg, Assistant Professor, Robert H. Smith School of Business, University of Maryland

Jonathan Putnam, Assistant Professor of the Law and Economics of Intellectual Property, University of Toronto School of Law

Lawrence M. Sung [Document 2], Assistant Professor of Law, University of Maryland, Baltimore

April 18:
(Great Hall, Department of Justice Main Building)

"This session will be held in the Great Hall of the Department of Justice's Main Building, located at 950 Pennsylvania Avenue, N.W., Washington, DC. The general public and press are invited to attend. However, for security purposes, notice of your intention to attend the hearings and your date of birth must be given to the Department at least 24 hours in advance of the hearing date. This information should be provided to Kathleen Leicht of the Antitrust Division via e-mail at kathleen.leicht@usdoj.gov, or telephone at (202) 514-7018. Interested persons will not be admitted to the Main Justice Building without advance notice.

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Standard-Setting Practices: Competition, Innovation and Consumer Welfare

Participants in this session will discuss the antitrust treatment of common practices used by organizations to set standards that incorporate intellectual property. Participants will address effects on innovation and product market competition.

9:00 a.m - 9:30 a.m. **Introduction**

Mark Lemley, Professor of Law, Boalt Hall, University of California, Berkeley

9:30 a.m. - 12:30 p.m. **Intellectual Property Strategies in Standards Activities**

Michael Antalics, Partner, O'Melveny & Myers, LLP

Carl Cargill, Director Corporate Standards, Sun Microsystems, Inc.

Donald R. Deutsch, Vice President, Standards Strategy and Architecture, Oracle Corp.

Ernest Gellhorn, Professor, George Mason University School of Law

Peter Grindley, Senior Managing Economist, LECG, Ltd, London

Mark Lemley, Professor of Law, Boalt Hall, University of California, Berkeley

Amy A. Marasco, Vice President and General Counsel, American National Standards Institute

Richard T. Rapp, President, National Economic Research Associates

David J. Teece, Mitsubishi Bank Professor of International Business and Finance, University of California, Berkeley

Dennis A. Yao, Associate Professor of Business and Public Policy and Management, The Wharton School, University of Pennsylvania

2:00 p.m. - 5:00 p.m. **Licensing Terms in Standards Activities**

Stanley M. Besen, Vice President, Charles River Associates

Daniel J. Gifford, Robins, Kaplan, Miller & Ciresi Professor of Law, University of Minnesota School of Law

Richard Holleman, [Document 2] Industry Standards Consultant

Allen M. Lo, Director of Intellectual Property, Juniper Networks, Inc.

Mark R. Patterson, Associate Professor of Law, Fordham University School of Law

Scott K. Peterson, Corporate Counsel, Hewlett-Packard Company

Lauren J. Stiroh, Vice President, National Economic Research Associates

Daniel Swanson, Partner, Gibson, Dunn & Crutcher LLP

Andrew Updegrove [Document 2], Partner, Lucash, Gesmer & Updegrove LLP

Daniel Weitzner, Director of Technology and Society Activities, World Wide Web Consortium

May 1:
(Great Hall, Department of Justice Main Building)

"This session will be held in the Great Hall of the Department of Justice's Main Building, located at 950 Pennsylvania Avenue, N.W., Washington, DC. The general public and press are invited to attend. However, for security purposes, notice of your intention to attend the hearings and your date of birth must be given to the Department at least 24 hours in advance of the hearing date. This information should be provided to Kathleen Leicht of the Antitrust Division via e-mail at kathleen.leicht@usdoj.gov, or telephone at (202) 514-7018. Interested persons will not be admitted to the Main Justice Building without advance notice.

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The Strategic Use of Licensing: Is There Cause for Concern about Unilateral Refusals to Deal?

Participants in this session will discuss the extent to which refusals to license intellectual property create competitive concerns, how recent case law on refusals to license is being interpreted, and whether this recent case law appropriately balances the interests of intellectual property law and antitrust law.

9:30 a.m. - 12:00 p.m. and 1:30 p.m. to 4:00 p.m.

The Strategic Use of Licensing: Is There Cause for Concern about Unilateral Refusals to Deal?

Ashish Arora, Associate Professor of Economics and Public Policy, Carnegie Mellon University

Jonathan Gleklen [Document 2], Partner, Arnold & Porter

Paul Kirsch, Partner, Townsend, Townsend and Crew LLP

Benjamin Klein, Professor of Economics, University of California, Los Angeles

Jeff MacKie-Mason, Arthur W. Burks Professor of Information and Computer Science and Professor Economics and Public Policy, University of Michigan

A. Douglas Melamed, Partner, Wilmer, Cutler & Pickering

Carl Shapiro, Transamerica Professor of Business Strategy and Professor of Economics, Haas School of Business, and Director, Institute of Business and Economic Research, University of California, Berkeley

Christopher J. Sprigman, Counsel, King & Spalding

Mark Whitener, Antitrust and General Counsel, General Electric

John Shepard Wiley Jr., Professor of Law, University of California, Los Angeles

May 2:
(Federal Trade Commission, Room 432)

A Competition View of Patent Settlements

Participants in this session will explore the efficiencies and competitive concerns that patent settlements may generate in a variety of industries and factual settings.

Patent Settlements: Efficiencies and Competitive Concerns

9:00 - 9:30 a.m.: **Introductory Presentations**

George S. Cary, Partner, Cleary, Gottlieb, Steen & Hamilton

Steven A. Stack, Jr., Partner, Dechert

9:30 a.m. - noon: **Panel Discussion**

Thomas O. Barnett, Partner, Covington & Burling

Joseph F. Brodley, Professor, Boston University School of Law

George S. Cary, Partner, Cleary, Gottlieb, Steen & Hamilton

Robert N. Cook, Drinker, Biddle & Reath LLP

Richard A. Feinstein, Partner, Boies, Schiller & Flexner LLP

Phillip A. Proger, Partner, Jones, Day, Reavis & Pogue

Prof. Carl Shapiro, Haas School of Business, University of California, Berkeley

Steven A. Stack, Jr., Partner, Dechert

May 14:
(Great Hall, Department of Justice Main Building)

"This session will be held in the Great Hall of the Department of Justice's Main Building, located at 950 Pennsylvania Avenue, N.W., Washington, DC. The general public and press are invited to attend. However, for security purposes, notice of your intention to attend the hearings and your date of birth must be given to the Department at least 24 hours in advance of the hearing date. This information should be provided to Kathleen Leicht of the Antitrust Division via e-mail at kathleen.leicht@usdoj.gov, or telephone at (202) 514-7018. Interested persons will not be admitted to the Main Justice Building without advance notice.

Visitors must enter the Main Building at the 950 Pennsylvania Avenue entrance and are required to show two forms of identification, one of which must contain a photograph. Please allow sufficient time to permit getting through the security procedures. Seating will be on a first-come, first-served basis."

9:00 a.m. - 12:00 p.m. **Antitrust Analysis of Specific Intellectual Property Licensing Practices**

Participants in this session will analyze practices such as package licensing, grant back and methods of extending the life of intellectual property rights.

1:30 p.m. - 4:30 p.m. **Practical Issues Encountered in Antitrust Analysis of Licensing Practices**

Participants in this session will discuss what standards should be used to determine whether the licensed intellectual property right would have foreclosed the licensee from being an actual or likely potential competitor with the licensor in the absence of the license. (These sessions have been rescheduled. They were originally to occur on April 16, 2002.)

May 22-23:

An International Comparative Law Perspective on the Relationship Between Competition and Intellectual Property

Participants in these sessions on May 22 and 23 will discuss competition law approaches that are presently in place or are under consideration in jurisdictions outside the United States.

May 22:
(Great Hall, Department of Justice Main Building)

"This session will be held in the Great Hall of the Department of Justice's Main Building, located at 950 Pennsylvania Avenue, N.W., Washington, DC. The general public and press are invited to attend. However, for security purposes, notice of your intention to attend the hearings and your date of birth must be given to the Department at least 24 hours in advance of the hearing date. This information

should be provided to Kathleen Leicht of the Antitrust Division via e-mail at kathleen.leicht@usdoj.gov, or telephone at (202) 514-7018. Interested persons will not be admitted to the Main Justice Building without advance notice.

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Mr. WOLF. What can you do to address the issue, other than a report? Because this is a major issue; it is our economy. With regard to the number of companies, there are some in my district, but also around the country, and this is our standard, our opportunity. We are less and less making hard things with steel and materials. We do not want to lose our intellectual property rights.

What do you think the FTC can do? What do you think the government can do? Are you going to come up with recommendations?

Mr. MURIS. We didn't go into this hearing with any preconceived ideas of where we were going to come out. We want to let the evidence speak for itself. But if the evidence warrants, there are several places where we might go. The Antitrust Division of DOJ and the FTC issued joint intellectual property guidelines in terms of antitrust in 1995. If we find ways those guidelines should be modernized, we would certainly do that.

We have a series of cases that I mentioned involving the relationship between generic and branded drugs. Some of the hearings will deal with that. We have cases dealing with the standard-setting process. And we are hoping to gather information that will help us understand the background for those cases, so when we do our investigations we will be even more informed.

We obviously are looking at issues in terms of the Patent and Trademark Office, about how the patent process works. They have been extremely cooperative. Jim Rogan, the new head——

Mr. WOLF. He has already testified.

Mr. MURIS. Yes, well, he made a speech at our first hearing. He has been extremely cooperative with us, and so has his staff.

ANTITRUST

Mr. WOLF. Before I recognize Mr. Serrano, on the antitrust enforcement and mergers and your agreement, tell us a little bit about it. We are going to look at your paper, but tell us why you think this makes sense and tell us why two commissioners submitted dissenting testimony. Can you tell us what their concerns are?

Mr. MURIS. Sure. Thank you. Because we have two antitrust agencies that enforce the same law, and because the law says only one of us can look at it, we have to have a process by which we clear mergers to each other.

For decades, that has been a secret process where the Commission and the Justice Department haven't told people precisely how the process occurred and which industries went to which agency. Because the process began to break down——

Mr. WOLF. You mean when the merger was filed, you didn't know if FTC was going to review it?

Mr. MURIS. Many lawyers in Washington received a lot of money beforehand by trying to predict where the merger would go. Now, in many cases, it was clear. The Justice Department has always done agriculture and it has always done steel. The FTC has always done automobiles, for example. But as industries began to converge, the FTC historically or more recently, has done hardware, and the DOJ has done software. That is not a very clean distinction. Lots of mergers involve that. As industries began to converge, more and more fights would occur.

Probably one of the most prominent examples of these fights was, FTC always did all of energy except for electricity, and that was fine, as long as you didn't have electricity companies and natural gas companies merge. When they started to merge, both agencies would fight over clearance. And the fights were real fights. There would be essay writing contests, people would argue with each other, and it would poison the relationship between the two agencies.

The fight over the AOL-Time Warner case, I think, was one of the most bitter fights in the history of the clearance process. This all went on under the radar screen, because obviously both agencies didn't want to let the world know they were spending resources fighting with each other.

When we arrived, I found out from Bob Pitofsky that he and Joel Klein had tried hard to settle this problem and to say the FTC will do this and the DOJ will do that and we will stop fighting. The fights caused a poisonous relationship and they also caused delay.

We found that in about a quarter of the matters in the last 2 years before we arrived there had been delay in the clearance process. And the delay causes a problem because, one, you are not investigating; and two, in the merger area, the two agencies have—and this is a technical law—but the two agencies have 30 days to decide who is going to investigate.

If you spend those 30 days fighting with each other instead of investigating, you come up against the time where on the 30th day you have to decide whether you issue a request for additional information. That request for additional information is extremely burdensome to business.

If you can use the 30 days to decide whether you should issue the request or not, there are occasions when we decide not to issue a so-called "request for additional information." Well, if you are spending the 30 days fighting with the Antitrust Division, then neither of you can investigate before the 30th day is up, and you are left—on rare occasions the agencies were left—at the end of the period where they had no choice but to issue a so-called "second request." So we thought when we arrived that we would put that to an end.

Charles James, the head of the Antitrust Division, and I were close friends, and we found this dispute which I mentioned, that had gone on for over a year, that dispute was one that we resolved quickly. But that meant for one whole year neither agency could investigate a potential antitrust problem because they could not agree on who would do it.

I don't think that makes a lot of sense. That is why I think we have broad support from the business community, we have broad support from former heads of the antitrust agencies, including Bob Pitofsky and Joel Klein, who signed a letter saying they thought this was a good thing.

The issue in controversy is that Senator Hollings would prefer the FTC review media mergers. Well, historically, the Antitrust Division has done almost all of the media mergers. But because the FTC had done one of the last media mergers, the AOL-Time Warner case, Senator Hollings wants the FTC to do those.

Now, because the AOL-Time Warner case was so contentious—and this shows you how convoluted the process got—Bob Pitofsky promised that in the future, when you had disputes over who should do media mergers, the FTC would not claim that it had done the AOL-Time Warner case. So for purposes of deciding who would do future cases, we pretend that the FTC had never done AOL-Time Warner.

Well, those kinds of promises became increasingly necessary because the process had become so contentious, so we decided to start over again. We have a process now where clearances are done in 2 days. We have announced to the world how the process works. We have announced to the world who has what industries, and Senator Hollings would prefer that we do media mergers. One of the reasons that Justice has done media mergers is because Justice does not have this common carrier exemption. And, increasingly, telecommunications and media firms are merging. It was the Justice Department that broke up AT&T.

In the criteria for doing mergers before the agreement that we just reached, there was a 1993 agreement that said mergers should be done on the basis of experience. Because the Justice Department has so much experience in telecommunications, and telecommunications and media are merging, that is one of the reasons why the Justice Department has overwhelmingly handled this area and not the Federal Trade Commission.

So that is a long-winded answer, but it is, unfortunately, a complex issue.

Mr. WOLF. No, that's okay.

Mr. Serrano.

Mr. SERRANO. Mr. Chairman, thank you.

Well, I don't know that you were prepared to comment on NBC going back on the alcohol ads, and how that affects their purchase of Telemundo in terms of, will they then be behaving the same way on Telemundo?

And this is an issue Ms. Roybal-Allard had been a leader on. I wanted her to know I asked that question.

ALCOHOL ADVERTISING

Mr. MURIS. Yes, sir. I was certainly glad, and because legally I think it would have been extraordinarily difficult to treat hard liquor separate from beer and wine, I think as a law enforcement agency, our hands were tied. As a parent, I was certainly very glad that NBC reversed its decision. I do not know what NBC's policy is, but I will be glad to check, in terms of Telemundo.

[The information follows:]

Question. (Rep. Serrano/Tr. 5, 28–29) NBC has purchased Spanish language cable station Telemundo. Will Telemundo follow NBC's alcohol advertising policy?

Answer. On April 15, 2002, NBC finalized its acquisition of Telemundo. NBC has made no announcement regarding its commercial advertising plans for these stations.

Mr. SERRANO. Okay.

One quick question. Do you know historically why you were not given jurisdiction at all over common carriers?

COMMON CARRIER EXEMPTION

Mr. MURIS. I think it was probably because when the law was passed, the one phone company was heavily regulated already and there was not all this competition. Historically, until the last 30 years or so, you had long distance, where a lot of these problems have occurred, being performed by AT&T; and AT&T was heavily regulated, both locally and by the FCC.

Of course, that is the world in which the statute was created, the exemption was created, and that world bears no relation to the world we have now. And I think that TV show really demonstrated the potential problems.

Mr. SERRANO. I was looking at the list of the areas that were divided up between DOJ and FTC, and I noticed, for instance, you have computer hardware and they have software; you have grocery manufacturing and they have agriculture. Now, I see a similarity between those, but then, why on earth did you give up beer? But anyway, that is subject for another day. A lot of sports fans will be asking that question.

ANTITRUST

Mr. MURIS. If I can just comment, most of these allocations were based on, historically, who has done the particular area. And the DOJ have, by historical accident as much as anything else, had several investigations involving beer, including mergers. Now, obviously, this agreement doesn't affect consumer protection, it just affects antitrust.

Mr. SERRANO. Well, I have no feelings on that one. Just trying to score some funny points with the chairman. We have a sense of humor here.

But hardware or software, there is a relationship. Why not under one umbrella?

Mr. MURIS. Absolutely. And, frankly, the agreement almost cratered over hardware and software, and we created a committee called the convergence committee because we could not agree on how to define hardware and software. This is an area of constant dispute between the two agencies. And, quite frankly, in our agreement, we have separate paragraphs devoted to hardware and software. We could not really agree, but rather than blow up the whole possibility of an agreement over that, we decided to punt it to what we called a "convergence committee."

Because, quite frankly, you are absolutely right. That distinction is not a distinction that will resolve who does what.

Mr. SERRANO. Yeah, just like agriculture and groceries. I grew up in New York City. I thought all food grew in supermarkets anyway. I found out later it was different.

Okay, I understand what the problems are. You are probably doing a great job of trying to settle all these disputes and trying to do this; but I just think, that hardware and software one just doesn't make any sense.

Mr. MURIS. You are absolutely right.

Mr. SERRANO. Let me take you to another issue. On this national Do Not Call List, if you could, just kind of briefly tell us what the issue is here and what you are trying to accomplish.

And let me tell you that I am one who feels somewhat guilty when I get upset at people calling me, since we are in a profession where we mail, we call, we stop people in front of subway stations and beg them to vote for us, at supermarkets, at malls. I guess I know when to stop. When a person looks at me, I say, okay, drop it.

These folks don't know when to drop it. Maybe that is the difference.

TELEMARKETING

Mr. MURIS. Well, when I went through my confirmation process and became chairman, it was clear the FTC had become a very prominent player in the consumer privacy issue. But during my confirmation process, something I thought was very odd happened. Privacy was defined as dealing with notice and choice legislation on the Internet. And however important one thinks that issue is, I think privacy has a wide variety of dimensions.

So we are focusing not on telling Congress what it should do, but on what we can do. And that is why we are bringing a lot more cases, and that is why in this area we have the authority to do this national Do Not Call List. If you look at the hierarchy of problems in the privacy world, I think what people care about is consequences of privacy violations.

Obviously, the worst kinds of problems are problems that involve physical security with stalking, things like that. You have economic security problems with identity theft. But you also have just a disruption in your life that can occur from privacy violations; and in the aggregate, the disruption that can occur from the telemarketing calls is significant.

So I thought it made a lot of sense to make this proposal. We are in rulemaking now and we will decide, based on our rulemaking records, exactly how we should proceed.

Mr. SERRANO. But how do you envision this Do Not Call List working? Who gets on the list?

Mr. MURIS. Well, it would be up to individuals. We fortunately have many states that already have such lists and we have been able to talk to them about how their lists work.

We are now in the process of dealing with contractors. We are working on the mechanics. Like I say, this is all in the rulemaking record. We don't have the ability to reach all of the calls because of the common carrier exemption; the FCC would have to adopt a similar rule. We hope, if we adopt a rule, the FCC would as well.

The Patriot Act gave us more power over charities in terms of their calls. The one area where we clearly don't have jurisdiction, and I would be surprised if we got it, was the area you mentioned in terms of calls involving political campaigns. But we think in the aggregate that we will probably be able to reach, assuming the other agencies like the FCC go along, about 80 percent of the phone calls.

Mr. SERRANO. Now, your budget assumes a new fee, a Do Not Call Fee, to offset the continuing cost of the Do Not Call List. Who would be assessed this fee and how much would the fee be?

Mr. MURIS. That is something we are asking for comments on in the context of rulemaking. There are thousands of telemarketers.

We think it would be a fairly small amount and it would be assessed to the telemarketers.

Mr. SERRANO. All right. I have no more questions at this time, Mr. Chairman.

Mr. WOLF. Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. Thank you, Mr. Chairman. My line of questioning is going to deal with the whole issue of underage drinking. But first I really want to commend Chairman Wolf for his leadership and strong advocacy against underage drinking and those issues that contribute to the seriousness of this problem. You have really been a champion Mr. Chairman.

As you know, our children are continuously bombarded with alcohol advertising; and in fact, in the year 2000, the beer industry spent over $700 million on advertising. The very glitzy and hip beer commercials often provide an extremely powerful and primary source of education on alcohol for our young people.

In the FTC's report of 1999, which was entitled Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers, the FTC recommended strengthening and improving measures in the alcohol beverage industry's advertising practices to ensure they do not appeal directly or indirectly to underage consumers. Among those recommendations was the establishment of a third-party review mechanism and the tightening of current lenient, voluntary industry standards for the placement of ads that might reach a substantial number of underage consumers.

I think the recommendations are good. However, to the best of my knowledge, the FTC really has not followed up on these recommendations; and my question is, what is the FTC doing in that area and why hasn't it been more aggressive in pushing for the adoption of these recommendations?

[The information follows:]

Question. (Rep. Royball-Allard/Tr. 34–35) Why hasn't the FTC been more aggressive in encouraging alcohol advertisers to adopt the 1999 Alcohol Report's recommendations?

Answer. Following the 1999 issuance of the Alcohol Report, the Commission staff encouraged alcohol companies to adopt the Report's recommendations. The staff spoke to industry members and others regarding the importance of the Report's recommendations for improvement in self-regulation. In addition to meeting with individual alcohol companies and the major trade associations, the staff made several presentations at regional and national alcohol regulatory conferences. Although no segment of the industry implemented the third party review program the report recommended, individual companies did respond to the report by making other improvements in their ad placement and advertising review process. Among other things, some adopted or reiterated policies specifying a higher adult audience composition standard and requiring post-placement audits, and the Wine Institute modified its advertising code in response to the Report, including adopting of a provision specifying that the audience for alcohol ads should contain at least 70 percent adults.

In addition, this past week, Coors Brewing Company announced that it will implement a dispute resolution program through the Counsel of Better Business Bureaus under which the CBBB would review unresolved consumer complaints about Coors' advertising against an advertising pledge adopted by Coors. I commend the BBB and Coors for their efforts and believe that the program will provide valuable information about the feasibility of this approach.

Mr. MURIS. I actually had a meeting last week. We had a meeting with one of the beer companies and with the Better Business Bureau. I do think that at least one of the companies, one of the major companies, is going to move on adopting some of those recommendations.

I think it is quite sensible to have more third-party resolutions. There is a whole system that is done through the Better Business Bureau looking at complaints about non-alcohol advertising; and I think we are hoping that if one of the major companies adopts it, then that will put more pressure on the others.

Ms. ROYBAL-ALLARD. Your recommendations concerning the placement of alcohol ads include tightening the current industry standards pertaining to the percentage of underage viewers that are likely to view the ads. The Beer Institute standards presently allow that half of the audience could be underage. Mothers Against Drunk Driving recently recommended guidelines that would set a standard of 90 percent adult viewers during any alcohol advertising.

Could you tell me what FTC considers to be a fair standard?

Mr. MURIS. I certainly haven't looked at the implications of the Mothers Against Drunk Driving standard. I know the FTC report, and I cannot recall the exact numbers, the FTC report recommended further tightening, as you mentioned, but I would have to go back and look at the report to see what we said about that.

Ms. ROYBAL-ALLARD. Could you get back to me on that?

Mr. MURIS. Sure, be glad to.

[The information follows:]

Question. (Rep. Roybal Allard/Tr. 36) What percentage of an audience for alcohol ads should be underage?

Answer. The Commission has not set any particular audience percentage as appropriate for the marketing of age restricted products like alcohol. The FTC has considered whether advertising appears to be directed to an underage audience based on a combination of its content and placement. Among the relevant facts are the percentage of the audience under 21; the total number of minors reached; whether the content is youth-oriented; and the popularity with minors and apparent ages of the characters or performers.

When the Commission issued its 1999 Alcohol Report, it looked at the self-regulatory codes of the beer, spirits, and wine industries. At that time, the codes required that no more than 50 percent of the audience for alcohol advertising be under 21. Noting that several alcohol companies already followed stricter internal standards, restricting ad placement to media with an adult composition of 60 to 75 percent (*i.e.*, 25 to 40 percent underage), the Alcohol Report urged industry members to raise the standards for placement of alcohol ads and to follow other "best practices" designed to limit underage exposure to alcohol ads. Alcohol Report at 9–10.

Since that report, individual alcohol companies have adopted or reiterated policies specifying a higher adult audience composition standard, and the Wine Institute revised its advertising code to specify that adults should comprise at least 70 percent of the audience. Companies also have improved informal audits designed to ensure compliance with these internal standards. The report notes that underage audience composition limits are more likely to be effective if coupled with other "best practices" identified in the 1999 Alcohol Report, that is, periodic reviews of past placement together with a prohibition on placement of ads on the weekly television series most popular with teens.

Ms. ROYBAL-ALLARD. Also, in the same 1999 report I cited earlier, it found that half of the alcohol companies included in the report violated their own industry standards by repeatedly showing ads to audiences with a majority of underage audience, or that they

failed to provide adequate information to determine whether or not they were in compliance. Yet, in spite of this report, the FTC concluded that the industry generally complies with existing self-regulatory standards.

Can you explain this conclusion, in light of the fact that the report also cites these other two points?

Mr. MURIS. Yes. I was certainly not a member of the Commission when that report was issued, so it would be difficult for me to say exactly what they were thinking. But having read the report, I think that they thought that, on balance, the provisions of the self-regulatory code were followed.

But I would be glad to have the people who were involved in writing the report communicate with you as to what they thought the basis for their conclusion was.

Ms. ROYBAL-ALLARD. I really would appreciate that, because just in looking at the report and the conclusion, it doesn't seem to make sense.

Mr. MURIS. Sure.

[The information follows:]

Question., (Rep. Royball-Allard/Tr. 37) The 1999 Alcohol Report concluded that in the majority of instances alcohol advertisers followed their self regulatory codes, but it does not appear that this conclusion was supported by the text of the report or the underlying data. What is the basis for this conclusion in the Alcohol Report?

Answer. The FTC report *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers* (September 1999), conducted at the request of the House and Senate Appropriations Committees, evaluated alcohol industry compliance with voluntary self-regulatory policies pertaining to placement and content of advertising, as well as product placement in programming, online advertising, and college marketing. The Report sets forth both its conclusions and basis for those conclusions.

I was not a member of the Commission when the report was written. I understand, however, that following review of special reports submitted under oath by eight alcohol companies, the Commission found that in general self regulation plays an important role in the industry's efforts to address concerns that alcohol advertising not be directed to an underage audience. More specifically, the report concluded that:

> The [alcohol] company special reports make clear that most industry members seek to comply with current code requirements. They instruct those that prepare and place the ads, design the web pages, and handle the product placements, that it is important to comply with the code provisions. Despite their efforts, however, compliance is not universal. Indeed, in the preparation of this report, a number of instances of code violations were uncovered.

For example, the Alcohol Report noted that four of the eight companies surveyed had data demonstrating compliance with the industry standards for advertising placement, two did not have such data, and two others submitted data showing that they were not in compliance with the standards. Accordingly, the Report recommended not only that companies set higher standards for ad placement, but that they conduct regular audits of a sample of past placements to verify compliance with policies.

Ms. ROYBAL-ALLARD. The FTC report also recommends that a third-party review mechanism be put in place. Do you believe that a board created and approved by the alcohol companies themselves would truly be independent and given the powers to engage in meaningful enforcement; or do you believe that it would take an executive order or some kind of legislative action to create a truly independent review board with real power and enforcement authority?

Mr. MURIS. Well, it obviously would depend on the nature of the board. But as I mentioned, the Better Business Bureau already has this self-regulatory system that I think works quite well in an independent sense and I think has real promise in this third-party self-regulatory arena.

Ms. ROYBAL-ALLARD. Okay. In terms of this self-regulatory board, the board itself, what would ensure it would be not so much independent but that it would be unbiased in its actions?

Mr. MURIS. Let me tell you how the Better Business Bureau process works now, because it really was an early example of self-regulation, and I think it works very well.

Companies frequently complain about each other's advertising, and they have a procedure where it is less formal than a court, but people go and they make presentations. There are some former FTC Commissioners. They have lots of people who are potential panelists to review the ads. And the people tend to be from a wide variety of walks of life. They are independent of the companies that are being reviewed.

There is a review process, an appeals process, and because it involves so many different companies and people who have a tie to one of the disputants are removed, I think the process works quite well.

Ms. ROYBAL-ALLARD. The Office of National Drug Control Policy has a successful antidrug media campaign that is targeted at our Nation's youth, which is funded at close to $200 million every year. Unfortunately, this campaign does not include alcohol, even though it is the drug of choice for the majority of our young people.

Do you think there should be a similar government media campaign on alcohol to counterbalance the messages that kids are getting from alcohol ads promoting drinking?

Mr. MURIS. Well, I don't know the specifics of those funding decisions, but I do know that the evidence shows that public service announcements aimed at things like safe driving activities have an impact; and I do know the evidence shows, in terms of cigarettes, that public service announcements on television that talked about the problems with cigarettes had an impact.

Again, I don't know about these funding issues, but I would think that evidence shows that would be a very good thing to do.

Ms. ROYBAL-ALLARD. I have another question, but I will wait until the second round.

Mr. WOLF. Let me just follow up and say I think it does make sense. Ms. Roybal-Allard offered an amendment in the committee 2 years ago, which I supported and would support again. It is a gateway. The amendment was a very moderate amendment, modest, if I might say. It only would allow the advertising for those age 13, not 14. We are not targeting 15 and 16. It is still against the law, but only 13.

So I think you might want to look at that and give her an answer because that may give her the inspiration or the information to come back and look at the issue again because of this report. I think you ought to take this report home and read it. It is pretty frightening, far beyond what I thought.

I had been in an accident with a drunk driver. My wife and one of my children were in the accident with me. So I had been thinking in terms of drunk driving, but when you read this report, it also discusses date rape. It is violence.

So the gentlelady has a very good idea, I think you have a good record. You probably know these issues better than anybody. I think there can be difference of opinion in all those issues, but if you were to look at it and say that would make a difference, I would think that would certainly give Mrs. Roybal-Allard a lot of additional information on this issue if she were ever to offer her amendment again.

Mr. MURIS. I will be glad to do that.

[The information follows:]

Question. (Chairman Wolf/Tr. 16–17, 40–43). Have you read the Post story on college drinking and what should be done about it? Should there be a government media campaign, like the "Truth" campaign, to counterbalance alcohol advertising?

Answer. The Post reported on a study providing estimates about the prevalence of injuries due to college drinking. This study was issued to accompany a significant new report of the National Institute on Alcohol Abuse and Alcoholism's Task Force on College Drinking, published April 9, 2002.

The report of the NIAAA Task Force, "A Call to Action: Changing the Culture of Drinking at U.S. Colleges," marks the completion of a four year study of college drinking conducted by NIAAA. The report makes recommendations for college administrators and researchers seeking to address high-risk college drinking. Its primary recommendation is that organizations conduct scientifically valid research on the effectiveness of alcohol prevention programs, and that colleges rely on strategies shown by research to be effective. Additionally, while noting that research on prevention programs is incomplete, the report ranks the effectiveness of current strategies to reduce high-risk college drinking.

High-risk college drinking takes a heavy toll of students and the community as a whole. NIAAA and its Task Force on College Drinking are to be commended for the completion of this important effort. I support the recommendation that policymakers focus on prevention policies that valid research shows is effective.

Several government entities, including NIAAA and the National Highway Transportation Administration ("NHTSA"), as well as many private entities, currently disseminate a substantial amount of information on this subject. NHTSA data that drunk driving deaths among youth are down in part because young people are less likely to drive after drinking indicate that prevention efforts are important. The FTC is a strong believer in the value of consumer education, and the NIAAA report stated that "conducting marketing campaigns" was a promising approach to "correct student misperceptions about alcohol use on campus."

Mr. WOLF. Mr. Cramer.

Mr. CRAMER. Thank you, Mr. Chairman, and I want to say on this issue of underage drinking issue that you and Ms. Roybal-Allard have taken such a strong position on it. I want to make sure I understand this. The 1999 FTC report, did that look at the advertising practices of all alcohol, beer, wine, spirits, all alcohol?

ALCOHOL ADVERTISING

Mr. MURIS. Yes. Though obviously there is much more advertising on a national level, in particular, of beer, but my understanding was, the report was before I was a member of the Commission, that it was addressed broadly.

Mr. CRAMER. And in that same study, when advertising occurs, it can occur on TV, it can occur on radio, newspapers——

Mr. MURIS. Magazines.

Mr. CRAMER. Magazines as well. Was any advertising medium treated any differently in that report? Was TV treated differently

than radio, magazines, newspapers in the evaluation of advertising issues?

Mr. MURIS. I do not think so. I think they were addressing—like the questions that were just asked in terms of the placement, they were looking at the placement. There are services that can give you some idea of the readership of magazines, just as with the viewership of television.

Mr. CRAMER. Obviously the impact of TV is much greater, but nevertheless, all focus could be moved from one to the other——

Mr. MURIS. Yes.

Mr. CRAMER. I want to move now to the privacy issue. In your prepared statement, you address three categories that you are working on to increase privacy protection. I want to talk about the Children's Online Privacy Protection Act. Could you expand on what plans you have to increase the enforcement of that Act?

CHILDREN'S ONLINE PRIVACY PROTECTION ACT

Mr. MURIS. Well, we have—it is an important statute, a new statute as you know. We have just, in the last year, brought several cases, received civil penalties, and we have a multifaceted strategy. The strategy is to bring cases and to educate people. We are doing both of those. Compliance has increased dramatically. We have a report which we are about to issue on that. We have an active staff in the area and we will continue to do that.

Mr. CRAMER. I want to stay on the issue of children and this time, on-line gambling. We have the voluntary action that the on-line gambling industry is taking, which is a good start, but I don't think that is enough. What do you think about that and what do you have in mind to curb on-line gambling by children?

ON-LINE GAMBLING

Mr. MURIS. That is where we started with the industry. We will see what sort of compliance that increases. A problem on the Internet that is generic to all sorts of issues, and why I mentioned in my testimony that we are increasing our efforts internationally is that more and more problems on the Internet are coming from outside the United States, and I think it is going to be a long haul, but in the antitrust world, it took about 15 years to really have good international cooperation on cross-border price fixing.

I am hoping we can do the same thing in the consumer protection world, but that it won't take 15 years, but only 3 to 5 years. We are starting with bilateral cooperation and we have done this with Canada. And in the telemarketing world, the U.S. is very successful in crackdowns on telemarketers. Many of them went to Canada and we are now cooperating with Canadian authorities. I think, unfortunately, the same thing would happen in other fraud areas and on issues like gambling.

Mr. CRAMER. The operation in top ten dot coms, that involved other countries as well, did it not?

Mr. MURIS. Sure.

Mr. CRAMER. Did that involve Canada?

Mr. MURIS. Yes.

Mr. CRAMER. Do you feel like the Internet law enforcement efforts of the FTC—as I understand, since 1994, you brought 222

Internet-related law enforcement actions against 688 defendants. Is that adequate? Do you plan to increase that?

INTERNET LAW ENFORCEMENT TO INCREASE

Mr. MURIS. We do plan—one of the things that has happened in the last few years, the Commission is growing. This current budget would keep us at a level of about 1074 FTE, but last year, fiscal year 2001 was the first fiscal year the FTC had an FTE over 1,000 since 1988, and one of the priorities is to go after Internet fraud. And one of the things we are also asking for is the ability to upgrade our computer facilities.

The Commission has now created a database, for both identity theft and other areas, where we record complaints from all over the country and some from outside the United States. We have over 400 law enforcement agencies that can access that database, and quite frankly if we don't take steps to improve how we are keeping that database, it is going to be in danger of collapsing. So one of the things we have asked for is more money. I think this is an enormously effective enforcement tool and we are a leader in providing the information to law enforcement agencies.

We have trained hundreds of law enforcement officials on how to go after fraud on the Internet and how to go after specific problems. I think it is one of the best things the FTC has done and in the computer world it requires money and that is one of the things we have asked for.

Mr. CRAMER. It is a very difficult category enforcement. I was a prosecutor in my prior life, and this is a new category of crime that would be very difficult, and probably time consuming and expensive for prosecutors to be involved in.

Mr. MURIS. Yes. And we have an excellent career staff. The woman that was talking about the common carriers on TV earlier, has been at the FTC for over 20 years. She is head of the marketing practices unit, and she is very good in this whole area. We have put someone new in charge of our whole computer area, and I think she will do an outstanding job. But I think the future of FTC law enforcement is really going to be using these high-tech tools to do a better job, and the Commission has made a great start, but I think it needs to put a lot of effort into it.

Mr. CRAMER. Thank you, Mr. Chairman.

Mr. WOLF. Thank you, Mr. Cramer. The Do Not Call List program requested in your budget, how would the program work and how would you enforce the Do Not Call program?

PROPOSED DO-NOT-CALL-LIST

Mr. MURIS. The way we envision it to work—and as I said, we are still in rule-making. These comments will go on our public rulemaking record. The way we envision it to work is that individuals, either through the telephone or on-line, will sign up for the list. We are exploring whether to offer consumers an intermediate option where perhaps we are discussing various options.

Right now they can get calls about 13 hours a day, 7 days a week. Maybe they just want to receive calls one or two nights a week; so we are exploring that option as well. But individuals who telemarket will have to comply with the Do Not Call list.

So they will have to exclude these phone numbers, and under the Telemarketing Sales Act, the States themselves can actually enforce the Act. So we are hoping, through our own enforcement and through the active participation of the States, to be able to quickly enforce the law. We have had very good luck under the other parts of the telemarketing sales rule.

Mr. WOLF. Some States have had these laws. How would you work with the States? Would your program preempt State laws?

Mr. MURIS. That is one of the issues. I don't believe in preemption for preemption's sake, and it may be possible to work out an arrangement where we can have very close cooperation. One of the advantages that we have of being on the timeline we are on now is, many States have biannual legislatures. We will finish our rule, if indeed we decide to promulgate the rule this year, and whatever needs to be done by the States or whatever the States choose to do—many of the States may choose, that do not have Do Not Call, may choose to make it their own law so that they can enforce it locally.

Their legislatures will be in session early next year, virtually all the States, where they will be able to take those steps. But we are spending a lot of time on the issue of how to coordinate with the States.

Mr. WOLF. Does the FTC have jurisdiction over the intrastate calls?

Mr. MURIS. No.

Mr. WOLF. So would a consumer have to sign up on a list to be protected from intrastate calls?

Mr. MURIS. My understanding is that there is very little in the States now, and there are about 20 States that have do not call lists. Very little enforcements involves intrastate calls. Obviously, if the State wants to, it could have a separate list dealing with intrastate calls, but my understanding is that the vast majority of what the States are doing now is interstate calls.

Mr. WOLF. Your budget request assumes you will collect $3 million to offset the costs of operating this program, and if the cost of the program is $5 million, why wouldn't you set the fee to collect $5 million?

FUNDING

Mr. MURIS. Well, when that number was put together, quite frankly it was with OMB last November and December. As we go through the process, we are going to have a much more refined estimate, and we certainly would propose that we pay for the entire program.

Mr. WOLF. Okay. In fiscal year 2003, CBO estimates that $150 million in premerger filing fees will be available for the FTC. However, the FTC is requesting $171 million. What is the justification for requesting funding in excess of the level fees anticipated to be collected? You commented earlier that mergers were down.

ANTITRUST ENFORCEMENT

Mr. MURIS. I understand. One thing that had happened with the merger wave, the FTC historically, in its antitrust mission, has had about a 50/50 split between mergers and nonmergers. Because of

the merger wave, mergers crowded out nonmerger cases. So we think that it would be more appropriate to return to the more historical split——

Mr. WOLF. So 50 percent of your work has been mergers?

Mr. MURIS. Historically it would be about half and half. But with the merger wave it became, close to three quarters was mergers. So the FTC was really doing less nonmerger enforcement, and we think there are lots of good things in the nonmerger area. One thing I didn't mention is we just took our first consent involving physician price-fixing. We are finding at all levels of health care, health care costs are exploding again, and we are now putting very large resources into the health care area, and we haven't been able to do that outside of pharmaceuticals because of the merger wave.

In terms of mergers, despite the decline in the merger wave, complex merger investigations are still occurring, and we have a very high level of enforcement underway. We don't require quite the resources we had in the past, but the resources we require are still significant in that area. And finally, the whole budget had been funded entirely by these fees, including consumer protection.

Obviously, our consumer protection work has nothing to do with the level of merger activity in the economy, and I know this would the first time in a while that the committee would fund the FTC outside of the fees, but we would hope you would do that because of most of our work has nothing to do with the level of mergers.

Mr. WOLF. A couple more questions and then I will recognize Mr. Serrano. Building security, your budget requests $2.1 million for physical security upgrades to the FTC headquarters building. While security, including the protection of Federal employees, residents, people working and the visiting in the area should be the highest priority, I am concerned that we are balkanizing the city. In some places, there are jersey wall or planters; other places have concrete pipe that they have cut in half, other places they have metal barriers.

Are you going to coordinate your security efforts? Right now you can't go in front or in back of the White House. I happen to live in the area, and my constituents come into town. You can't go down 9th Street by the FBI, which I understand. You can't go up to Capitol Hill in certain areas. You have to go through security, jersey barriers, and I know that the Architect of the Capitol has done a good job but there doesn't seem to be any coordination in the city as to style of barriers.

So you are getting jersey barriers, concrete pipe, metal barriers? There doesn't seem to be anyone in the city looking at how all this gets tied together. I hope the committee will be able to fund this need. We certainly want to protect your people, the people at the FTC. But as the head of the agency, how will you look at what kind of barriers you have, and what you do for your building, both with how it fits in from a visual point of view, but also for safety and from a traffic pattern point of view?

SECURITY

Mr. MURIS. One of the surprises as Chairman in the post-September 11 world is how much time I have had to spend on this security issue. It is not something I would have expected a year ago.

It is an important issue. My understanding from talking to the people at OMB and the meetings we have been in is that they are trying to coordinate these issues, and I will go back and check on that. Because of where we sit at the tip of the Federal Triangle——

Mr. WOLF. You are right there.

Mr. MURIS. Yes. We are in a pretty volatile position, and an explosion, a serious God-forbid explosion up here could blow out a lot of windows down where we are, and one of the things we are doing is trying to get glass that will prevent injuries. Some of the barriers that you are talking about, but I certainly understand the problem of balkanization, and I would hope that that will not occur. We are working with GSA. My understanding is that GSA is trying to coordinate the sort of planters, which is one of the things we are——

Mr. WOLF. Can you tell us who is doing that? I sent a letter to the White House several weeks ago asking that they appoint someone either in the White House or in the administration to look at the issue both from a safety and anti-terrorism aspect, and also from an appearance aspect. Last Monday I came downtown, and I took two of my grandkids to the Smithsonian. We went all over the city and each agencies' security is all different. Every agency has a different barrier, a different planter, this street is closed, you can't go up that street. I think one person from GSA and maybe from the White House should bring it together. I shouldn't get into evacuation plans, but, I mean, who is responsible for what agency? How do you know whether you should evacuate or not? Do you know? Does St. James call you on the phone?

Mr. MURIS. I can remember we certainly didn't receive a lot of guidance on September 11.

Mr. WOLF. Has it increased since then?

Mr. MURIS. I was in a meeting recently on that subject, and I am told again by our internal people that we think we have good coordination there. We have our own internal evacuation plan, of course. And on your more general question, my understanding, and I will get back to you, is that the planters that we have requested will be in a coordinated way through GSA, but I will check on that.

[The information follows:]

Question. Who at GSA is coordinating the FTC's perimeter security to assure it aesthetically blends with the Archives, Smithsonian and other related Federal Triangle projects?

Answer. Pending the appropriation of requested funds in FY 2003, FTC staff have had preliminary discussions with General Services Administration on perimeter security of our 600 Pennsylvania Avenue building.

A contact with GSA regarding security is Wendell Shingler, Assistant Commissioner, GSA's Office of Federal Protective Service, at (202) 501–0907.

A second contact is John Cogbill, Chairman of the National Capital Planning Commission, at (202) 482–7200. The NCPC is apparently working with GSA and other Federal agencies on an "Urban Design and Security Plan."

The NCPC has informed us that the "Plan" will identify a design framework for security measures around federal facilities in the federal triangle. We understand that the GSA's use of jersey barriers and planters is an interim measure that will be better coordinated when the "Plan," scheduled to be completed later this year, is approved and funded.

Mr. WOLF. Your location is particularly important for both location, if something happens, but also because millions of people go by your building. When was your building built?

Mr. MURIS. It was built in the 1930's, part of the Depression work projects.

Mr. WOLF. People see your building and you want it to blend in with other buildings in the area. You are not very far from the Smithsonian?

Mr. MURIS. Sure. We are right across the street.

Mr. WOLF. Across from the Archives?

Mr. MURIS. Sure.

Mr. WOLF. We will try to write a letter, maybe a call. We will wait for you to tell us what GSA is doing on this issue. Perhaps we will try to get everyone to come together. We will certainly try to meet your needs with regard to security.

Mr. MURIS. I appreciate that, Mr. Chairman.

Mr. WOLF. And I would encourage, obviously, that you pick security measures that fit in with the building next door and the one across the street. I think across the street at the Smithsonian is jersey barriers.

Mr. MURIS. I think that is what they have up now. I think those are going to be coordinated, and they are temporary, but I don't know that for a fact.

Mr. WOLF. I want to discuss the on-line sale of Oxycontin and then I want to recognize Mr. Serrano, and Congressman Rogers, who has done a lot of work in the area of drugs and Oxycontin.

Oxycontin is a miracle drug that is beneficial for someone dying of cancer. Clearly it does amazing things with regard to alleviating pain. You just have to take one a day rather than every four hours or more often. Mr. Rogers pointed out and he had some examples here on-line pharmacy advertisement on the Internet showing that Oxycontin is available without a prescription. Given the FTC's jurisdiction to regulate marketing practices that cause, or are likely to cause, substantial consumer injury, have you looked at the Oxycontin issue? Have you looked at the purchasing of these prescription drugs which are very powerful? They have devastated two communities. The other side of the coin is that this is a very good drug that can help someone who is dying of cancer and is in severe pain. It can be a Godsend. The other side of the coin is in southwest Virginia. It is coming into my congressional district, Loudoun County, quite extensively. I think you live in Virginia, don't you?

Mr. MURIS. Yes sir, Oakton.

Mr. WOLF. You are actually a constituent. You can exercise your rights and vote against me.

Mr. MURIS. I wouldn't do that. I am actually still getting mail from both you and Mr. Davis.

Mr. WOLF. You are still in my congressional district until January 3 of next year. Loudoun County had four robberies a month ago during one weekend. The Target pharmacy in Reston was robbed on a Sunday afternoon for Oxycontin. That is how powerful the drug is. So if you could look at this issue and make some comments.

Mr. MURIS. Yes, sir. I will be glad to do that.

Mr. WOLF. Can you deal with this issue?

ONLINE PHARMACIES

Mr. MURIS. We certainly have authority on on-line pharmacies in terms of deceptive advertising and fraudulent marketing practices. Obviously in terms of the issues of whether a prescription is required or not, we don't have that authority in terms of the medical profession, but——

Mr. WOLF. Oxycontin is a drug that requires a prescription. If you can look at it and maybe let Mr. Rogers' office know.

Mr. MURIS. Yes, sir.

[The information follows:]

Question. What is the FTC's position to the illegal sale of OxyContin on the Internet?

Answer. OxyContin (oxycodone HCI controlled-release) is a prescription drug indicated for the management of moderate to severe pain when a continuous, around-the-clock analgesic is needed for an extended period of time. It also is a Schedule II controlled substance under the Controlled Substances Act. Accordingly, although the Federal Trade Commission (FTC) has the authority to act against an Internet website making false or misleading marketing claims,[1] at the federal level, the Drug Enforcement Agency (DEA)[2] and Food and Drug Administration (FDA)[3] have primary responsibility for the regulation of the online prescribing and dispensing of this drug.

The FTC staff has conducted a limited search for websites purporting to sell OxyContin. We identified a number of websites purporting to offer services or publications that offered to provide consumers information on how to order prescription drugs, including OxyContin, from foreign pharmacies without a prescription. This was not an exhaustive search and we did not find any domestic sites purporting to dispense OxyContin. Because OxyContin is a controlled substance, we did not attempt to order it over the Internet. The information we have collected will be forwarded to the DEA and FDA.

The online sales of prescription drugs have been of concern for a number of years. In March 2000, the Department of Justice issued a report entitled, *The Electronic Frontier: The Challenge of Unlawful Conduct Involving the Use of the Internet: A Report of the President's Working Group on Unlawful Conduct on the Internet* which, in part, outlined the application of existing laws to online sales of prescription drugs. The relevant sections of that report are attached for your information.

In addition, a number of Federal agencies, including the FTC, FDA, DEA, Department of Justice, and U.S. Customs, formed an interagency working group to coordinate and share information concerning the online sales of drug products. The next scheduled meeting of the working group is April 25th. The FRC has requested that the issue of the online sale of controlled substances be included on the agenda for that meeting.

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[1] See 15 U.S.C. §§45(a) and 52. As an example, in FTC v. Rennert (CV–S–00–0861JBR)(D.Nev.)(July 6, 2000), the Commission alleged that defendants falsely represented that their customers were served by a clinic with physicians and an on-site pharmacy. According to the Commission's complaint, defendants' customers were not served by a medical clinic or an on-site pharmacy. Defendants employed one physician in another state to review customers' medical questionnaires.

[2] See 21 U.S.C. §§822, 829, 841, 958. The DEA has addressed the issue of the sale of controlled substances online, stating that "[i]t is illegal to receive a prescription for a controlled substance without the establishment of a legitimate doctor/patient relationship, and it is unlikely for such a relationship to be formed through Internet correspondence alone." DEA–19N, Dept. of Justice, Drug Enforcement Administration; 66 Fed. Reg. 21181 (2001).

[3] See 21 U.S.C. §§331(a), 353, and 353(b). The Federal Food, Drug, and Cosmetic Act provides that prescription drugs may be dispensed only with a valid prescription under the professional supervision of a physician or other practitioner licensed to administer the drug.

APPENDIX D – INTERNET SALE OF PRESCRIPTION DRUGS AND CONTROLLED SUBSTANCES

1. Nature of the Potentially Unlawful Conduct

Over the past year, more and more consumers have purchased prescription drugs over the Internet. According to one recent study, online pharmacies sold more than $1.9 billion in prescription drugs, over-the-counter drugs, cosmetics, vitamins, toiletries, and other health and beauty products in 1999.[1] The ability to order prescription drugs over the Internet from online pharmacies can obviously provide significant societal benefits. Individuals who might otherwise have difficulty going to a "brick and mortar" pharmacy to obtain needed medications – such as persons with disabilities, the elderly, and those in rural communities – will surely benefit from the convenience of being able to order their prescription drugs online. Online sales are also likely to foster price competition for prescription drugs among licensed sellers. Any law enforcement initiatives must protect public health by deterring criminal and illegal pharmacy practices on the Internet and safeguard the privacy of confidential consumer information, yet avoid stifling the growth of the Internet generally or chilling its use as a communication medium, including its use for lawful commercial purposes.

In analyzing the legal issues surrounding online pharmacies, it is important to distinguish among three different types of online pharmacies.

> Some online pharmacies operate much like traditional "brick and mortar" or legitimate mail-order pharmacies. These online pharmacies use state-licensed pharmacists and require consumers to obtain valid prescriptions from licensed physicians before ordering drugs online. They verify that a licensed physician actually has issued the prescription to the patient before they dispense any drugs. These sites, like their physical counterparts, are covered by a comprehensive regulatory scheme that includes pre-market approvals, prescription drug designations, practitioner examinations, and pharmacy dispensing. This regulatory scheme, established under existing laws, has created a safety net to protect the American public from injuries resulting from unsafe drugs, counterfeit drugs, and improper prescribing and dispensing practices.

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[1] *See* Online Pharmacy Sales Top $1.9 Billion, E-Commerce Times, Jan. 13, 2000. Still, "Internet prescription sales in 1999 represented a small slice – about $160 million – of the $101 billion U.S. market," according to Forrester Research, an Internet research firm. *See* Laura Johannes, Competing Online, Drugstore Chains Virtually Undersell Themselves, Wall St. J, Jan. 10, 2000, at B1. By 2004, however, Forrester Research estimates that prescription drug sales over the Internet will account for $15 billion. *See* Online Healthcare Expected to Reach $370B by 2004, E-Commerce Times, Jan. 4, 2000.

> Other online pharmacies offer to "diagnose" a patient online, to "prescribe" the medication, and to distribute it without a licensed prescriber (such as a physician) ever physically seeing the patient. These websites typically use an online medical questionnaire, which asks for the patient's health profile, current medication, and medical history (see sidebar on Online Pharmacies – Potential Health Risks). Based on this questionnaire, a prescriber affiliated with the website "diagnoses" the patient's ills and prescribes medication, which the website's pharmacy then distributes. These websites may appeal to consumers who wish to purchase "lifestyle" drugs (such as those used for erectile dysfunction or hair loss), but do not want the inconvenience or embarrassment that might accompany a request to a doctor, or who might wish to resell these drugs.
>
> Still other online pharmacies are websites that allow consumers to purchase prescription drugs without any type of prescription. These websites may also appeal to consumers who wish to obtain certain medications without first obtaining a prescription. It is also possible that consumers who have been told by doctors that they should not take certain drugs may try to circumvent the system by going online and buying the drugs that doctors have denied them.

Online pharmacies that dispense prescription drugs based solely on an online questionnaire or that do not require a prescription at all pose a significant risk to public health for three reasons. First, they circumvent the traditional protections built into the doctor-patient relationship, such as when a doctor requires a patient to undergo a physical examination to make a diagnosis and identify drug allergies or physical ailments that make taking certain drugs dangerous to the patient's health. Second, the inability of consumers to confirm the legitimacy of online pharmacies, many of which might be located overseas, increases the risk that drugs are placebos, mislabeled, or counterfeit, and the inability to confirm the authenticity of the doctors associated with them likewise offers little comfort regarding the adequacy of medical review. Finally, because the Internet can be an anonymous medium, some online pharmacies might be nothing more than scams, collecting credit card numbers and cash, but providing no products. In the physical world, consumers have certain protections against the fraudulent sale of prescription drugs (*e.g.*, consumers can physically enter a store and see who is selling a drug or can receive approval from their insurance company to use certain mail-order services). In the cyberworld, such protections are not as obviously present.

An increasing number of illegal drug traffickers (whether they deal in cocaine, heroin, MDMA, LSD, marijuana, controlled substances such as anabolic steroids, or precursor chemicals that are needed to manufacture illicit drugs) are also using the Internet. With portable computers and online connections, illegal drug traffickers can transmit text, audio, and video; track shipments; and engage in financial transactions virtually anywhere in the world. In short, the Drug Enforcement Administration ("DEA") and other drug enforcement officials are increasingly finding that illegal drug traffickers are turning to innovative technologies to conduct their businesses, disguise their activities, and avoid law enforcement scrutiny.

Online Pharmacies – Potential Health Risks

The potential health risks created by online pharmacies that offer online diagnoses and prescriptions are best illustrated by example.

Viagra™ is a commonly sold prescription drug on the Internet. It is indicated for the treatment of erectile dysfunction, which may be a symptom of more serious diseases, including heart disease. Without a physical examination, a patient's underlying heart disease or other condition may not be detected, with potentially fatal consequences. A recent survey of websites selling Viagra™ found that 45 percent of them provided no information about contraindications, e.g., concomitant use of nitrates, and 56 percent provide no information about other risk factors. *See* K. Armstrong, J.S. Schwartz & D.A. Asch, Direct Sale of Sildenafil (Viagra) to Consumers over the Internet, 341 New Eng. J. Med. 1389 (1999). Hearings before the House Subcommittee on Oversight and Investigations, Committee on Commerce, also revealed numerous examples of websites selling Viagra™ to consumers who were at risk of heart disease.

Prescription diet drugs are also commonly sold over the Internet. Suppose an anorexic woman who seeks such a drug fills out an online questionnaire and in the section on height and weight, the woman states that she is 5'9" and weighs 280 lbs. when, in fact, she weighs only 80 lbs. She also fails to mention on the questionnaire that she is being treated for anorexia nervosa and depression with suicidal thoughts. A "doctor" reviews the questionnaire, but does not bother to call her primary care physician. Based on the information contained in the questionnaire, the "doctor" prescribes the diet drug. A week later, the woman is rushed to the hospital for attempting suicide by overdosing on the drug.

2. Analysis of Existing Law

The Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 *et seq.*, prohibits the manufacture and distribution of misbranded and adulterated drugs, requiring them to be labeled accurately and manufactured and properly handled in ways that prevent contamination or misuse. Congress established the regulatory scheme that currently governs the sale of prescription drugs in 1951 to protect the public from abuses arising from the sale of potent prescription drugs and to relieve retail pharmacists from burdensome and unnecessary restrictions on the dispensing of over-the-counter drugs. *See* 21 U.S.C. § 353(b)(1). That regulatory scheme relies largely on two health professionals – a physician and a pharmacist – to protect patients from the knowing or accidental misuse of medicines that are toxic or that have the potential for causing harm.[2]

[2] To help ensure that these health professionals are knowledgeable about their patients, (continued...)

Accordingly, drugs that are considered prescription drugs under the FDCA may be dispensed only with a valid prescription of a practitioner licensed to administer the drug. *See* 21 U.S.C. § 353. A prescription drug is considered "misbranded" if it is not dispensed pursuant to a valid prescription in accordance with 21 U.S.C. § 353(b)(1). Introduction or delivery for introduction of misbranded drugs into interstate commerce violates the FDCA. *See* 21 U.S.C. § 331(a). Legal action to curtail the distribution of misbranded drugs – including distribution of drugs without a valid prescription – may be brought criminally or civilly. For a felony conviction, the government must establish that the defendant acted with intent to defraud or mislead or that the defendant is a repeat offender. *See* 21 U.S.C. § 333(a). Civil cases and misdemeanor prosecutions do not require proof of intent to defraud or mislead.

An online pharmacy that provides prescription drugs without a prescription – the third category of online pharmacies noted above – would plainly be in violation of the requirements of section 353(b)(1). For online pharmacies that offer online diagnosis, prescription, and distribution of medication – the second category of online pharmacies noted above – the issue is whether the online interaction results in a valid "prescription" under 21 U.S.C. § 353(b). That issue may depend on state law. Traditionally, the licensing and regulation of doctors and pharmacies have been the responsibility of the states.[3] For a prescription to be valid under this federal provision, however, there is a strong argument that it needs to be based on a legitimate doctor-patient relationship. For example, with the assistance of FDA, the Department of Justice has successfully prosecuted doctors who "prescribed" steroids (which were regulated at the time as prescription drugs, rather than controlled substances, as they are now) without establishing legitimate doctor-patient relationships with their customers. And the Federation of State Medical Boards has taken the view that "[w]ebsites that offer prescription drugs based solely on an electronic medical questionnaire are a threat to public safety and physicians who participate in such offerings clearly fail to meet an

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[2](...continued)
Congress in effect prohibited the practice of "diagnosis by mail"–*i.e.*, the issuance of a prescription on the basis of a form completed by a patient and mailed to a business that employs a doctor to review such forms. *See* 21 U.S.C. § 353(b)(2) (excluding "any drug dispensed in the course of conduct of a business of dispensing drugs pursuant to diagnosis by mail" from exemptions to the requirement that prescription drugs bear adequate instructions for use); Proposed Amendments to Section 503(b) of the Federal Food, Drug, and Cosmetic Act of 1938: Hearings before the Subcomm. on Health of the Senate Comm. on Labor and Public Welfare, 82d Cong. 36-39, 185, 202 (1951); S. Rep. No. 946, at 7 (1951).

[3] Generally, state boards of medicine and pharmacy prescribe rules governing those disciplines within their respective states. *See, e.g.*, Va. Code, tit. 54.1, subtit. III, ch. 29 (requiring practitioners of medicine and related healing arts to have a license from state Board of Medicine, which is given authority to regulate those practitioners); Va. Code, tit. 54.1, subtit. III, ch. 33 (requiring pharmacists to have a licence from state Board of Pharmacy, which is given authority to regulate pharmacies).

acceptable standard of care."[4] If a prescription is not valid, then the online pharmacy may be found to be distributing "misbranded" medication in violation of the FDCA.[5]

Some of the drugs available online (or the subject to drug trafficking) are controlled substances. The Controlled Substances Act prohibits the knowing or intentional unauthorized manufacture, distribution, possession, or intent to manufacture any controlled substance; it also requires that all persons who import, export, manufacture, distribute, or dispense a controlled substance in the United States obtain a registration. *See* 21 U.S.C. §§ 822, 829, 841, 958. Because the statute regulates conduct in a technology-neutral way, it applies to online pharmacies and other websites that offer or dispense controlled substances.[6]

The registration of all authorized domestic handlers of controlled substances in the United States serves as the basis for a "closed" system of distribution – only those properly authorized or registered may obtain controlled substances from another registrant or may import them, and those licensed and authorized to dispense such substances to the ultimate user or consumer are mandated to do so pursuant to legitimate medical and pharmacy practices as defined by state law. Indeed, the DEA has issued a regulation that defines "prescription" in a way that may make it impossible to issue a valid prescription for controlled substances on the basis of an online "diagnosis" as a regular course of business (though online diagnoses in emergency situations might still be permissible). *See* 21 C.F.R. § 1306.04.

Another potential avenue for enforcement involves the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45 *et seq.* The FTC Act protects consumers from unfair or deceptive acts or practices, including the false advertisement of drugs, *see id.* §§ 45(a), 52. Actions to enjoin violations of the FTC Act may be initiated administratively or filed in federal district court, *see id.*

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[4] Letter from James R. Winn, M.D., Executive Vice President, Federation of State Medical Boards of the United States, Inc., to Nelson Peacock, Office of Intergovernmental Affairs, U.S. Dep't of Justice (Nov. 1, 1999). Similarly, the FDA, the National Association of Boards of Pharmacy, and the Federation of State Medical Boards have noted in a joint statement that "[a] health care practitioner who offers a prescription for a patient the practitioner has never seen before and based solely on an online questionnaire generally has not met the appropriate medical standard of care." Principles of Understanding on the Sale of Drugs on the Internet (July 28, 1999).

[5] Though not addressed in this report, the sale of veterinary prescription drugs sold over the Internet also raises many of the same issues. The FDCA provides that veterinary prescription drugs must be sold and used through a prescription that is based on a legitimate veterinarian-patient relationship. These drugs are often used in food-producing animals, and without a veterinarian's oversight, they may be misused, resulting in drug residues that are potentially harmful to humans.

[6] Another relevant portion of the statute is 21 U.S.C. § 863, which makes it illegal for a person to sell or offer for sale drug paraphernalia, to use any facility of interstate commerce to transport drug paraphernalia, or to import or export drug paraphernalia. These prohibitions also apply in a technology-neutral way to cover conduct involving the use of the Internet.

§§ 45(b), 53. Many online pharmacies make important representations to consumers on their websites. For instance, claiming that a properly licenced physician will review the online questionnaire would be such a representation, as would a representation that a product is safe. Websites may represent, falsely, that medical information collected from consumers will be kept confidential or that an online consultation is equivalent to a physical examination. To the extent such representations are false or deceptive, the online pharmacy would be violating the FTC Act, thereby subjecting the website operator to a civil enforcement action.

Federal law enforcement may also look to the federal mail and wire fraud statutes whenever an online or other pharmacy defrauds consumers. Whether such a suit would be criminal or civil, under 18 U.S.C. § 1345 or the FDCA, would depend on the precise facts of the case and the evidence of fraudulent intent. Schemes involving the sale of drugs or health products over the Internet may also violate other related federal criminal laws. Some websites offer to bill private or public health care programs or insurers for a "doctor's" advice or for the price of the drug or product itself. False representations to an insurer to obtain payment can implicate both federal criminal and civil laws.

Based on the above analysis, existing federal law appears generally adequate to encompass the unlawful sale of prescription drugs over the Internet. The same substantive legal requirements that apply to the sale of prescription drugs from the corner pharmacy, by mail order, or by the telephone also apply to such sales over the Internet. The Internet simply provides another means of communication.

3. Investigatory Challenges

Even if existing federal *substantive* law is adequate, unlawful online pharmacies raise a host of difficult investigatory issues. Solutions are complicated given the fact that the diagnosis of medical problems and the sale and distribution of prescription drugs domestically are regulated by different federal and state agencies (as discussed below, the situation is even more complicated when foreign websites are involved). The federal government, through federal statutes such as those described above, has substantial jurisdiction over the illegal sale of prescription drugs. At the same time, states have jurisdiction over doctors and pharmacists practicing within their borders.

State regulators, however, face many significant challenges to enforcing existing state laws relating to the practice of prescribing and dispensing medicine against online practitioners. In many cases it can be difficult, without extensive time and resources, even to identify the name, location, and state of licensure or registration of the physicians, pharmacists, and website operations involved. Even when relevant parties can be identified and located, it can be difficult and costly for a state to pursue enforcement action against an out-of-state physician or pharmacist. Even if such an action were successful, the website operator would not be precluded from continuing to operate in other states.

There have been a number of proposals to address this investigatory challenge:

> The Administration recently announced a new initiative to protect consumers from the illegal sale of prescription drugs over the Internet. In addition to

increasing existing penalties and investigative resources and launching a new public education effort, the initiative would establish new federal requirements for online pharmacies to ensure that they comply with relevant state and federal laws. These requirements, the details of which are undergoing interagency review, might include disclosures or certifications regarding the identity of pharmacists or other relevant health care professionals employed by the website and the states in which they are licensed.[7]

In July 1999, the FTC proposed that websites that offer to sell prescription drugs must disclose information such as the name, address, and telephone number of the pharmacy that will dispense the prescription and the states where the pharmacy is licensed or registered to do business; the name, address, and telephone number of each physician providing online prescribing services and the states where each physician is licensed or authorized to practice medicine; the name, address, telephone number, and principal officers of the online business offering the prescription drugs; and the states from which the website will accept orders for prescription drugs.[8]

In August 1999, Congressman Klink introduced the Internet Pharmacy Consumer Protection Act, H.R. 2763, 106th Cong. (1999), which would require online pharmacies to provide on their websites identifying information, such as the name of the principal practitioner, the address and telephone number of the principal place of business, and the states in which the pharmacy and pharmacists are licensed. If the website provides medical consultations for prescriptions, it would also have to disclose the names and licensing information of the prescribers. The proposed legislation would authorize FDA to enforce these requirements.

These proposals generally complement existing federal laws regarding the sale of prescription and unapproved drugs. In the offline world, consumers are assured of the safety and suitability of the drugs that they take not only because the drugs must be prescribed by a licensed physician, but also because they must be dispensed by a licensed pharmacy. When, for example, an offline consumer walks into a brick-and-mortar pharmacy to have a prescription filled, he or she knows the identity and location of the pharmacy, and the pharmacy's license on the wall provides visual assurance that it meets certain health and safety requirements in that state. In the online

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[7] This certification proposal could be modeled on a voluntary certification program offered by the National Association of Boards of Pharmacy, in which the organization verifies the licensure of online pharmacies and provides a "Verified Internet Pharmacy Practice Site" seal of approval to sites that meet its standards.

[8] *See* Drugstores on the Net: The Benefits and Risks of Online Pharmacies: Hearings Before the Subcommittee on Oversight and Investigations, House Comm. on Commerce, 106th Cong. (1999) (statement of the FTC).

world, existing law requires a consumer to have a valid prescription from a licensed physician before a prescription drug can be dispensed, but does not provide a mechanism for identifying the online pharmacy or verifying that it is properly licensed. These proposals (and variations thereof) therefore fill a gap in the existing regulatory structure to protect consumers from illegitimate online pharmacies – *i.e.*, those that seek to operate without complying with relevant state and federal laws.

In addition, as noted above, the proposals address an important investigatory need. Sites that operate without the required disclosures or certifications would be subject to sanctions. The failure to disclose or to display proper certification would provide investigators with a rapid and coordinated way in which to identify illegitimate online pharmacies. Penalties for false disclosures or certifications would deter such misrepresentations, and having a single enforcement mechanism would permit rapid and coordinated investigations, while retaining traditional state authority to regulate pharmacies.

In the meantime, several federal and state law enforcement agencies are already working together to create coalitions to combat the illegal sale of online pharmaceuticals. These alliances preserve traditional jurisdictional boundaries between federal and state law enforcement, while targeting illegal online pharmacies that threaten public health and safety.

A good example of a joint federal-state alliance is that entered into in August 1999 by the Kansas Attorney General's Office and the U.S. Attorney's Office for the District of Kansas. In addition to these two offices, the alliance includes representatives from the Kansas Pharmacy Board, Kansas Board of Healing Arts, Consumer Protection Division, the Medicaid Fraud and Abuse Division and the Food and Drug Administration's Office of Criminal Investigations. In this coalition, state authorities have taken the lead in dealing with online pharmacies that may not meet state regulations but are attempting to offer legitimate pharmaceutical services. The Kansas authorities have found that these entities will generally conform their conduct to meet state regulations after notification. For its part, the U.S. Attorney's Office is assisting the state with the identification of individuals, including doctors, responsible for illegal online pharmacy drug sites. In turn, Kansas state authorities are taking legal action against doctors, websites, and pharmacies that dispense prescription drugs over the Internet in violation of state law on grounds that "prescriptions" issued based on online interaction are not valid.

In addition to combating the unlawful sale of prescription drugs from domestic website operators, law enforcement agencies are also examining how to stop foreign Internet sites from selling prescription drugs that are then illegally imported into the United States. The United States continues to seek and obtain the cooperation of foreign governments in enforcing U.S. laws, including those that pertain to prescription drugs. Foreign sales of pharmaceutical controlled substances at the retail level into the United States via the Internet violate the United Nations Convention Against Illicit Traffic in Narcotics and Psychotropic Substances of 1988 as well as the Controlled Substances Act, 21 U.S.C. §§ 951-971. Virtually all countries that would be foreign sources for such substances are parties to the U.N. convention.

Although international awareness and cooperation on fighting crime has grown, we must continue to resolve philosophical differences between countries on combating the sale of illegal

goods online and also to develop practical ways to enforce our laws. For example, the focus of our concern with prescription drugs from foreign countries is not necessarily with the Internet aspect of the sale, but with the illegal importation and distribution of those drugs in the United States. One way to stop these sales might be for law enforcement agencies in the United States, in particular, the Customs Service and FDA, to work with their counterparts in countries with online prescription firms to prevent the shipping of the drugs into the United States.

The Customs Service's CyberSmuggling Center is, for example, actively working with Customs attaché offices and their foreign counterparts to identify and target online pharmacies located outside the United States that are shipping prescription drugs and controlled substances into the United States. Customs' International Mail Facilities are successfully stopping parcels entering the United States. Upon a determination by FDA that the drugs are in violation of law, the parcels are seized and referred for investigative follow-up. The Customs Service seized 9,725 packages with prescription drugs last year, over four times as many as were seized in 1998.[9] Despite these efforts, the Customs Service and the FDA would require a substantial increase in resources and personnel as a practical matter to stop all, or even most, illegal prescription drugs from entering the country.

4. Conclusions

Apart from new legislative efforts to require online pharmacies to make certain disclosures or to obtain appropriate certifications, existing substantive federal law (for now at least) appears to be adequate. The same federal legal requirements that apply in the physical world apply to the online sale of prescription drugs and illegal drugs. There are nevertheless numerous issues that create investigative difficulties for law enforcement. There are jurisdictional issues, as both federal and state officials have jurisdiction over the activities relating to the sale of prescription drugs. In addition, international issues have arisen, because many websites that offer drugs (approved and unapproved in the U.S.) are located outside the country. And, there is a pressing need for coordination of enforcement policies and initiatives among a variety of federal, state, and local entities. It is crucial that law enforcement agencies – at all levels – receive the training, funding, and other support necessary to conduct investigations into online pharmacies that threaten the public health without impairing those that provide prescription medication in a safe, legal, and convenient way.

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[9] *See* Robert Pear, Online Sales Spur Illegal Importing of Medicine to the U.S., N.Y. Times, Jan. 10, 2000, at A1.

Mr. WOLF. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. Mr. Chairman, forgive me if I am incorrect, but I don't think you fully addressed the issue of two dissenting views.

Mr. MURIS. You are absolutely correct. I am sorry I interrupted you.

Mr. SERRANO. Are you saying you purposely did that?

ANTITRUST ENFORCEMENT

Mr. MURIS. No. I was going to say I pulled out Commissioner Anthony's statement, with which I agree with every word. When she said that it does not fully maximize the unique makeup, experience and institutional assets of the Commission, I agree with that, but Congress has created two antitrust agencies and we have to share the work. Like I said, I am an FTC partisan. I would be glad if we could do more, but under the institutional structure we have, we cannot.

Now, Commissioner Thompson has actually recommended not here, but in another statement that he made that we eliminate the Antitrust Division in terms of its civil work. That would obviously solve the problem, it would solve the problem in the long run but it doesn't solve the problem in the day-to-day dealings with the Antitrust Division. I can hardly go to the Antitrust Division and take the position that they shouldn't exist, and for that reason, I think with Commissioner Thompson's zeal, he goes even farther than I do in supporting the FTC here, but that is not a position that can solve this day-to-day problem. This has always been an issue that the Chairman has handled.

The other commissioners have not been involved, and the contentious nature of it, I can tell you Mr. Serrano, is very poisonous. In this music clearance dispute, I was extremely surprised that virtually no one in the Federal Trade Commission was willing to concede that the Department of Justice was acting in anything other than bad faith. And when you have to deal with people on a day-to-day basis, as we do, you have this hostility and suspicion. Remember, we are dealing with lawyers in both agencies, and these are people who are aggressive.

And I think that aggression should be turned on dealing with these fraudulent practices, anticompetitive mergers and price fixing and not on each other. So I thought this was an important agreement and that is why I think officials from the last four presidents who have been at the agencies have signed a letter saying it was a good thing to stop the clearance fights, and I appreciate the opportunity to address that.

Mr. SERRANO. So you don't disagree with them. You just feel like your hands were tied when the time had come to make this distinction.

Mr. MURIS. Absolutely. That is an excellent way to put it.

Mr. SERRANO. I am sorry I said it. Somebody will be upset with me. The privacy issue, it has been reported that despite the proliferation of communication technology and the sharing of information by public and private sector entities, you do not believe that more stringent privacy legislation is required to protect our citizens. Is this an accurate characterization of your views? In some

ways, this seems counter to the interests of business and consumers. Many consumers will not shop on-line due to privacy concerns, and you have spoken to this whole issue before. So could you comment on the comments made about you?

PRIVACY

Mr. MURIS. Sure. I think there has been a misperception of my views on legislation. What I said is on this narrow issue I mentioned of notice and choice legislation dealing with on-line only and not applying to off-line, I didn't think we were ready to do that. Quite frankly, we have one experience with notice legislation which are these Gramm-Leach-Bliley notices, over a billion of them went to the American consumers.

I stated recently that for most people those notices were about as useful as socks on a rooster. I don't think that experience has been very salutary. We in the federal government are not very good at telling people how to do notices. That doesn't mean that other legislation might not be beneficial. We are looking hard at the Social Security numbers issues and identity theft. I think some additional legislation might be helpful there. We are trying to figure out exactly how to draft it. We have a handful of recently passed pieces of legislation that I think we need to get on to doing a better job of enforcing.

We have the Children's Online Privacy Protection Act that we mentioned. We have new identity theft legislation, we have changes in the Fair Credit Reporting Act; we have the Gramm-Leach-Bliley legislation. So I think that our efforts ought to be on that area, but some legislation, narrower legislation than this broad-based on-line legislation, with notice and choice, I think might be appropriate.

Mr. SERRANO. My next question I think you have answered already, but if you care to go further—I was going to ask, in your opinion, what are the new threats that consumers need to be aware of? I suspect many of the threats are in terms of being ripped off, but all Americans should be concerned these days about threats that have to do with our war on terrorism and the fears and everything that has happened since September 11. Could you care to comment on that?

CONSUMER PROTECTION

Mr. MURIS. Yes, sir. We have found—it is an unfortunate fact of life with the concerns after September 11 that people are trying to prey on those concerns. That is why I think one of things we do best is we got together in working with law enforcement officials all over the United States, with the State attorneys general and with local officials, and we in a coordinated way went after a lot of the bogus bioterrorism products . We are looking at other issues.

As I mentioned to Mr. Cramer, our tools need to be sophisticated. Unfortunately the crooks we are dealing with are sophisticated as well and we are in something of an arms race with them. But I think it is, like with a lot of other problems, you are never going to eliminate crime, but we have done an excellent job in being the cop on the beat and I feel very proud about this. 20 years ago when

I ran the FTC's Bureau of Consumer Protection, we started the Fraud Program.

Surprisingly it was controversial. People thought the FTC's role should be in drafting legislation. The FTC 20 years ago was called the second most powerful legislature in Washington. Well, the House of Representatives in a revolt led by members of the then majority party really slapped the FTC down because I think that is an inappropriate role for a bunch of unelected bureaucrats, but I think going after fraud in the way we do it is an excellent role for us.

We started it—Bob Pitofsky and his consumer protection director, Jodie Bernstein really went a long way toward perfecting it. And now I think we can build on that record and do even better.

Mr. SERRANO. You mentioned something like a home kit for anthrax; right? What other things are happening out there that we should be aware of, aiming to take advantage again of the pain we are all going through?

FRAUD

Mr. MURIS. Well, we certainly have people trying to sell things on-line that protect you, gas mask-type things, pills. We have the whole variety of both before and after September 11 of medicines and magic claims that people are making. Another thing which I am astonished that I forgot to mention is for the first time we are reaching out in terms of Spanish-speaking issues. I authorized several hundred thousand dollars to translate our consumer education materials into Spanish.

SPANISH LANGUAGE MATERIALS

I grew up in southern California and lived in southern Florida for 4 years. There were very large Spanish speaking populations. I lived in Chicago for a year and they had a large Spanish-speaking population. We are now also, for the first time, aggressively trying to hire people who are bilingual, and we are actually going to bring cases involving Spanish speaking claims as well as the consumer protection issues. So that is a new initiative for us.

Mr. SERRANO. I am probably going to get into a lot of trouble for bringing this up, but you opened up something here. Where do you draw the line on what is considered fraud? If I tell you that this water will cure cancer, you can obviously come after me because there is no proof that this water can cure cancer. That would be consumer fraud, fraud against consumers. But on Spanish TV, and Ms. Roybal-Allard can attest to this, we do have guys and women who come on there and tell you that if you wear this particular cross that they swear once touched the Wailing Wall—of course, they are selling 10,000 of them—you will never suffer from any disease. I know that touches on this religious thing, except these guys are not officials of any church. Where is that line?

Mr. MURIS. Well, obviously——

Mr. SERRANO. You notice that I am stumbling over my words not because I am short of them, but I am being careful not to step——

Mr. MURIS. Obviously there are serious first amendment issues. When people write books and sell thousands of copies of books that claim miracle diets, miracle cures, that is protected by the first amendment; but when they get into advertising and selling specific products, we can do something about that. We recently sued the practices of Ms. Cleo, which she didn't see it coming, and what the problem was—I apologize. I had to say that.

Mr. SERRANO. Very good.

Mr. MURIS. What the practices there involved was—we weren't saying that if people wanted to have psychic readings, we weren't attacking psychic readings, but the ad said you got a free reading, and in fact you didn't. They hemmed and hawed on the line and by the time you got to the reading part of it, they were billing you. It is not a case against psychic reading. California, particularly in northern California, there were palmists everywhere. The first time I ever drove past the grapevine up in California, I was surprised to learn that was so prominent, at least in northern California, and if people want to do that, we are not attacking that. But if someone uses the word "free" and it is not free, we can attack that.

Mr. SERRANO. So Ms. Cleo, what is it that says a lawyer has a fool for a client? So psychics should not advise themselves. There is an indictment somewhere here. Mr. Chairman, I have a couple more questions which I will submit for the record unless you have three more rounds.

Mr. WOLF. No, we are not.

Mr. SERRANO. Then I will submit, and I thank you for the testimony today.

Mr. MURIS. Thank you, sir.

Mr. WOLF. Ms. Roybal-Allard.

Ms. ROYBAL-ALLARD. I have a couple more questions dealing with alcohol advertising. A new product that contains alcohol, known as "Alcopops", are sweetened, premixed malt beverages such as Mike's Hard Lemonade and Doc Otis. Research has shown that because of their sweet taste and packaging, which is very similar to that of fruit punch and soft drinks, coupled with hip youth-oriented marketing campaigns that these products have special appeal to young people and potentially could move young people as entry level consumers from soft drinks towards experimentation with these types of alcoholic beverages.

The Center for Science and Public Interest and other consumer groups have complained that these new sweet drinks may violate section 5 of the FTC Act, which prohibits deceptive advertising practices. Are you taking steps to monitor or to restrict the advertising of these types of products?

[The information follows:]

Question. (Rep. Roybal-Allard/Tr. 66, 67) What is the status of the petition by the Center for Science in the Public Interest regarding flavored malt beverages? Will the FTC restrict the advertising for these products?

Answer. This petition is under review and we hope to have a response in the near future. The question we are examining is whether the advertising or marketing of these products in directed to underage consumers.

ALCOHOL ADVERTISING

Mr. MURIS. I will probably have to get back to you with more details, but I understand that there were—what we deal with is the marketing. The existence of the product is not something that we can regulate. But we can deal with issues of whether it is sold in a deceptive way or whether it is targeted toward young people in a way that violates our statute. In that case we would look at the marketing, look at how it is placed in the stores and my understanding is those were the issues raised by this petition, and I would be glad to get back to you on the——

Ms. ROYBAL-ALLARD. But you are looking at this——

Mr. MURIS. Yes. We received this petition and we have certainly looked into it.

Ms. ROYBAL-ALLARD. There also has been a proliferation of liquor-branded Alcopops such as Smirnoff Ice, Bacardi, Sky Blue, Captain Morgan Gold, among others. These products are malt-based, and although they contain alcohol, they don't contain hard liquor. Therefore, they are heavily advertised on television under the same voluntary standards that apply to beer, standards that the FTC itself has criticized in the September 1999 report, which I referred to earlier.

Don't liquor-branded Alcopops constitute a form of stealth advertising for liquor brands and what does the FTC plan to do to monitor or to restrict the advertising for these kinds of products so that they don't substantially reach or appeal underage consumers?

Mr. MURIS. This is a scenario where we share jurisdiction with the Bureau of Alcohol, Tobacco and Firearms, which I guess must be in the Treasury Postal Subcommittee, and they look at the labels. My understanding is that just Monday they came out with some restrictions on the marketing. We work closely with them. We have done consumer research with them in the past, and my understanding is that they are now have told those companies to restrict what they have been saying about their products.

Ms. ROYBAL-ALLARD. I have one more question that has to do with the outreach to Hispanic Americans. I understand that the FTC is taking steps to address issues that are of particular concern to Hispanic Americans. Have you discovered special consumer problems related to Hispanic Americans, or are the problems basically the same but have been complicated because of language barriers?

HISPANIC AMERICAN CONSUMER PROTECTION

Mr. MURIS. Well, so far, and I have only been there 10 months and we just started to do this, but for better or for worse, they are being targeted by the same sorts of scams that other people are and we have started the consumer protection front. We are moving to the case front. We have a leading publication which we have done hundreds of thousands of copies of identity theft, and we have translated it into Spanish. We are now distributing that. Identity theft appears to be a major problem throughout the country. And I would certainly be glad—one of the things we have done in the past in congressional districts all over the country is outreach in terms of lots of scams and issues, and we are hoping to be able to

do this now in Spanish as we increase our ability. We are not there yet. We are still hiring people, but that is one of my goals.

Ms. ROYBAL-ALLARD. With regards to the hiring, do you have a need for additional resources to hire additional bilingual staff?

RESOURCES

Mr. MURIS. If we got lower than our request, it would certainly make it difficult to do that because quite frankly, this is a good program, but it is on top of our other programs, and if it has to compete with other programs, then obviously we will have to do some paring back.

Ms. ROYBAL-ALLARD. Thank you. Thank you, Mr. Chairman.

Mr. WOLF. One last question and you can maybe comment for the record. How well are you doing regarding telework? As you know, it is now the law that Federal employees who have jobs that are eligible to participate in telework be given that opportunity. How many people are teleworking in the FTC?

TELEWORKING

Mr. MURIS. I don't know the answer. I will get back to you. I do know that we are very flexible, but I do not know the——

[The information follows:]

Mr. WOLF. Do you participate in flex time and job sharing?

Mr. MURIS. Yes. And I think we are particularly good. In our Bureau of Consumer Protection, for example, a majority of the employees, in fact, the vast majority, are female. We have many women with young children who don't work full-time. I am a strong supporter of that. I work at home. I have always worked at home myself.

Mr. WOLF. You telework? I would encourage you to take a Friday and stay home.

Mr. MURIS. I appreciate that.

Mr. WOLF. Obviously, you would be working and probably more productively. You wouldn't have to come down Route 66 and fight the merge and go over the TR Bridge and swing down Constitution Avenue and come to the parking lot. To have a leader of an agency, and obviously you can't do this very often, but once or twice a year, to say I am going to be at home teleworking and to get on line and be dealing with your office, I think it raises the comfort level of people who work for you to say okay, it is okay. I am not advocating that you telework every day or anything like that, but once or twice a year would not be a bad idea.

Mr. MURIS. I keep very bad hours and people frequently get phone messages from me at 3:00 or 4:00 in the morning and——

Mr. WOLF. So you are working and teleworking. You have a very important job. The last thing, and it is not a question, is I think you have to do more, to tell people what you are doing. My sense is the public does not have knowledge of what FTC does. The FTC did have a reputation in the old days of being out there and moving around. I am impressed by what you say, for the record, and I think it is important not to hide your light under a bushel basket, but to let people know that you are out there and doing these things. The Public Affairs Office might be more aggressive in let-

ting people know. Also, I think it is important to crack down on those who are doing bad things.

That helps the overwhelming number of businesses that are honest and decent and not violating the laws. Letting people know that when you are bringing a case against Ms. Cleo or alcohol or advertising, whatever the case may be, that the FTC is aggressively moving ahead and the public can see it because, one, you are letting people know you are working, but secondly it also would put a little bit of fear of God into somebody who is thinking they may try something else. With that, I thank you and your people for their hard work.

Mr. MURIS. Thank you.

QUESTIONS FOR THE RECORD
FEDERAL TRADE COMMISSION

Chairman Frank R. Wolf

Q.: What is the FTC doing to prevent telephone fraud cases?

A.: Telemarketing fraud is one of the Commission's highest law enforcement priorities, and has been so for well over a decade. The Commission has targeted a wide variety of fraudulent telemarketing schemes, including: bogus prize promotions; investments in rare coins, art, oil and gas leases, FCC licenses, and other unconventional commodities; vacation travel; bogus credit card protection; and fraudulent credit repair scams, to name but a few.

The Commission typically attacks fraudulent telemarketing operations by filing federal district court actions that seek preliminary and permanent relief. Most often these cases are filed *ex parte* and result in issuance of temporary restraining orders halting the fraud immediately and freezing the defendants' assets to preserve them for eventual restitution to consumer victims where practicable, or for disgorgement of ill-gotten gains to the U.S. Treasury. These cases allege that the targeted companies or individuals have engaged in unfair or deceptive acts or practices, in violation of Section 5 of the FTC Act.

Many cases also allege violation of the Commission's Telemarketing Sales Rule (the "TSR"), which prohibits misrepresentation of material facts and other deceptive and abusive practices. Since adopting the TSR in 1995 (pursuant to the mandate of the Telemarketing and Consumer Fraud and Abuse Prevention Act) the Commission has brought about 140 actions to enforce it. Many of these cases have been filed in connection with sweeps conducted jointly with state and local consumer protection authorities and the FTC's sister federal agencies, such as the SEC, the Secret Service and the Postal Inspection Service. Since the TSR was adopted, the FTC has led a score of sweeps, yielding over 400 law enforcement actions, including state actions.

In addition to its enforcement work against telemarketing fraud, the Commission in recent years has filed a number of district court enforcement actions against other types of phone-based fraud, such as telephone bill "cramming," in which a vendor of goods and services not necessarily related to the telephone places unauthorized charges for these goods or services on consumers' telephone bills. The Commission has also attacked unauthorized billing scams that illegally exploit the telephone billing and collection system in connection with Internet-based entertainment services. The infamous Moldova modem hijacking case, *FTC v. Audiotex Connection*, No. C97-0726 (E.D.N.Y. Nov. 4, 1997), is one example. In that case the defendants enticed consumers who visited their web sites to download purported "viewer" software to access computer-stored images for free. Once the consumer downloaded and activated this software, it automatically disconnected consumers' modems from their local Internet service providers, turned off

the speakers on the consumers' modems, and silently dialed international telephone numbers to reconnect consumers to the Internet through an expensive overseas telephone call. Once hijacked in this fashion, consumers' modems remained connected to those international telephone numbers even when consumers left the defendants' web sites or left the Internet entirely to do word processing, spreadsheet, or other computer work. As a result, many consumers received phone bills with international call charges totaling several hundred or several thousand dollars. The Commission obtained over $2.74 million in redress for more than 38,000 consumers in that case.

Rep. Harold Rogers

Q: **I understand that a request for advisory opinion has been filed with the FTC seeking its views on the appropriateness of communicating in advertising that a significant number of researchers have determined that smokeless tobacco products provide a reduced risk alternative to smoking cigarettes.**

What is the status of the FTC's consideration of the Advisory Opinion request? When to you expect the Commission to reach a decision on the request?

Do you plan to confer with any other agencies of the government in preparing your response to the request for an advisory opinion?

A.: The Commission staff is reviewing the petition and the numerous scientific articles it cites. The staff is also consulting with the appropriate public health agencies. After this review, the staff will make a recommendation to the Commission on what actions should be taken in response to the petition. We currently expect this process to take at least several months.

Rep. Lucille Roybal-Allard

Telemarketing and Privacy

Q.: **I understand that the cost of creating a national "do not call" registry has significantly decreased over the past 10 years because of technology advances. How much do you expect it to cost and how do you propose to pay for establishing such a registry?**

A.: Based on research conducted by Commission staff, currently the cost to develop and implement a national registry will be approximately $5 million in the first year. This research included publication of a Request for Information issued by the FTC on February 28, 2002. The information submitted by potential venders in response to the Request for Information indicate that this estimate is reasonable and realistic. The President's Budget

proposes that $5 million of the agency's total funding be used for the proposed national registry, of which $3 million will come from user fees. The Commission will likely issue a Notice of Proposed Rulemaking concerning such user fees in the near future. In that Notice, the Commission will likely propose that telemarketers and their clients be charged a user fee for accessing the national do-not-call registry, if one is developed.

Q.: You've received some criticism that a national registry would preempt state laws, which may be even tougher. What would be the impact on state law and what would you do with existing state registries?

A.: The preemptive effect of the proposed new Telemarketing Sales Rule provisions creating a national do-not-call registry is an important issue. Preemption of state law should not be undertaken lightly, and generally should occur only in limited circumstances. At the same time, the compliance burden of industry should not be needlessly compounded. Some industry participants in the rulemaking generally expressed concern about the proliferation of State telemarketing laws, including "do-not-call" statutes, indicating that complying with myriad State laws imposes significant economic costs. In announcing its do-not-call proposals, the Commission specifically solicited comment on the interplay between existing State do-not-call registry laws and the proposed new TSR provisions. The Commission will very carefully consider all views expressed in the comment received on this important issue.

Q.: My understanding is that a number of groups would be exempt from FTC rules because the agency doesn't have jurisdiction over them – groups such as banks, telecommunications firms, insurance companies and nonprofit organizations. Is the voluntary industry registry an adequate substitute for a national registry? If not, how do we bring these groups under the FTC umbrella?

A.: Although the Telemarketing Sales Rule (TSR) does not reach entities outside the jurisdiction of the FTC – basically, banks, common carriers, non-profit organization and insurance – the TSR **does** apply to professional for-profit telemarketing companies that perform telemarketing services for such entities. Most telemarketing calls are placed by such telemarketing companies, and would therefore would be subject to the proposed do-not-call provisions. As a practical matter, therefore, the jurisdictional limitations on the reach of the TSR will not likely be a serious impediment to the effectiveness of the proposed do-not-call registry. Moreover, the proposed do-not-call requirements will not exempt many of the types of calls exempted by state laws.

The Direct Marketing Association's Telephone Preference Service (TPS) is a voluntary program. Until recently, DMA did not permit consumers to submit their names by telephone or by electronic mail, but would accept them by mail. No fee was charged for mail-in registration. Lately a for-fee on-line sign-up option has been added. DMA requires its members to adhere to the list; the penalty for non-compliance is expulsion

from the association. Sellers and telemarketers that are not members of DMA may purchase the TPS for a fee, but are under no compunction to do so. Although we applaud DMA's efforts, the TPS is not backed by the force of law, and has limited participation on the part of consumers as well as businesses. Such limitations would not affect the proposed FTC do-not-call registry. Despite more than a decade of operation of the TPS, evidence gathered during the TSR proceeding, as discussed in our Notice of Proposed Rulemaking, indicates that it has not been effective to provide consumers with adequate control over the number of telemarketing calls they receive, and that stronger measures are needed to protect their right to privacy from unwanted intrusions and interruptions in their own homes.

Predatory Lending

Q.: I'm concerned about so-called "predatory lending" practices, and I understand that you recently settled a case with a California-based home mortgage lender that overcharged customers. Based on the 15 cases against sub-prime lenders you have brought since 1998, how widespread do you believe the practices to be?

A.: The Commission has brought several enforcement actions in recent years against subprime lenders challenging a variety of deceptive and other practices in violation of the Federal Trade Commission Act, Truth in Lending Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, and Home Ownership and Equity Protection Act. Our most recent action was the settlement of a lawsuit against First Alliance Mortgage Company and others, which allegedly deceived consumers about the fees and other terms of their loans. We expect that up to $60 million will be available for return to borrowers as a result of the settlement.

We are unaware of any data on the overall incidence of illegal practices in the subprime market. Certainly, there are many lenders in this market who comply with the law and provide a valuable product to an historically underserved population. Our enforcement actions, however, have involved companies throughout the United States, including small lenders, large regional lenders, and, most recently, one of the largest home equity lenders in the country. Based on our enforcement work and observations of the industry, it appears that there may still be significant problems with some lenders in the subprime market. Given the degree of injury that can be caused by deceptive practices in this area, we intend to remain active as will the state Attorneys General.

Q.: Is this just a matter of enforcing existing laws, or are there new practices or new trends that Congress needs to address with additional legislation?

A.: The predatory lending cases we have pursued have all involved practices that already violate provisions of federal and state law, including, for example, the Federal Trade Commission Act which prohibits unfair or deceptive practices in or affecting commerce; the Truth in Lending Act which requires, among other things, disclosures of key terms

during the loan closing process; and the Home Ownership and Equity Protection Act (HOEPA), which prohibits certain practices and requires additional disclosures for certain high rate, high fee loans.

My own view is that existing laws provide us tools for addressing predatory lending practices, and that the FTC and other law enforcers need to continue aggressive efforts to prosecute illegal practices in the subprime market. I have not had the opportunity to study the need for additional legislation in this area, but I would have concerns about any legislation that might have the unintended effect of reducing the availability of credit in low income markets.

Outreach to Hispanic Americans

Q. **I understand that the FTC is taking steps to address consumer issues of particular concern to Hispanic-Americans. Please describe the issues related to Spanish-language or targeting Hispanic-Americans to which the FTC is devoting attention?**

A. Hispanic-Americans face the same issues as consumers in the population at large. As part of its effort to reach out to Hispanic-Americans, the FTC is making consumer information available in Spanish, reaching out to the Spanish-language media, and partnering with organizations, businesses, and leaders in the Hispanic community.

For example, to further its education mission, the FTC's Bureau of Consumer Protection produces publications on more than 100 bread-and-butter issues of importance to all consumers. Since the start of FY02, eighteen publications have been translated into Spanish, including those dealing with identity theft, fair debt collection, predatory lending, health and fitness, buying a used car, scholarship scams, fraudulent telemarketing, and job scams. At least twenty more publications are being translated in preparation for release with enforcement announcements. Eventually, all our consumer information will be translated into Spanish.

Q. **I understand that the FTC has recently hired both bilingual consumer staff and legal staff. How does this help the FTC perform its mission, and to what consumer problems are these staff devoted?**

A. To enhance its education mission, the Bureau of Consumer Protection hired a Consumer Outreach Specialist (whose first language is Spanish) to communicate consumer protection messages in Spanish through our publications, the media, and partners in and out of government. Since January, she has facilitated interviews about consumer protection issues with Univision, Telemundo, Bloomberg Spanish New York, CNN En Espanol, and many newspapers and local radio stations.

The FTC solicits and collects complaints from consumers in its effort to target enforcement actions against the most pervasive and egregious frauds. This year, we have

expanded our outreach efforts to Hispanic-Americans: Spanish-speakers now staff our toll-free help line and the complaint form on our website (www.ftc.gov) is in both Spanish and English. Last February, I announced the release of the Spanish-language ID Theft Affidavit for consumers whose personal information has been compromised. In fact, since February, over 15,000 copies of *Robo de Identidad* (with the Affidavit) have been distributed.

We plan to exhibit at the Congressional Hispanic Caucus Foundation Conference in September 2002.

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

THE CHAIRMAN

April 15, 2002

The Honorable Frank R. Wolf
Chairman
House Appropriations Subcommittee
on Commerce, State, The Judiciary and Related Agencies
241 Canon House Office Building
Washington, D.C. 20515

The Honorable José E. Serrano
Ranking Member
House Appropriations Subcommittee
on Commerce, State, The Judiciary and Related Agencies
2342 Rayburn House Office Building
Washington, D.C. 20515-3216

Dear Chairman Wolf and Congressman Serrano:

Commissioner Thompson's letter of April 15, 2002, claims that I mischaracterized his views when I stated, during a hearing before your committee last week, that he recommended eliminating the civil antitrust authority of the Department of Justice. I respectfully disagree.

On March 6, 2002, Commissioner Thompson issued a statement with the following passage:

> Several possible rationale [sic] alternatives could be pursued instead of the proposed clearance agreement:
>
> * * *
>
> Congress could unify merger and conduct investigations within the FTC and continue the DOJ's criminal jurisdiction, a result that would provide for maximum efficiency, fully utilize the FTC's independent antitrust purpose and structure, and continue to take advantage of DOJ's role as the federal government's criminal prosecutor.

This passage speaks for itself. To offer eliminating DOJ's civil antitrust jurisdiction as one "rational[] alternative" to the new clearance agreement and then praise that alternative as providing "for maximum efficiency" certainly sounds like a recommendation.

Commissioner Thompson is a valued colleague who has given me excellent advice on several issues; I am grateful for his cooperation and expertise. On clearance, however, we have different perspectives. My perspective on this issue is shaped by the fact that, as Chairman, I must deal daily with our sister antitrust enforcement agency to further our mutual goal of promoting competition in the marketplace. The two agencies act jointly on a wide variety of initiatives, and a cooperative spirit is necessary to accomplish our objectives. Because we act within the context of statutorily established concurrent jurisdiction, our cooperative relationship necessarily involves some give and take.

In contrast, Commissioner Thompson's perspective is shaped by his strong belief that the FTC is superior to the Antitrust Division. While I admire Commissioner Thompson's stance as a strong advocate of the FTC's capabilities, I must note that the view expressed seems unburdened by the exigencies of concurrent jurisdiction. I believe that the quoted passage – whether called a "rational[] alternative" that would "provide for maximum efficiency" or a "recommendation" – reveals his position. Such public discussion can serve only to exacerbate what too often have been strained relations between the two federal agencies charged with enforcing our nation's antitrust laws. The presumption of institutional superiority, shared in parts of both agencies, is one reason why the clearance process has generated a disturbing number of fractious disputes in recent years.

As I testified, Bob Pitofsky and Joel Klein – the previous heads of the FTC and the Antitrust Division, respectively – tried unsuccessfully for more than a year to resolve the clearance problem. With some give and take, Charles James and I succeeded in negotiating a new clearance agreement that will minimize future clearance battles. The new agreement is a good government initiative that would have been unattainable had an unyielding attitude of institutional preeminence prevailed in either agency.

Sincerely,

Timothy J. Muris

OFFICE OF
THE COMMISSIONER

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

April 15, 2002

The Honorable Frank R. Wolf
Chairman
House Appropriations Subcommittee
on Commerce, State, The Judiciary and Related Agencies
241 Canon House Office Building
Washington, D.C. 20515

The Honorable José E. Serrano
Ranking Member
House Appropriations Subcommittee
on Commerce, State, The Judiciary and Related Agencies
2342 Rayburn House Office Building
Washington, D.C. 20515-3216

Dear Chairman Wolf and Congressman Serrano:

I wish to correct a mischaracterization of my views presented to the House Appropriations Subcommittee on Commerce, State, The Judiciary and Related Agencies at the April 10, 2002 hearing on the Federal Trade Commission's budget. It is my understanding that the testimony of my colleague Chairman Timothy Muris contained certain inaccurate statements about my views of the clearance agreement between the Chairman and Assistant Attorney General Charles James. More specifically, Chairman Muris inaccurately announced that I recommended eliminating civil antitrust jurisdiction from the Department of Justice. This statement is not correct. Accordingly, I respectfully request that your hearing testimony be corrected to accurately reflect my views.

Since his testimony, Chairman Muris informed me that the basis of his characterization was a reference contained in an attachment to a statement I publically released on March 5, 2002.[1] This attachment was one of several documents that the Senate Commerce Committee staff asked me to provide to give them background and perspective about clearance issues.

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[1] Statement of Commissioner Mozelle W. Thompson Concerning the March 5, 2002 Clearance Agreement Between the Department of Justice and the Federal Trade Commission, *available at* <www.ftc.gov.opa/2002/03/clearancemwt> (attached).

Included in these documents was a list of alternatives for dividing antitrust enforcement among multiple agencies.

One of the three options I listed restated an option that the ABA Antitrust Section's Special Committee on the FTC discussed in 1989. (This Special Committee was chaired by the prominent antitrust counselor and former FTC Chairman, Miles Kirkpatrick, and coincidentally included as a member a law professor from George Mason University Law School – Timothy Muris). The ABA Report offered that an argument could be made to eliminate DOJ's civil antitrust jurisdiction:

> Our system of government traditionally has entrusted many critical legal decisions to multi-member panels (e.g., three-member courts of appeals panels, the nine-member Supreme Court, and multi-member independent agencies). Multiple voices may improve quality and increase public trust. With the critical merger enforcement decision having moved from the courts to the prosecutors, there is virtue in preserving a multi-member prosecuting agency. [Footnote: "This argument counsels in favor of shifting all civil antitrust enforcement to the FTC."][2]

Chairman Muris's testimony before your Subcommittee would lead one to erroneously believe that my reference to this historic option constituted my "recommendation" about how clearance issues should be resolved between the FTC and DOJ. However, Chairman Muris's characterization ignored the very next document in the above-referenced attachments. That document, titled "Allocating Antitrust Investigations Involving the Media and Entertainment Industries by Content and Distribution," is where I recommend "a more rational[] re-allocation of media/entertainment industries."[3] The document specifies in two charts: (1) the FTC/DOJ existing industry allocation in the broad media and entertainment sectors (based on the current respective expertise of the two agencies); (2) the industry allocation under the Muris/James Agreement; and (3) my recommendation concerning how to allocate media and entertainment industries between the two agencies.

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[2] Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission, Vo. 56 Antitrust & Trade Regulation Report No. 1410 (April 7, 1989) at S-34 (excerpt attached). Footnote 168 indicates that the Committee did not discuss further the option of granting the FTC exclusive federal civil antitrust jurisdiction because the Committee members believed that such a change was unlikely.

[3] "List of Documents Submitted," (Attachment to March 5, 2002 Statement, *supra* n.1) at item 4.

I have repeatedly stated that "[w]hile generally I favor interagency agreements that enhance the speed and efficiency of case processing, the [Muris/James] Agreement raised substantial concerns."[4] I continue to believe that there are steps we can all support to improve the clearance process, even though clearance issues may not be as significant a problem as portrayed by Chairman Muris. But I also believe that the impact of significant industry re-allocations and limiting legislatively granted concurrent jurisdiction, as contained in the Muris/James Agreement, warrants greater consideration and more open discussion than what has occurred thus far.[5]

Thank you for your consideration and the words of support and praise that you and other members expressed for the Commission's work during this past year.

Sincerely,

Mozelle W. Thompson /by cat

Mozelle W. Thompson

cc: Chairman Timothy J. Muris

Attachments

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[4] Statement of Commissioner Mozelle W. Thompson Concerning the Abandoned Clearance Agreement Between the Department of Justice and the Federal Trade Commission, January 18, 2002, *available at* <http://www.ftc.gov/opa/2002/01/ftcdojmt.htm> (attached). *See also*, March 5, 2002 Statement, *supra* note 1.

[5] *See e.g.*, Statement of Mozelle W. Thompson, Concurring in Part in, and Dissenting in Part from, The Federal Trade Commission's April 10, 2002 Testimony before the Subcommittee on Commerce, Justice, State, The Judiciary, and Related Agencies, House Committee on Appropriations, *available at* <www.ftc.gov/os/2002/03/budgetmwt>.

Statement of Commissioner Mozelle W. Thompson

Concerning the March 5, 2002 Clearance Agreement Between the Department of Justice and the Federal Trade Commission

With profound disappointment I learned today that DOJ Assistant Attorney General for Antitrust Charles James and FTC Chairman Timothy Muris executed an agreement that allocates merger reviews and conduct investigations between the two agencies on the basis of industries. This Agreement - which is identical to the one proposed on January 17th - was executed without substantive consultation with me, without approval of the FTC's Congressional committee Chairmen, and without the meaningful public dialogue that such a sweeping proposal deserves.[1] On January 17th, when this Agreement was first put forward, I stated that "[w]hile generally I favor intra-agency agreements that enhance the speed and efficiency of case processing, today's announced Agreement raises substantial concerns." During the intervening weeks my concerns have not been addressed and, in fact, for several reasons have only been heightened.

First, it was only last Thursday that I saw for the first time a memorandum prepared by four private antitrust attorneys who advised the Chairman and Assistant Attorney General on, among other things, how to allocate between the FTC and DOJ the future review of cases in various industries. Despite repeated prior requests, this memorandum was not provided to me or my colleagues but was instead belatedly posted with other documents on the FTC Web site. This non-public consultation with private attorneys is not a substitute for meaningful consultation with FTC Commissioners who are appointed by the President and confirmed by the Senate to work on behalf of the public interest.

Second, the documents that have been publicly provided as support for the Agreement are fundamentally flawed. For example, letters from the ABA Antitrust Section, former FTC and DOJ officials, Senators Herb Kohl and Mike DeWine, and the U.S. Chamber of Commerce each state support for some form of clearance agreement, but the authors take great pains to avoid stating that they support today's Agreement. Also, the proffered statistical data supporting the Agreement overstate DOJ's expertise in media and cable transactions, while failing to note the FTC's considerable experience in these matters. (See Attached)

Finally, I continue to be concerned that the public benefit of the Commission's independent expertise and knowledge in certain key industries, such as media, entertainment, and high technology, will be lost. Reviews of mergers and conduct - such as anticompetitive foreclosure - in these industries may be among the most important antitrust matters reviewed by the federal antitrust agencies. History demonstrates that the five-member independent Commission has used its democratic decision-making process to protect media consumers, the industry, and democracy.[2] Moreover, the Commission's substantial expertise and meaningful bi-partisan agency enforcement actions in the high-technology area may no longer be available to the public. See, for example:

- Sony *et al.* (compact disc cooperative pricing policies)
- Warner Communications & Vivendi Universal (price fixing/advertising restraint)
- Time Warner/EMI (pre-recorded music merger)AOL/Time Warner (broadband merger)
- Barnes & Noble/Ingram (booksellers)
- Random House (book publishing and resale price maintenance)
- MSC.Software (computer-aided engineering software merger)
- Hearst (pharmaceutical database merger)
- Automatic Data Processing (salvage yards parts trading database merger)
- Cablevision/TCI (New Jersey cable television systems merger)
- Time Warner/TCI (cable and cable programming merger)
- VNU N.V./Nielsen Media Research (advertisement media service merger)
- Cooperative Computing (computer management information systems merger)
- Autodesk./Softdesk (computer-aided design engines merger)
- Cadence Design (software layout environment for chip design merger)
- Adobe Systems (computer programming and software merger)

- Boulder Ridge Cable TV (cable television restraint)

In the end, I believe that issues raised by today's clearance Agreement are far too important to be resolved in secret or only with documents acting as a substitute for meaningful consultation. Thus, in the spirit of transparency - and with the hope that fuller discussion and debate will occur - I am making publicly available several analyses that I prepared in response to Congressional staff requests. (See attached) The information and statistics in these documents directly challenge the assertions contained in materials generated "after-the-fact" to justify the Agreement.

For the record, I continue to support the goal of clearance efficiency and reform, and believe there are workable parts of the present Agreement. But very little has been provided to justify the jiggering of the FTC's current antitrust authority, and I have seen nothing to demonstrate the need to move all responsibility for ensuring competitiveness in information, technology, thoughts and entertainment, to the executive branch through the Department of Justice.

What the events of the past six weeks have shown is that transparency in policymaking at the Federal Trade Commission and the Department of Justice is needed now more than ever. I hope it can begin with substantive dialogue to meaningfully discuss ways to resolve clearance issues related to our nation's media, entertainment, and high technology industries. The public interest demands no less.

List of Documents Submitted

1. Untitled document relating the abandoned DOJ/FTC Clearance Agreement, January 22, 2002.

Demonstrates that:

- The Muris-James clearance delay statistics are not that dramatic;
- Explains the value of the independent, multi-member FTC; and
- Highlights the FTC's recent expertise in cases involving the media and entertainment sectors.

2. Untitled document listing recent FTC cable expertise, Submitted February 20, 2002.

- Shows the great volume of investigations and enforcement actions involving cable mergers and agreements, as well as related media and entertainment markets.

3. "Comments on the Department of Justice's Submission Concerning Media and Entertainment Clearance Statistics," Submitted February 20, 2002.

- A closer examination of what DOJ's statistical analysis actually shows: the FTC is more effective in bringing enforcement actions in the media and entertainment sectors, and that the bulk of DOJ's expertise and enforcement actions are in relatively narrow slices of the overall media and entertainment sectors.

4. "Allocating Antitrust Investigations Involving the Media and Entertainment Industries By Content and Distribution," Submitted February 22, 2002.

Illustrates:

- The current division of FTC and DOJ areas of expertise for clearances;
- Shows the James-Muris proposal; and
- Proposes a more rationale re-allocation of media/entertainment industries.

Procedural Improvements for Clearance. The bulk of the proposed clearance improvements involve process and timing; industry allocations are a separate issue. According to the FTC Chairman, the changes will improve the clearance process and ensure that clearance disputes are resolved within 10 days. The agencies may enact these process changes without allocating

industries between the two agencies.

Clearance Statistics. The press release to announce the abandoned clearance agreement stated that, over the past two years, 32 disputed clearance matters took 15 days or longer to resolve. Several statistics may help put this number in context:

- What the statistic encompasses is not clear, but some number - perhaps as many as half of the 32 cited - may represent conduct investigations that do not involve mergers reported under Hart-Scott-Rodino. Those disputes not involving such mergers, of course, do not delay mergers and acquisitions, and the disputes generally do not hinder any other business activity.
- 32 matters in two years is only a fraction of the perhaps 600 cleared investigations and approximate 7,000 merger filings reviewed by the agencies over the last two years. (Probably around 500 of the cleared investigations were merger investigations and 100 or so non-merger investigations.)
- Chairman Muris states that the procedural and timing improvements would establish 10 days as the maximum delay period due to clearance disputes. These timing improvements could be effectuated whether or not the FTC and DOJ allocate the industries.
- Despite some press accounts of at least one antitrust practitioner claiming that the agencies have issued unnecessary second requests at great expense to the parties because of clearance disputes, no one has identified a specific transaction where such a thing has happened. Indeed, as a practical matter, whenever merging parties' counsel believes that they can provide quick evidence that shows a second request should not issue (or should not have issued) they may provide such evidence to both agencies' staff during any clearance period. (Or to the agency staff issuing the second request after the request has issued and before the merging parties choose to undertake a full search for documents.)

FY01: HSR statistics not public yet. (Likely around 2200 merger filings.)

FY00: 4749 Transactions 339 Investigations cleared 98 2d Requests 80 Challenges

FY99: 4340 Transactions 391 Investigations cleared 113 2d Req. 77 Challenges

FTC Act Section 5. Section 5 encompasses a greater scope of anticompetitive conduct than does the Sherman Act, so it allows the FTC to remedy conduct that can not be reached by DOJ under the Sherman Act. For example, the Commission can reach facilitating practices under Section 5. Facilitating practices (practices that facilitate horizontal collusion) are more typically a problem in oligopolistic industries such as media markets. The facilitating practice count was a critical aspect of the CD MAP case involving the five major music companies. Because of the legal parameters of a Sherman Act case, DOJ's bringing such a case might have proved problematic.

Administrative Litigation. Congress established the FTC as an expert antitrust body with its own administrative litigation process to handle novel, cutting-edge antitrust cases. For example, administrative litigation has helped develop the law in such novel areas as antitrust immunities (*Ticor Title Insurance*; *Superior Court Trial Lawyers*). This ability could be critical when litigating deregulating markets such as cable and when involving complex conduct cases.

Independent Agency.

- Congress provided that the FTC would be comprised of five members with staggered seven-year terms. By law, only three Commissioners may be from the same political party. The structure allows for more diverse views, greater independence, and greater continuity in decision-making.

Policy-Making Agency.

- The FTC has power to conduct industry studies and prepare reports to Congress (and post-enforcement evaluations) under Section 6. Unlike the DOJ, Congress gave the FTC authority to use compulsory process to evaluate public policy issues, conduct industry studies, and perform retrospectives on past enforcement actions. This power is especially

important in emerging, dynamic, and deregulating markets, such as cable, media, and software. Examples of recent Commission workshop and report subjects include:

- Business-to-Business (B2B) Electronic Marketplaces (2000)
- Competition Policy in the World of E-Commerce (2001)
- Electronic Signatures in Global and National Commerce Act (2001)
- Internet Retailers, Marketers and Suppliers (2001)
- Mobile Wireless Web, Data Services and Beyond: Emerging
- Technologies (2000)
- Marketing Violent Entertainment to Children (2000 and 2001 Reports on Movies, Video Games, and Pre-Recorded Music)
- Divestiture Study (1999 Policy Report)

Synergies with Consumer Protection Activities. The Commission's consumer protection mandate has provided the agency growing expertise in high-tech industries. For example, consumer fraud cases involving Hewlett Packard and Microsoft (PDAs); AOL, CompuServe, and Prodigy (ISP services); and Sharp Electronics (Mobile/Hand-held PCs).

The Commission's Recent Media, Entertainment and High Tech Investigations/Cases

- Sony et al. (compact disc cooperative pricing policies)
- Warner Communications and Vivendi Universal (price fixing and advertising restraint)
- Time Warner/EMI (pre-recorded music merger)
- AOL/Time Warner (broadband merger)
- Random House (book publishing and resale price maintenance)
- MSC.Software (computer-aided engineering software merger)
- Hearst (pharmaceutical database merger)
- Automatic Data Processing (salvage yards parts trading database merger)
- Cablevision/TCI (New Jersey cable television systems merger)
- Time Warner/TCI (cable and cable programming merger)
- VNU N.V./Nielsen Media Research (advertisement media service merger)
- Cooperative Computing (computer management information systems merger)
- Autodesk./Softdesk (computer-aided design engines merger)
- Cadence Design (software layout environment for chip design merger)
- Adobe Systems (computer programming and software merger)
- Boulder Ridge Cable TV (cable television restraint)

Below is a sampling of the numerous cable industry mergers and agreements that the Federal Trade Commission has investigated in recent years:

[DETAILED CASE DESCRIPTIONS TO BE PROVIDED LATER]

The Department of Justice's Submission
Concerning Media and Entertainment Clearance Statistics
Provided to the Senate Committee on Appropriations

On January 29, 2002, The Department of Justice provided a set of materials to the Senate Committee on Appropriations. When viewed beyond the facade of the aggregate numbers presented, the materials demonstrate the Federal Trade Commission's success relative to the Department, as well as its expertise in significant segments of the broad, diverse media and entertainment sectors.

1. The materials reveal that the FTC is the more effective compared to DOJ in the DOJ-defined combined areas of telecommunication, media, and entertainment.

- DOJ's Attachment A shows that the FTC is almost twice as likely as DOJ to take

enforcement action in these areas following a substantial investigation:

- **FTC: 64%** of agency's substantial investigations result in enforcement actions.
- **DOJ: 36%** of agency's substantial investigations result in enforcement actions.

2. The FTC tends to investigate complex and novel media and entertainment antitrust matters, while DOJ frequently handles narrow cookie-cutter media and entertainment investigations. These DOJ cookie-cutter investigations result in many easy-to-get consent decrees; however, these matters do not add much value to DOJ's expertise in other media and entertainment industries.

- For example, DOJ's Attachment C shows that a significant part of the Attachment A statistics are simple, cookie-cutter cases that increase DOJ's numbers but not experience:
  - Radio and TV station mergers: 37 enforcement actions in 66 investigations; and
  - Billboard acquisitions: 9 enforcement actions in 12 investigations.

3. By adjusting Attachment A's results (through subtracting out the numbers relating to DOJ's cookie-cutter cases), the revised statistics offer that, of the two agencies, the FTC has brought a greater number of enforcement actions in the overall media and entertainment sector:

- **FTC: 14** Enforcement Actions
- **DOJ: 12** Enforcement Actions

4. Because of DOJ's failure to prosecute a large percentage of matters that it investigates, the adjusted Attachment A figures shows even more dramatically how much more effective the FTC has been in the FTC's investigations of media and entertainment matters:

- **FTC: 64%** enforcement percentage.
- **DOJ: 19%** enforcement percentage.

5. DOJ's expertise in the telecommunications industry of course does not create expertise for media and entertainment sector because DOJ's telecommunications experience lies primarily in telephone and radio related areas.

6. Three current FTC Commissioners believe that the FTC has a unique role in media and entertainment investigations: Commissioners Anthony and Thompson so stated in their January 18, 2002 statements concerning the abandoned clearance agreement. And Commissioner Leary, as reported recently in *FTC Watch*, supports the FTC involvement in challenging, dynamic media and entertainment cases:

The FTC's primary mission, as envisioned by Congress is to provide forward-looking guidance that tackles intellectually challenging cases, Leary says. For example, he said, the Commission needs to stay focused on: . . . merger cases in new rapidly changing arenas, such as AOL/TW - 'that absorbed more time and energy than any other cases since I've been here and was all worth it.'"[3]

7. The DOJ category labeled "Media and Entertainment" - as demonstrated by Attachment A - constitutes a wide variety of different industries with various structures and market dynamics. Expertise in one type of matter and market - say analyzing TV station mergers or billboard mergers - does not benefit the agency in analyzing matters involving another industry, such as the cable or broadband industries (and the AOL/Time Warner merger). Several possible rationale alternatives could be pursued instead of the proposed clearance agreement:

- If industries are allocated within a global clearance agreement:
- The industries could be divided up more precisely to take account of the current significant expertise of the agencies. Because certain areas are so distinct (*e.g.*, billboards versus music), further dividing the list could be undertaken without sacrificing administrative efficiencies; and
- The FTC could review all matters in industries that are converging (where cable and television and Internet may ultimately interface) and those industries that are deregulating. These matters are the ones where the reviewing agency must look forward and contemplate rapidly changing industries - the five-member nonpartisan Commission is

well-suited to achieve the important public policy objectives for these industries and consumers. If Congress wants both agencies to share jurisdiction and disfavors the current, expertise method of sharing jurisdiction, investigations may be randomly assigned to one agency or the other, regardless of the industry. No time or administrative effort would be wasted, and one agency alone does not necessarily shape the future of industries, especially emerging or important media and entertainment industries.
    - A hybrid allocation system could be easily devised to allocate matters within certain specified industries to one agency or the other, with all other matters randomly assigned.
- Congress could unify merger and conduct investigations within the FTC and continue the DOJ's criminal jurisdiction, a result that would provide for maximum efficiency, fully utilize the FTC's independent antitrust purpose and structure, and continue to take advantage of DOJ's role as the federal government's criminal prosecutor.

Allocating Antitrust Investigations Involving the Media and Entertainment Industries By Content and Distribution

Media/Entertainment Content	Current	Muris	Thompson
Advertising Services	DOJ	DOJ	FTC
Magazine Publishing	DOJ	DOJ	DOJ
Newspaper Publishing	DOJ	DOJ	DOJ
Movie Production	DOJ	DOJ	DOJ
Music Licensing Rights	DOJ	DOJ	DOJ
Cable/Satellite programming (MVPD)	Mix	DOJ	FTC
Upstream Internet video content	-	DOJ	FTC
Book Publishing	FTC	DOJ	FTC
Pre-recorded Music	FTC	DOJ	FTC
Sports	FTC	DOJ	FTC
Games/Toys	FTC	DOJ	FTC

Media/Entertainment Distribution	Current	Muris	Thompson
Radio Stations	DOJ	DOJ	DOJ
Television Stations	DOJ	DOJ	DOJ
Outdoor Advertising/Billboards	DOJ	DOJ	DOJ
Movie Distribution	DOJ	DOJ	DOJ
Satellite Services (*e.g.*, DBS)	DOJ	DOJ	DOJ
Set-top Boxes and other inside-the-house Internet and cable equipment	DOJ	DOJ	FTC
Upstream Internet video distribution	-	DOJ	FTC
Cable Services (video/data/audio)	FTC	DOJ	FTC
Cable Infrastructure	FTC	DOJ	FTC
Video Rentals	FTC	DOJ	FTC
Gaming	FTC	DOJ	FTC

Endnotes:

1. It is curious that the Chairman claims that the Agreement is purely an "inside baseball" administrative matter, thus not warranting a Commission vote, or Congressional or public consultation. Yet the Chairman sees that the Agreement constitutes a significant enough policy change that it warrants two press conferences and several press releases over the past six weeks.

2. Indeed, the non-consultative actions in this situation only demonstrates why the FTC's role as an independent bi-partisan deliberative body is so important.

3. *FTC: Watch*, "When Is Antitrust Disgorgement a Good Idea?" at p. 3 (January 14, 2002).

BNA Antitrust & Trade Regulation Report

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Special Supplement

REPORT OF THE AMERICAN BAR ASSOCIATION SECTION OF ANTITRUST LAW SPECIAL COMMITTEE TO STUDY THE ROLE OF THE FEDERAL TRADE COMMISSION

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There also are advantages in having antitrust enforcement decisions made by a multi-member agency. The best example is provided by merger enforcement. Frequently, the critical question in merger litigation is whether a complaint will be filed. Time and again, parties abandon or restructure proposed transactions in the face of a federal complaint; when they proceed, they often lose in court, at least when the FTC sues. Our system of government traditionally has entrusted many critical legal decisions to multi-member panels (e.g., three-member courts of appeals panels, the nine-member Supreme Court, and multi-member independent agencies). Multiple voices may improve quality and increase public trust. With the critical merger enforcement decision having moved from the courts to the prosecutors, there is virtue in preserving a multi-member prosecuting agency.[168]

In addition to the benefits and possible benefits of dual enforcement, those Committee members favoring its retention are impressed by the apparent absence of real harm. Critics of dual enforcement usually point to the waste that stems from having two federal agencies, to increased uncertainty, to questionable case selection, to flawed adjudication processes, and to the lack of any genuine expertise. These points are worth considering briefly.

Most Committee members doubt that dual enforcement wastes substantial resources. Consolidation of support services such as libraries could save only a little. Even if there is a minimum efficient size for antitrust enforcement agencies, below which agency leadership resources would inevitably be used inefficiently, many Committee members doubt the FTC and the Antitrust Division have shrunk below this threshold.

Many Committee members also doubt that dual enforcement presents substantial problems of uncertainty. Although Section 5's wording differs from that of the antitrust laws, the FTC has interpreted them as being the same or very similar, and recent court decisions have rebuffed the FTC when it interpreted Section 5 expansively.[169] The area of greatest interagency overlap is merger enforcement, but a Committee survey of leading merger lawyers found almost unanimous agreement that dual enforcement has created little uncertainty and has prevented very few transactions. Most lawyers surveyed perceive that the two agencies evaluate mergers by similar standards. Moreover, the Hart-Scott-Rodino process permits relatively quick, inexpensive government merger reviews, and thus clients are undeterred by uncertainty. Of course, uncertainty costs would rise were the areas of overlap between the agencies to increase, and the agencies to adopt significantly different antitrust policies. In part because the agencies are aware of this risk, most Committee members are not persuaded that the uncertainty cost of dual enforcement is high.[170] Moreover, if the agencies adopted substantially different policies, the President might be able to use his supervisory authority to encourage greater consistency.[171]

There is general agreement that the FTC has engaged in some questionable case selection over its history. Some on the Committee believe that this has been caused in part by the agency's rather amorphous mandate and by its vulnerability to congressional pressure. Others point to the cases that were brought by the Antitrust Division that have now fallen from favor,[172] noting that the FTC has not had any monopoly on prosecutorial misjudgment. The Committee is not persuaded that the likely costs from future questionable case selection are sufficiently great to justify abolishing the FTC's antitrust role.

FTC adjudication is considered above as a possible strength, but the agency's perceived lack of expertise is a greater concern. The agency is at the mercy of the presidential appointment process, and without first-rate commissioners the agency cannot serve its intended role.[173] Although the Committee is troubled by the uneven quality of FTC appointments, our concern is insufficient to persuade a majority of us that the FTC's role in antitrust enforcement should be ended.

A majority of the Committee have concluded that, on balance, it should not recommend consolidating antitrust enforcement in a single agency. Dual enforcement has certain benefits and imposes only limited costs. Moreover, antitrust enforcement is less "dual" than sometimes thought. The Antitrust Division generally limits its activities to criminal antitrust enforcement and merger enforcement, and ever

[168] This argument counsels in favor of shifting all civil antitrust enforcement to the FTC. This seems unlikely to occur, and the Committee did not discuss the possibility at any length.

[169] *See* E.I. du Pont de Nemours & Co. v. FTC, 729 F.2d 128 (2d Cir. 1984); Official Airline Guides, Inc. v. FTC, 630 F.2d 920 (2d Cir. 1980), *cert. denied*, 450 U.S. 917 (1981). *But cf.* United Air Lines, Inc. v. CAB, 766 F.2d 1107 (7th Cir. 1985) (interpreting Section 411 of Federal Aviation Act, which parallels Section 5).

[170] Other Committee members are more concerned about possible uncertainty, for the reasons stated earlier. The Committee is in agreement that, assuming dual enforcement will continue, both agencies should strive to adopt consistent enforcement policies.

[171] *See generally* American Bar Association Recommendation, *reprinted in* 38 Admin. L. Rev. 206 (1986) (supporting executive oversight of agency rulemaking); Strauss & Sunstein, *The Role of the President and OMB in Informal Rulemaking*, 38 Admin. L. Rev. 181, 200-201 (1986) (arguing that the President "may consult with and demand answers from" independent agencies, and exercise supervisory authority, although the "ultimate power to decide rests with the relevant agency").

[172] *E.g.*, United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967); United States v. Von's Grocery Co., 384 U.S. 270 (1966); United States v. International Business Machines Corp., Civ. No. 69 Civ. 200 (S.D.N.Y. 1982) (dismissed by stipulation); United States v. Cuisinarts, Inc., Crim. No. H-80-49 (D. Conn. Dec. 19, 1980) (*nolo contendere* plea accepted and $250,000 fine ordered in criminal resale price maintenance case).

[173] It is trite but true that the Commission can be no better than its leaders. The importance of strong leadership is addressed above at Section III.

allocate its resources and assist the states. In addition, we voiced our strong support for the Competition and Consumer Advocacy Program.

We also emphasized that it is important to both the public and the agency that the FTC provide guidance as to its current thinking on antitrust and consumer protection. "Guidance," as we defined it, includes a range of activities, cease and desist orders, guides, policy statements, advisory opinions, and Magnuson-Moss rules.

We urged that economists continue to participate in all aspects of the Commission's work—not only in deciding the cases or projects to be undertaken, but throughout the proceedings. We recommended that studies by FTC economists should focus on the operation of U.S. industries and the U.S. antitrust and consumer protection systems, rather than on abstract economic research.

The Report also examined two other topics essential to the FTC's success: obtaining adequate resources and ensuring that Congress exercises a proper role with respect to the FTC's work. On the former topic, without selecting specific budget figures or personnel numbers, we expressed our belief that current resources are insufficient and should be gradually increased. On the latter, while we recognize Congress's obligation to oversee FTC activities, we expressed concern that Congress may have unduly interfered with the details of FTC proceedings, particularly in pending matters. Congress should continue to review the general policies of the FTC, but it should not become involved in pending proceedings, nor alter the outcome of specific decisions except by substantive legislation.

Respectfully submitted,

Miles W. Kirkpatrick *Chairman*	Basil J. Mezines Alan B. Morrison Timothy J. Muris
Joan Z. Bernstein	Robert Pitofsky
Michael F. Brockmeyer	James F. Rill
Nancy L. Buc	Edwin S. Rockefeller*
Calvin J. Collier	J. Thomas Rosch
Kenneth G. Elzinga	Alan H. Silberman*
Ernest Gellhorn	Cass R. Sunstein
Caswell O. Hobbs, III	William L. Webster

* See separate statements by Mr. Rockefeller and Mr. Silberman.

APPENDIX A:
MEMBERS OF THE AMERICAN BAR ASSOCIATION SECTION OF ANTITRUST LAW SPECIAL COMMITTEE TO STUDY THE ROLE OF THE FEDERAL TRADE COMMISSION

Miles W. Kirkpatrick (chairman), a Philadelphia, Pa., attorney and a member of the *Advisory Board to* BNA's Antitrust and Trade Regulation Report, and formerly chairman of the ABA Antitrust Section, chairman of the 1969 ABA Commission to Study the Federal Trade Commission, and chairman of the FTC

Joan Z. Bernstein, vice president and general counsel of Chemical Waste Management, Inc., and formerly a Washington, D.C., attorney who served as general counsel to the Environmental Protection Administration and to the Department of Health, Education, and Welfare, and as director of the FTC's Bureau of Consumer Protection

Michael F. Brockmeyer, assistant attorney general and chief of Maryland's Antitrust Division, and chairman of the Multistate Antitrust Task Force of the National Association of Attorneys General

Nancy L. Buc, a Washington, D.C., attorney and a fellow of Brown University, who has served as chief counsel to the Food and Drug Administration and as assistant director of the FTC's Bureau of Consumer Protection

Calvin J. Collier, Senior Vice President, General Counsel and Secretary, Kraft General Foods, who has been chairman and general counsel of the FTC, associate director of the Office of Management and Budget, and deputy under secretary of the Commerce Department

Dr. Kenneth G. Elzinga, professor of economics at the University of Virginia, co-author of *The Antitrust Penalties: A Study in Law and Economics*, co-editor of *The Antitrust Casebook: Milestones in Economic Regulation* and *The Morality of the Market: Religious and Economic Implications*, and a member of the Board of Trustees of Hope College

Ernest Gellhorn, a Washington, D.C., attorney, co-author of *The Administative Process* (1st, 2d, & 3d eds.), a public member and chair of the Rulemaking Committee of the Administrative Conference of the United States, and a member of the American Law Institute, who has served as a professor of administrative law and antitrust law at Duke University and the University of Virginia, and as dean of the law schools at Arizona State University, Case Western Reserve University, and the University of Washington

Caswell O. Hobbs, a Washington, D.C., attorney, author of articles on antitrust and trade regulation, and a member of the Council (and formerly an officer) of the ABA Antitrust Section, who has served as director of the FTC's Office of Policy, Planning, and Evaluation

Basil J. Mezines, a Washington, D.C., attorney, author of *Administrative Law* and *Trade Associations and the Antitrust Laws*, and a member of the Advisory Board to the BNA Antitrust and Trade Regulation Report, who has served as executive director of the FTC and as director of its Bureau of Competition

Alan B. Morrison, director of the Public Citizen Litigation Group and a member of the Administrative Conference of the United States, and formerly a visiting professor at Harvard Law School and a member of the Board of Governors of the District of Columbia Bar

Timothy J. Muris, George Mason University Foundation Professor of Law at George Mason University Law School, co-editor of *The Federal Trade Com-*

Statement of Commissioner Mozelle W. Thompson

Concerning the Abandoned
Memorandum of Agreement Between The Federal Trade Commission and the Antitrust Division of the United States Department of Justice
Concerning Clearance Procedures for Investigations

Yesterday, Assistant Attorney General James and Chairman Muris abandoned their plans to announce an Agreement that would have redefined how the Federal Trade Commission and the Antitrust Division of the Department of Justice allocate the review of future antitrust matters. Under the claim that the Agreement would streamline the federal government's review of antitrust matters, the abandoned Agreement would have reallocated by industry the agencies' antitrust review responsibilities. While generally I favor interagency agreements that enhance the speed and efficiency of case processing, the abandoned Agreement raised substantial concerns.

First, redefining the Commission's future antitrust responsibility raises weighty issues that warrant close attention from each Commissioner in order to ensure that the public interest is adequately protected. Rather than simply codifying or clarifying the existing merger review responsibilities, the abandoned Agreement would have altered which agency would have primary responsibility for investigating both mergers and other anticompetitive practices in certain industries.[1] Such an important change demands careful consideration by each of the five Commissioners.

The abandoned Agreement was the product of private discussions between Chairman Muris and Assistant Attorney General James. Chairman Muris failed to consult with, or provide meaningful opportunity for, other Commissioners to provide any input. In fact, I was not even provided with a copy of the completed proposed Agreement until yesterday. This lack of transparency makes it difficult for the other four Commissioners to discharge their obligation to determine whether consumers would actually benefit from such a significant change at this agency.

Second, I am also concerned about the substance of this private "horse trading" because it may deprive consumers of the benefit of the Commission's independence, expertise, and knowledge. The Commission is an independent, nonpartisan body made up of five presidential appointees with varied expertise and professional experiences. I believe these perspectives have led to significant, positive agency actions in dynamic "new economy" industries that presented novel antitrust issues. But Chairman Muris's Agreement would have transferred the Commission's jurisdiction in publishing, media, entertainment, computer software, and Internet-related industries to the Department of Justice, thereby consolidating responsibility for the review of all matters relating to media content in the Department of Justice. This transfer would have deprived the public of the benefit of the Commission's recent experience in matters such as:

- AOL/Time Warner[2] (broadband);
- Random House[3] (book publishing);
- MSC.Software[4] (computer-aided engineering software);
- Hearst[5] (pharmaceutical databases);
- Sony[6] (compact disc cooperative pricing policies); and
- Time Warner/EMI[7] (pre-recorded music).[8]

Moreover, the public would have also lost the full potential of synergies arising from other ongoing related Commission activities that encompass: law enforcement investigations in Internet fraud cases; Internet privacy policy workshops and studies; advertising enforcement activity in the media space; and public workshops in cutting-edge areas (such as the June, 2000 Business-to-Business Electronic Marketplaces Workshop).

In summary, I am disappointed that the Commissioners were not invited to participate in this public policy decision that would have so profoundly shaped the future of the Commission. The lack of transparency in the negotiation of matters as important as those covered in the abandoned Agreement can compromise my responsibility to the public to give thorough and careful consideration to matters that will have an important impact on all consumers. However, my greater fear is that the

abandoned Agreement would have compromised opportunities for independent consideration of important antitrust matters and how America will grow.

Endnotes:

1. I believe that the changes embodied in the proposed Agreement exceed merely administrative responsibilities and go to the core of the agency's mission.

2. *In the Matter of America Online, Inc. and Time Warner Inc.*, Docket No. C-3989 (Consent accepted December 14, 2000) <<www.ftc.gov/opa/2000/12/aol.htm>>.

3. *In the Matters of Harper & Row et al.*, Docket Nos. 9217-9222 (Order dismissing administrative complaints September 20, 1966) <<www.ftc.gov/opa/1996/9609/book.htm>>.

4. *In the Matter of MSC.Software Corporation*, Docket No. 9299 (Administrative complaint filed October 10, 2001) <<www.ftc.gov/opa/2001/10/msc.htm>>.

5. *FTC v. The Hearst Trust et al.*, Civ. No. 1:01CV00734 (D.D.C. 2001) <<www.ftc.gov/opa/2001/12/hearst.htm>>.

6. *In the Matters of Sony Music Entertainment, Inc. et al.*, Docket Nos. C-3971-3975 (Consents accepted May 10, 2000) <<www.ftc.gov/opa/2000/05/odpres.htm>>.

7. Time Warner's proposed acquisition of EMI in 2000 was abandoned during the Commission's investigation.

8. Because Chairman Muris failed to apprise his fellow Commissioners of the existence of his discussions, negotiations, and industry allocations until four days ago, I have not fully appraised the impact of the proposed shifts on the Commission's *de facto* jurisdiction.

WEDNESDAY, MARCH 13, 2002.

SMALL BUSINESS ADMINISTRATION

WITNESS

HECTOR V. BARRETO, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION

OPENING REMARKS OF SUBCOMMITTEE CHAIRMAN WOLF

Mr. WOLF. Welcome. The committee will convene.

We are pleased to welcome today Mr. Hector Barreto, Administrator of the Small Business Administration. The 2003 budget request for SBA totals $798,253,000, an increase of 8 percent from fiscal year 2002. Hower, the budget reflects a reduction of nearly 50 percent in loan capacity of the 7(a) general business loan program. A reduction of this magnitude in what is considered your flagship business loan program is not desirable, particularly if we are coming out of this recession and headed toward a period of economic recovery, when people begin to try to expand and do certain things.

I understand that you have proposed an option for augmenting the 7(a) program, and we look forward to hearing about this proposal. There are a number of other issues which I will just submit for the record, and then I will recognize Mr. Serrano. Your full statement will appear in the record as if read. You may summarize or proceed as you see appropriate.

Mr. Serrano.

Mr. SERRANO. Thank you so much, Mr. Chairman.

I want to welcome the Administrator also. I am very much interested in hearing your comments on the whole issue of the New York recovery and how the world has changed for your agency since September 11th. I have always been a strong supporter for your agency, and I work very closely with my sister, Congresswoman Velazquez, who is the Ranking Member of the authorizing Committee, so you have two friends, and we in New York certainly need a friend for all the problems that we have.

So I welcome you and we stand ready to hear your testimony.

Mr. BARRETO. Should I read the statement?

Mr. WOLF. Whatever you think is appropriate. The full statement will appear in the record as if read. You may read it in its entirety or you can summarize, whatever you think is appropriate.

Mr. BARRETO. I will read it quickly then.

Mr. Chairman, Ranking Member Serrano, and members of the Committee, thank you for inviting me here today to discuss the President's budget request for the SBA for fiscal year 2003.

To paraphrase President Bush, there are no Democratic solutions to small business issues, nor are there Republican solutions. There are only solutions. Year after year the members of your committee

have recognized this, and have consistently reached consensus instead of conflict. America's small businesses are better off today as a result of your working together. I know we can continue that tradition. It is in that spirit that I respectfully ask for your support of the President's budget request of $798 million for the SBA.

The President has increased the SBA's budget to provide capital and technical assistance to small businesses and disaster victims so that the SBA may continue making services available to those who need them most. This budget reflects the President's commitment to economic security through its support of small businesses and their creation of new jobs. It supports the President's role of Government, a role which is not to create wealth but is instead to create an environment in which entrepreneurs can thrive.

Before we continue our discussion on fiscal year 2003, please permit me to take this opportunity to commend the many Federal Disaster Relief workers for their role after the attacks of September 11th. Through the dedication of SBA employees we have delivered, as of March 11th, more than $570 million in disaster loans nationwide: approximately $315 million in disaster loans in New York, $12 million in Virginia, and $243 million elsewhere throughout the country. I am proud to lead an agency that employs such loyal, dedicated and caring employees, that made distribution of this aid possible. I know you join me in the sentiment and share our commitment to continue in the important work on behalf of the impacted small business men and women across our country.

I would like to address in greater detail funding for the 7(a) loan guarantee program, the flagship program for the SBA. Many might see the stated 7(a) funding as problematic. We at the SBA, instead, see it as an opportunity for us to refine the program to ensure that it retains its relevance and vitality for future years. In the interim our budget request will allow us to continue meeting demands for 7(a) for fiscal year 2003.

Let me elaborate. In fiscal year 2003, for the first time in many years, the SBA and the Office of Management and Budget worked to make the subsidy rate calculation method more accurately reflect changes in the program. While the interim calculation produced a rate that may not be the rate that any of us would like to see, it shows our commitment to move to produce the most accurate method possible. This is not an empty commitment as has been made in the past. We actually have a contract with the Office of Federal Housing Enterprise and Oversight, and work has begun on creating an econometric model for the subsidy rate in fiscal year 2004.

In the interim our calculation for fiscal year 2003, which weights preferred lender loans in proportion to participation in the program, lowered the subsidy rate by one-fifth, all the way down to .88 percent. That is a 20 percent decrease. With the requested appropriation of $85.36 million for fiscal year 2003, this would have resulted in a 9 percent increase in loan volume, producing a record level of loan authority. However, recently passed legislation subsequently reduced the fees paid by borrowers and lenders for a two-year period beginning in fiscal year 2003, resulting in a double subsidy rate of 1.76 percent, and a 7(a) program level of $4.85 billion.

While the statutory change poses a significant challenge to the SBA in satisfying increasing loan demand, we believe that other recent legislation will help us meet this demand. The combined budget authority for the 7(a) program in fiscal year 2002 equals the program level of $13.84 billion. Adding this amount to the fiscal year 2003 program level produces a two-year program level with an annual average of $9.34 billion. This is consistent with historic levels. While we anticipate an increased program level of $10.5 billion in fiscal year 2002, this would leave an additional $2 billion in guarantee authority to support nearly a $7 billion program level in fiscal year 2003.

The current challenge creates an opportunity to examine the 7(a) program to ensure its continued relevance in the marketplace. One of our concerns is the relationship between the 7(a) program and the 504 certified development company. 7(a) and 504 in some ways compete with each other. The 504 program, formed specifically for job creation, provides financing for real estate and major fixed assets. We have determined that the 504 program is not reaching its full potential.

For example, over 40 percent of the dollar volume of loans provided under 7(a) are provided through large real estate loans, many of which our 504 program could accommodate. Steering those larger real estate loans to 504 will assist our goal in reducing the 7(a) loan size from roughly $244,000 per loan to a more desirable $175,000. Our aim is to increase the proportion of smaller loans, the type of loans often the most difficult for small businesses to receive. We're looking at ways to encourage lenders to make smaller loans. Doing so will enable us to better provide loans to small businesses, the businesses that represent 99 percent of all employers and 52 percent of the private workforce. We are confident that our lending partners will work with us to ensure that more businesses which need 7(a) assistance will be able to receive it.

As with 7(a) we hope to use OFHEO's econometric model for the 504 program subsidy rate. We will implement the results in fiscal year 2005, a year later than implementation for the 7(a) subsidy rate, to give us time to evaluate the results of using this model on the 7(a) program before using it in additional programs.

As we attempt to implement these and other reforms to our finance programs, we will work closely with you in Congress to ensure that these programs retain their crucial role in assisting small businesses. In keeping with the President's management goals, we are restructuring the workforce at the SBA. We are investing in the workforce now to produce future savings. The structure we developed to deliver our services to our customers was developed in the 1960s and is in drastic need of updating. We in Government need to do things as modern private organizations do them. Our restructuring agenda includes more use of telecommuting and contracting out of services, as well as other means to reduce overhead and rent and use of technology to improve productivity.

Managing for results, working with partners to ensure the effectiveness of programs is another of the President's management goals. And I have taken steps to deal with the management issues raised by the General Accounting Office and the Inspector General.

Regarding telecommuting, we have made great strides at the SBA in expanding our telecommuting program. Currently 12 percent of currently-eligible employees are taking advantage of our telecommuting program. I have signed a comprehensive telecommuting policy for the SBA which includes an electronic telecommuting tracking system.

The system will allow managers to transmit specific program data used for reporting internally and to the Office of Personnel Management. We have also developed a tiered approach to phasing in the remainder of our telecommuting program. I am confident that an ever-growing number of our employees will take advantage of the tremendous benefits of telecommuting in the upcoming fiscal year.

And I would like to thank you, Mr. Chairman, for spearheading congressional action in this area so important to employee satisfaction and retention.

This budget includes $1 million for the new Native American Economic Development program, an initiative to establish partnerships with tribes engaged in economic development activity. The SBA is dedicated to ensuring that all Native Americans who seek to create, develop and expand small businesses have full access to the necessary business development and expansion tools available through agency programs. This program is a comprehensive initiative designed to meet specific cultural needs and result in small business creation.

The SBA will celebrate its 50th anniversary in July 2003. In its half century in existence, the SBA has assisted hundreds of thousands of businesses in their formative stages. Many of those companies have names with which you all are quite familiar, names like Federal Express and Intel and Nike, just to name three. We are working hard at the SBA to ensure that the agency retains its leadership position as it looks forward to another half century, and will continue to provide crucial assistance to the next Federal Express or the next Intel.

As I have taken a close look at our programs and services throughout my first year as Administrator I have seen what the SBA can do and what the SBA needs to do to keep its programs in tune with the ever-changing economy. We cannot do this alone. I know that I have spoken with some of you individually, but I want to take this opportunity, while we are all together, to enroll you in these efforts. We have an opportunity together to look back at successes, to identify weaknesses where they exist, and to position the SBA whereby it can assist in creating an environment in which entrepreneurship can continue to flourish.

As I mentioned at the beginning of my testimony, the SBA's fiscal year 2003 request is a good one for small businesses and offers a beginning point for us to work in tandem with our partners in Congress to ensure that the SBA remains effective, relevant and provides 21st century service for the small business community's needs. We ask for your support of this budget.

We thank you for the opportunity to appear here today. I would be happy to answer any questions you may have. Thank you, Mr. Chairman.

[The information follows:]

STATEMENT OF

HECTOR BARRETO
ADMINISTRATOR

U.S. SMALL BUSINESS ADMINISTRATION

SBA'S FISCAL YEAR 2003 BUDGET REQUEST

BEFORE THE

COMMITTEE ON APPRORPRIATIONS

SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, THE JUDICARY AND RELATED AGENCIES

UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 13, 2002

Mr. Chairman, Ranking Member Serrano, and members of the Committee, thank you for inviting me here today to discuss the President's Budget Request for the U.S. Small Business Administration (SBA) for Fiscal Year (FY) 2003. To paraphrase President Bush, there are no Democratic solutions to small business issues, nor are there Republican solutions. There are only *solutions*. Year after year, the Members of the House Appropriations Subcommittee on Commerce, Justice and State have recognized this and have consistently reached consensus instead of conflict. America's small businesses are better off today as a result of your working together.

I know we can continue that tradition. It is in this spirit that I respectfully ask for your support of the President's Budget Request of $798 million for the SBA. The President has increased our budget to provide more than $17 billion in capital and technical assistance to small businesses and disaster victims so that the SBA may continue making services available to those of our Nation's 25 million small businesses which need them most. This budget reflects the President's commitment to economic security through its support of small businesses and their creation of new jobs.

Before we continue our discussion on FY 2003, please permit me to take this opportunity to commend the many federal disaster relief workers for their role after the attacks of September 11. In the immediate aftermath of this unprecedented attack on American soil, the SBA mobilized both its disaster and district office employees, including its resource partners, to open some 40 temporary disaster assistance offices in New York City and Virginia.

Through the dedication of SBA employees, we have delivered as of March 11 more than $570 million in disaster loans nationwide – $315 million in disaster loans in New York, $12 million in Virginia and $243 million elsewhere. I am pleased to say that the SBA was on-site very quickly after the attacks and in many cases canvassed areas door-to-door south of Canal Street and beyond, distributing disaster loan applications to small business owners. These dedicated men and women of the SBA have worked tirelessly to distribute applications, answer questions, verify damages, and process and disburse loans. Placing the success of the mission above any personal consideration, the SBA family continues to work long hours without seeking recognition for their tremendous efforts. The SBA also rolled out an unprecedented nationwide expansion of the Economic Injury Disaster Loans (EIDL) Program to help those small businesses across the country adversely affected by the events of September 11. I am proud to lead an Agency that employs such loyal, dedicated and caring employees. I know that you join me in this sentiment and share our commitment to continuing this important work on behalf of impacted small businessmen and women across the country.

Disaster assistance, however, is but one of many ways through which the SBA reaches its customers. The 2003 budget includes specific requests for the following programs, a few of which I will highlight in greater detail later in my testimony:

- $4.85 billion in program level, through an appropriation of $85.360 million, for the 7(a) Loan Guaranty Program;
- $4.5 billion in program level, without taxpayer subsidy, for the 504 Certified Development Company Program;
- $7 billion in program level, without taxpayer subsidy, for the Small Business Investment Company (SBIC) Program;

- $1.67 billion in program level, without taxpayer subsidy, for the Surety Bond Guarantee Program;
- $26.6 million in program level, through an appropriation of $3.726 million, for the Microloan Direct Program.
- $17.5 million for Microloan technical assistance;
- $795 million for disaster relief;
- $1.1 million for Advocacy Database and Analysis;
- $500,000 for Ombudsman and Regulatory Fairness Boards;
- $750,000 for Veteran's Outreach;
- $1.5 million for initial preparation for a National Conference on Small Business;
- $3.6 million for 7(j) technical assistance;
- $500,000 for the Pro-Net Small Business Database;
- $500,000 for Small Business Innovation Research (SBIR) Program technical assistance;
- $3 million for the Federal and State Technology (FAST) Program;
- $2 million for the HUBZone program;
- $88 million for Small Business Development Centers (SBDC) grants;
- $3 million for the Paul D. Coverdell Drug-Free Workplace Program;
- $5 million for the Service Corps of Retired Executives (SCORE);
- $475,000 for Business Information Centers (BICs);
- $12 million for Women's Business Centers (WBCs);
- $750,000 for the Women's Council;
- $1 million for Native American outreach; and
- $3.1 million for United States Export Assistance Centers (USEACs).

I would like to address in greater detail funding for the 7(a) Loan Guaranty Program, the flagship program of the SBA. Many might see the state of 7(a) funding as problematic. We at the SBA instead see it as a challenge -- an opportunity for us to refine the program to ensure that it retains its relevance and vitality for future years. In the interim, our budget request will allow us to continue meeting demand for 7(a) through FY 2003. Let me further elaborate.

One fundamental issue we face with the 7(a) program is the subsidy rate. The subsidy rate calculation method for the 7(a) program has needed updating for some time. Under the current Administration, the SBA and the Office of Management and Budget (OMB) have, for the first time in many years, worked together to make the calculation method more accurately reflect changes in the program. Our combined efforts reduced the subsidy rate calculation for FY 2003 by *one-fifth*, lowering it all the way to .88 percent. With the requested appropriation of $85.36 million for FY 2003, this lowered subsidy rate would have increased loan volume by 9 percent, producing a record level of loan authority. However, P.L. 107-100 subsequently reduced the fees paid by borrowers and lenders for a two-year period beginning in FY 2003, after the FY 2003 funding level for 7(a) had been established, producing a doubled subsidy rate of 1.76 percent and reducing the FY 2003 7(a) program level to $4.85 billion.

While this statutory change poses a significant challenge to the SBA, we believe that we will nevertheless meet demand for the 7(a) program in FY 2003. The combined budget authority for the 7(a) program in FY 2002 is $175 million. This figure includes the SBA's annual appropriation of $78 million, the supplemental appropriation of $75 million, and carryover from

FY 2001 of $22 million. While the supplemental 7(a) program is executed at a different subsidy rate than the regular program (1.67 percent versus 1.07 percent, respectively), the total 7(a) loan guaranty authority for FY 2002 comes to $13.84 billion. Adding this amount to the FY 2003 program level of $4.85 billion produces a two-year program level of $18.69 billion, or an annual average of $9.34 billion, which is consistent with historical levels. In FY 2003, we anticipate converting approximately $3.3 billion in guaranty authority from FY 2002 into $2 billion in guaranty authority under the subsidy rate created by P.L. 107-100, supporting a nearly $7 billion program level in FY 2003.

The current challenge creates an opportunity to examine the 7(a) program to ensure its continued relevance in the current marketplace for both lenders and borrowers. One of our concerns is the relationship between the 7(a) program and the 504 Certified Development Company. 7(a) and 504 in some ways compete with each other instead of complementing one another. The 504 program, formed specifically for job creation, provides financing for real estate and major fixed assets. We have determined that the 504 program is not reaching its full potential. For example, over 40 percent of the dollars in all loans provided under 7(a) are provided through large real estate loans. Many of those loans are those which 504 could easily accommodate.

Steering those larger real estate loans to 504 will allow us to avoid duplication of financial assistance programs while assisting our goal of reducing the average 7(a) loan size from roughly $244,000 per loan to a more desirable average of around $175,000. Our aim is to increase the proportion of smaller loans, the type of loans often the most difficult for small

businesses to receive. We are looking at ways to encourage smaller loans. One way the SBA is considering involves allowing credit unions to provide 7(a) loans as well. Credit unions traditionally service customers who require smaller loans, and such a change, which would not require legislative action, would open up an additional avenue for such small businesses seeking financial assistance.

Doing so will enable us to better provide loans to small businesses – the businesses that represent 99 percent of all employers and 52 percent of the private workforce. An *Inc* 500 study has shown that a majority of the fastest growing companies started with less than $50,000 in capital. Reducing the average loan size in the 7(a) program will make the SBA an even greater engine in creating jobs and providing for the nation's economic security. We are confident that our lending partners will work with us to ensure that more businesses which need 7(a) assistance will be able to receive it.

As I said before, the 504 program provides financing for major fixed assets. Its statutory purposes are to foster economic development and to create or preserve job opportunities by providing long-term financing for small business concerns. The program will provide up to $4.5 billion in lending in FY 2003, up from a lending volume of $2.3 billion in FY 2001. This renewed emphasis on 504 allows the SBA to support a significantly higher number of the larger loans critical to the success of small businesses needing financing for real estate and long-term capital equipment purchases. This program has not required a subsidy from taxpayers since FY 1996, as an on-going fee paid by small business borrowers fully funds it. We propose to slightly

adjust this fee in FY 2003 from .410% to .425% to allow the program to continue without taxpayer subsidy.

I mentioned earlier that we had worked closely to improve the subsidy rate calculation method for FY 2003. We are also taking an additional step to improve the calculation method for both 7(a) and 504 by contracting with the Office of Federal Housing Enterprise Oversight (OFHEO) to create an econometric model for the subsidy rate. We will implement the results for the 7(a) program in FY 2004 and a year later for the 504 program to give us time to first evaluate the results of using this model on the 7(a) program.

As we attempt to implement these and other reforms to our finance programs, we will work closely with you in Congress to ensure that these programs retain their crucial role in assisting small businesses.

In keeping with the President's management goals, we are restructuring the workforce at the SBA, taking a hard look at how we currently structure our workforce and at how we plan to deliver our services over the next five years. The budget request includes $12.5 million for workforce restructuring -- an investment which I personally believe is crucial to ensure that the SBA restructures its workforce as soon as possible and as efficiently as possible to produce future savings. Our restructuring agenda includes increasing telecommuting, consolidating servicing contracts to reduce overhead and rent and improving productivity through the use of technology. The budget request also includes $2.5 million to conduct cost studies on 15 percent

of our commercial activities, including loan servicing, to ensure that we competitively source products and services.

We have made great strides at the SBA in expanding our telecommuting program. Currently, 12 percent of currently eligible employees are taking advantage of our telecommuting program. I have signed a comprehensive telecommuting policy for the SBA which includes an electronic telecommuting tracking system that allows managers to transmit specific program data used for reporting internally and to the Office of Personnel Management (OPM). We have also developed a tiered approach to phasing in the remainder of our telecommuting program. The first tier, to be implemented by March 30, will include all managers and supervisors, including all career Senior Executives, as well as other offices, including Human Resources. The second tier, to be implemented by April 30, will include all offices not covered under the bargaining unit, and the third and final tier will include those offices that are under the bargaining unit. I am confident that an ever-growing number of our employees will take advantage of the tremendous benefits of telecommuting in the upcoming fiscal year, and I would like to thank you, Mr. Chairman, for spearheading congressional action in this area.

Managing for results – working with partners to ensure the effectiveness of programs – is another of the President's management goals. I have taken steps to deal with the management issues raised by the General Accounting Office and the Inspector General. We have also addresses the President's E-Government initiative to create a government that is more citizen-centered. The budget request includes $5 million for SBA's leadership role in the Federal Government's interagency effort to build a website that reduces the burden of wading through

laws and regulations. Small business owners have a labyrinth of laws and regulations to negotiate on the Federal, state and local levels and no guide to assist them in determining which are applicable. This Business Compliance One-Stop on the Internet will build upon BusinessLaw.gov, which the SBA has already implemented, and will provide those small business owners simpler, 24/7 access to the vital information they need to run their businesses.

Additionally, in order to ensure security of its computer systems and to provide small businesses the access described above, the budget request includes $2.8 million to support SBA's upgrade of its information technology infrastructure. The SBA will also begin implementation of an e-documents management system to assist with the retention and administration of the SBA's electronic records. The budget request includes $750,000 for that purpose.

This budget request includes $1 million for the new Native American Economic Development Program, an initiative to establish partnerships with tribes engaged in economic development activity. According to the 2000 Census, there are over 2.5 million Native Americans and Alaskan and Hawaiian Natives, and the average unemployment rate on reservations in 1999 was 43 percent. The SBA is dedicated to ensuring that all Native Americans who seek to create, develop and expand small businesses have full access to the necessary business development and expansion tools available through Agency programs. This program is a comprehensive initiative designed to meet specific cultural needs and to result in small business creation. This initiative will make funding directly available to tribes to assist in economic development and job creation.

In addition to our initiative to assist Native Americans, the SBA operates two complementary programs to serve businesses which face difficulties due to particular economic and social reasons or geographic locations. The 8(a) Business Development Program assists the development of small companies owned and operated by socially and economically disadvantaged individuals. Eligible companies may be awarded set-aside federal contracts and other business development assistance. The number of contracting opportunities for small businesses has declined overall, including for 8(a). In response to that disturbing trend and to other concerns about the program, I ordered a review. While we have not completed that review, I can tell you that we will continue to work on ways to streamline the process required of applicants and to increase our efforts to obtain contract assistance for the program. We are also looking at ways to better define the individual needs of individual 8(a) firms and to increase their access to technical assistance and procurement opportunities.

Many 8(a) companies are located in areas designated as HUBZones (Historically Underutilized Business Zones) by the SBA's program which encourages economic development in distressed areas through federal contract award preferences for qualified small businesses located in such areas. Procuring agencies have not used this program to the extent possible. We are looking at a variety of ways to increase the federal contracts that these businesses receive as well as increasing their private sector contracting opportunities.

It is our goal to treat the 8(a) and HUBZone programs equally and not as competitors. I believe that they are both powerful tools that will help the federal government meet and exceed its small business contracting goals.

The SBA will also be implementing the President's management agenda, an agenda that includes restructuring our workforce, increasing the use of competitive sourcing, expanding use of technology and managing for results. Part of our operating expenses will increase as a result of shifting $18 million in pension and health benefits that were previously part of the Office of Personnel Management's budget.

The Loan Monitoring System (LMS) will allow us to do on-line monitoring of our lending partners. The SBA has contracted with KPMG to review the planning steps taken to ensure compliance with the law and remain consistent with the project parameters. In March we will receive a detailed outline of options. These options will allow the SBA to implement various modules, depending on cost benefit. Currently the vast majority of our oversight is done through on-site reviews of our lending partners and contracted audits for the Small Business Lending Companies.

SBA has taken steps to strengthen and institutionalize its "Information Technology [IT] Planning and Investment Control Process" to improve selection and control of IT projects in a portfolio environment and to improve formulation of the IT budget. Doing so will help the SBA meet the requirements of the Clinger-Cohen Information Technology Management Reform Act.

I want to briefly discuss two programs which we do not plan to fund in FY 2003. The Program for Investment in Microentrepreneurs (PRIME) mirrors the existing Microloan technical assistance program. We cannot justify funding two nearly identical programs. Our Microloan

intermediaries and our non-loan technical assistance providers already offer a full range of services for prospective microloan borrowers and microentrepreneurs. Their resources combined with the array of other programs such as WBCs and SBDCs will fully meet the needs of microentrepreneurs.

The Business Learning, Innovation, Networking and Collaboration (BusinessLINC) Program replicates other existing SBA technical assistance programs that foster mentor-protégé relationships, as well as programs at NASA and the Department of Defense. BusinessLINC also duplicates SBA's 7(j) management and technical assistance program, which provides contract grants and cooperative agreements to organizations that provide direct assistance to small and emerging businesses. Finally, BusinessLINC was designed to provide small businesses with an online information source and database of companies interested in mentor-protégé programs. We can achieve those goals through existing BICs, WBCs and PRO-Net, as well as through the private sector.

The SBA will celebrate its 50th anniversary in July 2003. In its half-century in existence, the SBA has assisted hundreds of thousands of businesses in their formative stages. Many of those companies have names with which all of you here are quite familiar – names like Federal Express, Intel and Nike, to name just three.

We are working hard at the SBA to make certain that the Agency retains its leadership position as it looks forward to another half-century and will continue to provide crucial assistance to the next Federal Express or the next Intel. As I have taken a close look at our programs and services throughout my first year as Administrator, I have seen what the SBA can do and what the SBA needs to do to keep its programs in tune with the ever-changing economy.

We cannot do this alone. I know that I have spoken with some of you individually, but I want to take this opportunity while we are all together to enroll you in these efforts.

As I mentioned at the beginning of my testimony, the SBA's FY 2003 request is a good one for small businesses and offers a beginning point for us to work in tandem with our partners in Congress to ensure that the SBA remains an effective, relevant agency that provides twenty-first century service for the small business community's needs. We ask for your support for this budget. Thank you for the opportunity to appear here today. I will be happy to answer your questions.

7(a) GENERAL BUSINESS LOAN PROGRAM

Mr. WOLF. Thank you, Mr. Administrator. What is your definition of a small loan? What is the amount?

Mr. BARRETO. Our average size has been $225,000. We would like to get that down closer to $175,000. I am not saying that is a small loan to every small business. "Inc. Magazine" recently did a study and said most small businesses are capitalized with as little as $50,000. We need to do a better job of reaching more small businesses. One of the ways that we need to do that is to get that loan size down to a level where small businesses can take advantage of it.

Mr. WOLF. You have requested $85.3 million in budget authority for the 7(a) business loan account. That is a 9 percent increase. Nevertheless, given the rise in this year's 7(a) subsidy rate from 1.07 to 1.76, the program level has been cut almost in half from $9.3 billion to $4.6 billion. We understand that the subsidy rate change was made after your budget was submitted to OMB, but you also received $75 million in the supplemental funds for emergency business loans.

How do you propose to keep the 7(a) program at a sustainable level that meets the demands of the marketplace?

Mr. BARRETO. As I mentioned in my beginning testimony, Mr. Chairman—and you are absolutely right in what you stated—the subsidy rate last year was about 1.07. We actually lowered it to .88, and at .88, the amount of money that we have requested would have given us budget authority something in the neighborhood of $9.7 billion for 7(a). On December 21st legislation was enacted that actually reduced the fees that we have on this loan, and when you reduce the fees, you increase the subsidy rate.

The effect of that legislation basically doubled the subsidy rate which hence is reducing the size of our budget authority by half.

Mr. WOLF. Was that a good idea?

Mr. BARRETO. We didn't have a strong role in that legislation. Obviously, we didn't anticipate the effects of it. The budget was put to bed by that time.

Mr. WOLF. Does that reduce the amount of loans you can——

Mr. BARRETO. Here is what is happening. If nothing happens, if we didn't do anything, with a subsidy rate at 1.76, we are going to have a budget authority of about $4.85 billion. But we are not going to not do anything. One of the things that we anticipate is going to happen is we are going to have a rollover this year in the 7(a) program of at least $2 billion. That is even with the higher subsidy rate.

Mr. WOLF. A rollover or carryover?

Mr. BARRETO. Carryover, I am sorry. A carryover in our 7(a) program. That is going to get us pretty close to $7 billion. We think that by pulling out some of those large real estate loans that are happening in 7(a), and putting them in the program where they really deserve to be, which is the 504 program, we think by doing that, that is going to give us probably an additional $2 billion of carryover. That is going to get us then really close to $9 billion in budget authority, and we think like I said, historically, the program has been running somewhere in that $9 to $10 billion level.

We think with some of the things that we can do with banks, getting some of those loans smaller, we think we are going to be okay.

As I said, we don't choose to look at this as a problem that is insurmountable for the agency. We truly see it as an opportunity for us. It is an opportunity to re-look at the way that we do things, re-look at the way that we service our constituents, which are small businesses, and reach more small businesses than we are currently reaching.

Mr. WOLF. But, availability will be more limited? Is there a possibility that some will be foreclosed because of this?

Mr. BARRETO. Not necessarily, and let me mention to you why. We have a lot of these larger loans again that are happening in the 7(a) program. We have not fully expended the authority inside of our 504 program. We usually have about $2 billion left over in the 504 program. If we can get more of those big real estate loans out of the 7(a) program and over into the program where it belongs, the 504 program, we think that we're going to be okay. We don't believe that there is going to be a lot of companies that are going to be falling through the cracks or not receiving necessary loans from the SBA.

Mr. WOLF. What if the carryover that you are projecting doesn't occur?

Mr. BARRETO. This year we are on pace to do about $10.5 billion. We have way in excess of authority in that, so I mean even in a best case scenario we don't think that we are going to exacerbate the budget authority that we have in 7(a) program this year. So there is no way that we can see that we are going to use up all the budget authority that we have for this year.

Mr. WOLF. What if you did, and what if the carryover wasn't as much as you thought?

Mr. BARRETO. Then I think that we have really got to drill down on some of the things that we were talking about with getting the loans smaller, taking some of the loans that we have outside of our program. We figure that is about $2 billion. Still we are not going to be where we are at now at $4.85 billion. We think we could be closer to the $7 billion level.

Mr. WOLF. But you are taking it from some other place.

Mr. BARRETO. It is not so much that we are taking it. It would be left over from this year, and we have the ability to carry over that authority to next year.

And with regards to the other issue, those loans, I don't think that is what the intention of the 7(a) program is. We are intending to help small businesses with starting new businesses with the working capital that they need. I mean we have some multimillion dollar loans that come out of that 7(a) program to buy hotels or large warehouses and large pieces of equipment. There is nothing wrong with that. Small businesses should be able to do that as well. But we think that the 504 program is really intentioned to do that.

OPERATING BUDGET

Mr. WOLF. Okay. You have requested a substantial increase of $56.3 million, an increase of 35 percent in your administrative operating expenses. Of this increase, $15 million is for restructuring

and workforce transformation. This funding is intended to support what the budget described as a five-year workforce restructuring plan to relocate employees to locations where they can best serve the small businesses.

Has the SBA briefed the committee or the staff or anybody up here with regard to this? I don't think you have briefed this committee. Have you briefed the Small Business Administration Committee?

Mr. BARRETO. We have had our budget hearings with them already. These issues did come up. The full amount of this involves a whole host of initiatives that we are dealing with. Obviously, workforce transformation is $15 million, $5 million for e-Government——

Mr. WOLF. But have you briefed anybody up here on it?

Mr. BARRETO. In this committee, sir?

Mr. WOLF. Yes.

Mr. BARRETO. We have had staff discussions, but I am not sure that there has been any other formal briefing.

Mr. WOLF. Have you briefed Mr. Manzullo's committee?

Mr. BARRETO. Yes, we have.

Ms. HONTZ. Yes, and the Senate.

Mr. WOLF. Staff indicates that they haven't received any specific information on the reorganization.

Ms. HONTZ. We promised to give them that by Friday.

Mr. WOLF. Oh by Friday. So you haven't as of yet?

Ms. HONTZ. No, sir.

Mr. WOLF. Are you looking at closing offices?

Mr. BARRETO. No, sir, not at this time. One of the benefits of the SBA is that it has a wide distribution system. We have offices in every State. But one of the things that we are looking at, as we are looking into the future, is we have to position the SBA for the next 50 years, and one of the things we want to try to do in some of this workforce restructuring is making sure that a small business in a State doesn't just have one office that they can go to. I think there are opportunities for us to do things, to spread out people, to have better uses of some of our personnel, especially as the SBA continues to change.

Some of the things that we were doing 20 years ago, 30 years ago, we are not doing any more. We may still have some people that are specialized in certain areas, but we could use them much better in other areas. So we are not looking at closing offices, but we are definitely looking at working smarter. I always tell our folks we can't work any harder, but we can always work smarter. And so that is what is going on, and that is what I think that this workforce transformation is going to allow us to be able to do.

Mr. WOLF. So you don't expect to be closing offices?

Mr. BARRETO. No.

TELECOMMUTING

Mr. WOLF. Two other questions, then I will recognize Mr. Serrano.

Regarding telecommuting, the law requires that 25 percent of those eligible particpate in the program. Your figure is 12 percent.

Is this 12 percent of your entire workforce or 12 percent of those eligible?

Mr. BARRETO. 12 percent of the entire workforce. We were briefed before I came over here, we could pretty safely say that we are close to 50 percent right now.

Mr. WOLF. If you could break it down based on that, as to eligibility and all.

Mr. BARRETO. Sure. I will be happy to provide you the breakdown on all of that. We do have an aggressive plan on that. We think it is a smart way of doing business for us. Definitely it is going to be something that is going to be much more efficient and cost effective for us to be able to do. So as we are looking at all of these transformation issues, this is a big part of our plan as well.

NATIVE AMERICAN OUTREACH INITIATIVE

Mr. WOLF. Good. Last question. On page 9, you said the budget request includes $1 million for the new Native American Economic Development Program, an initiative to assist tribes with small business development activities. I would urge that this initiative not be with tribes that have gambling.

Mr. BARRETO. I am sorry, sir?

Mr. WOLF. Not with tribes that have gambling. Only 2 percent, very few Indians have actually received any revenue with regard to gambling, and what you are finding is that gambling is occuring on the East Coast, and there is some on the West Coast. Have you been on any Indian reservations?

Mr. BARRETO. I have not.

Mr. WOLF. Well, they are terrible and the conditions are horrible. Very little of that economic help is going to the real people that need it. It is almost as if Congress has said, "well, they can just have their gambling" and not provide additional help. Native Americans are suffering dramatically. None of this money ought to go to any tribe that has a gambling operation. In fact, if it has a gambling operation, it ought to automatically be excluded. You ought to be going to South Dakota, Nevada and New Mexico and some of the States where Indians are really suffering. Quite frankly, maybe you ought to be increasing that, but not to Indian tribes that have gambling operations, because that would be almost criminal.

Mr. BARRETO. We agree, Mr. Chairman. I am somewhat familiar with some of those gaming tribes.

Mr. WOLF. Gambling. Gaming is Monopoly. Gaming is like jacks and checkers, Monopoly. I play games with my kids. Gambling is when you go into casinos and play the slot machines. It is gambling, and for the record it is gambling. We ought not be calling it gaming.

Mr. BARRETO. One of the things that we have done at the SBA, we have had Native American outreach programs for a long time. Tribal Business Information Centers was a program that we have had up until recently. And those TBICs, which we call them, were exactly in those kinds of reservations, the reservations where there was abject poverty and no opportunity whatsoever. What we have done with this initiative is really tried to create a better response

to those types of reservations, and as we go through this process in our program, we want to be working with those kinds of Indian nations that are really committed to doing this kind of development work for people who need it the most. So I couldn't agree more.

Mr. WOLF. I think you ought to be putting even more money into that. With telecommuting and with technology, a lot of the economic development, I think, could be done on Indian reservations by bringing in some of the high-tech jobs where you don't have to actually be at the workplace. I would urge you to even spend more than you are particularly looking at the tribes that are having the most difficult time, and they are probably the ones that are in the location that it is harder to get to. People generally don't go to a tribal area in North Dakota in January.

Try to find tribes in North Dakota, South Dakota, New Mexico, and reach out. Don't wait for them, because they may not be aware of what programs are available. I think you ought to be checking with BIA to find the tribes that have the most difficult time, and try to do something creative. See if we can with the high technology community.

There are actually a lot of programs now that are going into State prisons. Many of them could be put on Indian reservations, because the unemployment rate on many of these Indian reservations is very, very high. I would urge you, don't wait for it to be a grant program. I would try to seek them out, particularly those that are in the hardest areas.

Mr. BARRETO. Yes, sir.

Mr. WOLF. Mr. Serrano.

DISASTER LOANS

Mr. SERRANO. Thank you so much. Let me just comment on the Chairman's last comments. I respect the fact that he feels very strongly about the whole issue of gambling on the Native American reservations. However, I would just caution that it may not have been gambling that caused those problems, but a couple hundred years of neglect and indifference that created that situation. In fact, some would argue that gambling has actually generated some revenue in the economy for those communities.

Having said that, let me just move on to my community. Usually you try at these hearings not to bring district specific questions like your neighborhood. But the city I come from happens to be in the situation that you are involved in and one that this whole country is involved in, the recovery of New York City.

So after September 11th, Mr. Wolf and I worked to make sure that there were extra dollars put into SBA to do the work they had to do in New York. Can you tell us basically how that is going? What kind of requests are you getting for loans? How many people have you qualified for these loans? It seems to me that among the complaints we hear of how things are not moving fast enough, one of them is the issue of the work that SBA has been doing. So if you could just tell me what the situation is in New York and how it is going.

Mr. BARRETO. Thank you, Congressman Serrano.

We were in New York very, very soon, the day after September 11th we were there. We have taken something in the neighborhood

of 30,000 referrals from the FEMA registration line. SBA has directly assisted 40,000, over 40,000 individuals and businesses with loan applications and inquiries. We have received 9,240 disaster loan applications. We have approved close to 4,000 disaster loans in excess of $309 million. Our approval rate has been in excess of 53 percent, which is historically a pretty good rate.

You know, oftentimes people will look at that approval rate and say, "Well, you only approve 53 percent." You have to understand that oftentimes people that are applying for these loans may not qualify for a whole host of reasons. One is they may not be a small business. Sometimes that happens. Or they may not have the ability to be able to pay back the loan, but a 53 percent rate for us has been very good, especially in light of this disaster. This is really unprecedented for us. Usually when we respond to disaster, 80 percent of the individuals or the cases that we are dealing with are homeowners. I mean a lot of people don't know that. When SBA responds to disasters, 80 percent are homeowners, and only about 20 percent are businesses.

In this disaster it was completely the reverse. In this disaster, 80 percent of the cases that we have been dealing with are small businesses, only 20 percent are homeowner because there was so little residency around where the major damage has occurred.

Not only did we do that, but we have also taken the unprecedented step of changing our regulations so that we could do economic injury disaster loans outside of the declared disaster area, all throughout the surrounding areas of the city, the State, and really nationwide. We have done an additional $200 million in these kinds of loans, 4 percent loans over 30 years for small businesses.

The other thing that we have done is we have extended the deadline. What we realized is that there still were a lot of people that didn't know about these programs. So we have extended it to April the 22nd for these disaster loans.

And we have done a tremendous amount of outreach. We have done a lot of PSAs. In fact, I don't know if you saw it, but last week we had a large insert in the "New York Times." It was an entrepreneurial insert that gave a lot of information with regards to what the SBA was doing, how people could get help. That was the first part of a series. There are going to be three of those articles in the "New York Times" to be able to do that.

So we have done a lot, and we are real proud of our disaster team. There is more to do. There are still a lot of people out there that are hurting. A lot of times with small businesses, they don't know what they don't know. And so it is up to us to not wait for them to come to us but to reach out to them. We have done a lot of canvassing in New York, going door to door, going into neighborhoods, and that has all been really helpful. We have worked very closely with the whole congressional delegation in New York, especially with Congresswoman Velazquez, and we continue to work hard and make sure that we are helping as many people as we possibly can.

Mr. SERRANO. Now, the 47 percent that were not approved, what would you say was the main reason for not approving?

Mr. BARRETO. 27% of those declined were a result of being found to be ineligible, i.e., they were a large business, they weren't a small business; they had no physical or economic loss. In other words, you have to be able to determine that you have some kind of a damage, and that has to be validated. Or the other one—which is not the largest part of it, but oftentimes there may be problems with the credit history, that they maybe defaulted on loans in the past or still have judgements against them. It could be something as simple as, you know, somebody owes child support or has some other kind of a claim against them. So sometimes those things go into the case.

We look at it two or three times. Sometimes when somebody is declined the first time, we will look at it again and see if there is another way we can do it. Sometimes maybe what happens is they are not able to initially get the level of the loan that they were looking for. They can, however, get a smaller size loan, and then if they are able to prove that they need more, we are always willing to take a look at it and expand it at that time.

Mr. SERRANO. Based on your experience in New York and Virginia, do you believe the funding we have appropriated is adequate to meet all the applications that you have now?

Mr. BARRETO. I think to this point it has. I think that we still have quite a bit of authority left, and, again, we are doing everything that we can to get the word out there. Sometimes small businesses wait to apply.

Mr. SERRANO. You have quite a bit of authority left, in other words, dollars?

Mr. BARRETO. We have dollars left to loan, especially in our STAR program. By the way, we are also working very closely with our banking partners, making sure that they are fully utilizing some of the programs that we already have in place to ensure that we get as much of it out as possible.

Mr. SERRANO. Now, as you said in your opening statement, this was different, this was unprecedented. Do we need, or do you feel that we need, legislation to reflect the fact that you are now for the first time dealing with a response to terrorism rather than to natural disasters?

Mr. BARRETO. We haven't at this point. What we have seen is that the programs we have and the authority that we already have are sufficient. For example, we were able to change this rule for economic injury disaster loans without getting any additional legislation. We were able to make an internal administrative decision that allowed us to be able to do that.

So far, I think that we have been okay, and I think that we have a pretty good reach across the country and have communicated what is available to small business. Again, we continue to do that. That job is never done. But, I think we feel pretty good about where we are right now, and we continue the effort to make sure that we help more people.

Mr. SERRANO. Are you asking for any additional funds in the supplemental that is currently being prepared?

Mr. BARRETO. I don't believe that we have made any request for any additional funds at this time, Congressman.

Mr. SERRANO. That is strange. You may be the only agency that hasn't done that. Do you think that is what is going to happen?

Mr. BARRETO. We are looking at this all of the time.

Mr. SERRANO. I am not asking you to ask for more money, but some people may argue that if you have money left over, you didn't do the job of allocating the dollars. So how do you answer that?

Mr. BARRETO. Well, I think it is a combination of things. I think you can make the case that we need to do more outreach. Obviously, in our regular loan programs, SBA is not making the loans directly. We are working through our banking partners. Our banking partners sometimes will tell us that they need some changes in the program so they could be more competitive. So we are constantly working with that, making sure that we are being competitive in the way that we price our program and the way that we do our business. And we don't want it to be onerous for the banks to do SBA loans. We don't want it to be onerous for the small business person when they are applying for a small business loan.

There is an old saying in small business: Tell me yes or tell me no, but the maybe's kill me.

Too often, I think, Government agencies are put in the position where they are giving a lot of maybe's, and we want to do a much better job on that.

I think again, the example that I gave in the testimony is that in our 504 program we have not utilized the full authority that we have, and so we need to look at what we are doing. It is not that we are not doing real estate loans. We are doing some big real estate loans, but we are doing them maybe in the wrong place. We are doing it in 7(a), steering some of those to 504 could allow more of the 7(a) working capital loans to small businesses. So we are looking at that and looking at everything that we do.

8(a) PROGRAM

Mr. SERRANO. Mr. Chairman, I have one more for this round, a general question here.

Would you bring us up to date on your proposed rule change to 8(a)?

Mr. BARRETO. Absolutely.

Mr. SERRANO. What it means, why, and who is affected.

Mr. BARRETO. Absolutely. We were requested by Congress to look at the rule change. There was some confusion with the two programs that we have. We have two contracting programs. One program is the HUBZone program, the other program is the 8(a) program.

They are very different. The HUBZone program is for low- to moderate-income areas, and it is really a job-creator-type of initiative. It is designed to go into those communities, and incentivize companies to go into those communities and create jobs. The 8(a) is a business development program for disadvantaged small business, primarily a minority small business. So they do different things.

But there is some confusion out there. Some people think that HUBZones should have the priorities so that when a contracting officer of the Federal Government is making a decision, that they give priority and preference to the HUBZone program. Other indi-

viduals feel that the 8(a) programs should have the preference. So there is almost this ongoing competition.

Our general counsel told us we need to clarify this because there was too much confusion on it. And when they looked at it, they felt that the law said that neither one of them had a priority over each other. And so they declared—the general counsel wrote up his opinion on this, that they really have parity.

That is what the Senate Small Business Committee has said that they agree to. They believe that these two programs have parity.

And the key thing here is this: I think both of those programs are underutilized. I think that small businesses should be doing more business with the Federal Government, with the private sector. It is not a zero sum game. One program doesn't have to win and another program has to lose.

I think what we have to do is that we have to make both of those programs more effective. I think that there is legitimate criticism sometimes that these programs are working for too few people. And that wasn't the intention of putting these two programs together or developing these two programs.

So we are committed to making them both effective. If we are going to have a program, it should work. It should do what it said it was going to do. It should be measurable. We think that both of these programs can be effective.

Our Business Development Contracting Division has put together two very aggressive action plans on how we can empower these programs even further.

So, again, I think that there is a misconception. I talked to a Hispanic business group last week, and there was a lot of confusion about this, and I clarified this for them. We are committed to both programs, and we are going to work really hard with them to make sure that they both succeed.

Mr. SERRANO. Well, there is—you are right—a lot of confusion, and there is a lot of concern. You represent—you head an agency that is seen in many communities as the one agency that can help them. And it has also been an agency that has been seen throughout different administrations as turning its back on them or not doing enough to assist them. You have people in my community, businessmen, who, when you mention SBA to them, say, No, no, I am not going to go there, they don't want to talk to me, whatever the reason may be.

Now, the contract share of 8(a) firms has declined 34 percent over the past 3 years. How do you see this rule improving these statistics? And why has——

Mr. BARRETO. Well, I am not sure that the rule is going to improve the statistics, but I think that we can do a better job in making sure that small business gets Government contracts.

What has hurt 8(a) has not been the HUBZone program. What has hurt 8(a) contractors is contract bundling, supply schedules, additional credit card purchases from the Federal Government. And so those are the things that have a very onerous effect.

One of the things when we looked at the 8(a) program and that we decided to do is that we have got to do a much better job is that it has gotten top-heavy. There are 6,000 firms that are 8(a) contractors. Of those 6,000 firms, only 3,000 of them have ever gotten

any business. Only 50 percent of the people that are inside that program have ever gotten any business whatsoever. A few hundred of them have gotten 40 percent of all the contracts.

When we look at that, we say, wait a second, this is top-heavy, and it is not fully distributed across the country. In my opinion, if you are going to have a program like that, somebody in San Diego should have as much chance as somebody in St. Louis should have as much chance as somebody in New York, somebody in West Virginia, or wherever it is, to be able to go after these contracts.

And so one of the things that we have to do—and I think we have to do this on a parallel track—we have to fix the program that we currently have in place, and we have to create the program for the future. And so we are doing that right now.

One of the things that I did is that I hired a small business guy that was very familiar with contracting programs, Fred Armendariz, a very successful small business guy, to be the Associate Deputy Administrator for Business Development and Government Contracting. He is doing an excellent job. He gets it. He understands the struggles that small businesses go through.

And I agree with you. I was in the private sector all my life, and I was very familiar with SBA. But SBA needs to change the perception. It needs to be a strong partner. It needs to be perceived as an advocate. It needs to be perceived as an agency that will really respond to the needs of small businesses so we can get away from small business people saying 'I don't even want to try,' or 'it is painful for me to even think about getting into one of these programs or applying for one of these loans.'

We have got to change the way that people think of the SBA. We are going to do that by our actions. We are going to do that by the results that we get. And I think that we have got a lot of opportunity to do that.

I am optimistic about the future. I am optimistic about the opportunities for small business, especially minority small business, which is the fastest-growing segment of small business in the United States.

Mr. SERRANO. Thank you.

7(a) BUSINESS LOAN SUBSIDY RATE

Mr. WOLF. Mr. Mollohan?

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Mr. Barreto, overall the funding request for SBA under this administration for some programs has been reduced dramatically from the previous year. It really concerns me about the overall viability and effectiveness of the agency's programs, and starting with the program that you characterize as the flagship program of the SBA, the 7(a) loan guarantee program.

You suggest that some people might see the state of the 7(a) funding as problematic and you at the SBA see it as a challenge. I see it as both problematic and a challenge. And your attitude with regard to it probably would be pretty powerful as to how this all comes out. It concerns me a little bit that you are touting your cooperation with OMB for the first time in many years working together to make the calculation method more accurate to reflect changes in the program.

So let me start just with that statement. What changes in the program are you contemplating that makes the calculation for the subsidy more accurate?

Mr. BARRETO. Thank you, Congressman. And this is fresh on my mind. We did a subsidy rate hearing this morning to the House Small Business Committee, so we just came from that not too long ago.

Mr. MOLLOHAN. Are they worried?

Mr. BARRETO. Well, I think there was a very useful discussion. We had the National Association——

Mr. MOLLOHAN. Are the committee members, did they express worry?

Mr. BARRETO. What they expressed is that this is not a recent phenomenon. What they expressed is that this has been going on for years and years and years.

This administration, and you know, I just got in here in August, has already reduced the subsidy rate 20 percent.

Mr. MOLLOHAN. What is the phenomenon that has been going on for years and years?

Mr. BARRETO. The phenomenon or the issue has been calculating an accurate subsidy rate. That has been the issue.

Mr. MOLLOHAN. That is what has been going on and on for years?

Mr. BARRETO. Well, the——

Mr. MOLLOHAN. Attempting to calculate it accurately?

Mr. BARRETO. Right.

Mr. MOLLOHAN. Okay.

Mr. BARRETO. And there was a lot of discussion on what the best way to calculate that is. It is pretty simple, actually. We look at the money that is outflowing versus the money that is incoming, and then we make a determination on what that subsidy rate calculation——

Mr. MOLLOHAN. What your loss rate is going to be, right?

Mr. BARRETO. I am sorry—yes——

Mr. MOLLOHAN. What your loss rate is going to be.

Mr. BARRETO. Exactly, what the loss rates are going to be.

The other thing that is kind of difficult is that we have gone through this period of unprecedented growth. We are proud of that. The 1990s was the strongest economic period, in our history. And so when you are looking back at a period like that, it is very difficult to pick any certain year and say, well, that is what it is going to be in any future year. It is difficult to put your finger right on what it is going to be. You are making some assumptions.

One of the things that enabled us to get that subsidy rate down from 1.07 to 0.88 is that we started looking at very important weighting aspects. For example, our preferred lenders, the larger lenders, have a lower default experience than some of our other lenders. So what has happened is by factoring that, by putting more weight on that, we were able to get that subsidy rate down.

We are not done yet. By going forward, one of the things that we have done is we have contracted with OFHEO, the Office of Federal Housing Enterprise Oversight. They are developing an econometric model for us which GAO and OMB feel is one of the more accurate ways that we can do this measurement. We have got a

contract with them already, and we believe that going forward we are going to have a much more accurate reflection of what that is.

Now, I am not satisfied with where the subsidy rate is right now, and I think those were a lot of the comments that we were getting from Congress. But in a very short period of time, we have already made some progress. We are committed to continue working on this.

It is difficult for us to say what the previous administration was doing in any given year over those 10 years. We know that when you look at that, the subsidy rate was higher than a lot of people wanted it to be.

Mr. MOLLOHAN. Well, I know where the subsidy rate is going if your 2002 request had been approved. It is going to zero at some point in time. Right? You are not going to have the program?

Mr. BARRETO. Well, we hope to have a program.

Mr. MOLLOHAN. I understand, but that is where it goes if your request were zero, right?

Mr. BARRETO. If our request was zero——

Mr. MOLLOHAN. In 2002, your 7(a) loan program request, you requested zero, did you not, in 2002?

Mr. BARRETO. Okay.

Mr. MOLLOHAN. And this year, when we enacted $100 million, for fiscal year 2003 you are requesting $85.34 million, right?

Mr. BARRETO. Yes.

Mr. MOLLOHAN. Okay. In any measurement, that is a significant reduction in your lending capability.

Mr. BARRETO. You are absolutely right, but that was not what the intention of this budget was. We actually asked for more money than what we received for last year based on what the new subsidy rate would have been. That would have given us $9.7 billion in 7(a) authority. That was the intention of our——

Mr. MOLLOHAN. You are saying the authorizing legislation changed that, so——

Mr. BARRETO. December 21st, the legislation that passed reduced those fees, which increased our subsidy rate. It doubled the subsidy rate, which decreased the level of our program in half. But that was not our intention. I mean, I think there is a misconception——

Mr. MOLLOHAN. What changes in the program—and I know you spoke to them a little bit in your testimony, what changes in your program make your subsidy rate request valid or accurate?

Mr. BARRETO. I want to make sure that I understand——

Mr. MOLLOHAN. What programmatic changes——

Mr. BARRETO. What programmatic changes——

Mr. MOLLOHAN. It must be resulting in lower loss rates or something.

Mr. BARRETO. Right. May I have, with your permission——

Mr. MOLLOHAN. Sure.

Mr. BARRETO. I have the benefit of having an expert here. Our chief operating officer is Dr. Lloyd Blanchard, and he was at OMB working on the subsidy rate before he came over to work for us. So we really have the benefit of having somebody that really has the dual experience.

Mr. MOLLOHAN. We just love having OMB at the table. [Laughter.]

Mr. BARRETO. Dr. Blanchard?

Mr. BLANCHARD. Yes, Congressman, thank you. I believe the changes that you are referring to that helped us improve the subsidy rate was our recognition that the PLP loans do indeed come in at a better performance than the non-PLP loans. And so previous to this year, for the 2003 budget, the PLP loans were treated just like the non-PLP loans. When we saw that there was indeed a programmatic change back in 1992 or so to implement this PLP program, and that it did indeed produce better performance, meaning lower defaults, and that we were cheating the PLP loans in our calculation method, we decided to weight that more strongly.

Mr. MOLLOHAN. Who out there in the small business communities who had been getting loans through their institutions, guaranteed under this program, are not going to be receiving them with these guidelines?

Mr. BLANCHARD. No one. No one. This only changes the subsidy rate. This doesn't change the available lending.

BUSINESSLINC AND PRIME

Mr. MOLLOHAN. Okay. All right. Your request intends to reduce funding and to cut funding for the BusinessLINC and PRIME and the survey of women-owned businesses. I guess you are eliminating the PRIME and the BusinessLINC program.

One of the best programs, one of the best initiatives that we have undertaken is to create mentor-protege relationships particularly in the defense contracting area. And it would concern me that you are proposing to eliminate that program here, not that it was funded with any great amount of money to begin with. But could you just speak to that?

Mr. BARRETO. Sure, I would be happy to.

The SBA is very fortunate. One of the things that the SBA does very well is it leverages its resources. We have 1,000 small business development centers that we work with across the country. We have 12,000 Service Corps of Retired Executives. We have business information centers. We have a whole host of technical assistance that is available to small business. Last year, we helped 1.3 million small businesses through these programs.

You know, we——

Mr. MOLLOHAN. If they are so tremendous, why are we cutting them?

Mr. BARRETO. We are not cutting those programs. Those programs have continued——

Mr. MOLLOHAN. The ones that you mentioned you are not cutting?

Mr. BARRETO. Exactly. But, what happens oftentimes, Congressman, to be perfectly honest with you, is sometimes I think people get confused as to, which program to use. It is like they really don't know what they don't know. And sometimes what we find in our programs, there is duplication.

One program may be doing something very similar to what another program is. We don't have funding for those programs. But our intention is not to let people fall through the cracks. We are going to make sure that they have access to some of——

Mr. MOLLOHAN. Well, BusinessLINC is helping somebody, and PRIME is help somebody, aren't they?

Mr. BARRETO. They are technical assistance programs, absolutely. We do—some of the mentor-protege work that you are talking about is occurring right now in SCORE, for example, that I——

Mr. MOLLOHAN. And so your theory is that this is duplicated in other areas of your program, but some people aren't being helped here. Have you increased funding? I assume you are shifting the responsibility for the functions of BusinessLINC and PRIME to other programs?

Mr. BARRETO. It is not so much that we are shifting the responsibility of that program. It is just that there are other opportunities for small business. If a small business wants mentorship, there are ways to be able to get that. If they want a very specific——

Mr. MOLLOHAN. Well, where do they do that?

Mr. BARRETO. If they wanted that mentorship, a great way to do it is through our SCORE program, the Service Corps of Retired Executives.

Mr. MOLLOHAN. Are you increasing the funding in SCORE to accommodate that additional activity?

Mr. BARRETO. The SCORE program remained level, but last year that SCORE program helped 450,000 small businesses.

Mr. MOLLOHAN. I understand. I understand. But you are moving other responsibilities over to it, are you not? Or you are assuming it is going to absorb other responsibilities.

Mr. BARRETO. What we want to do is we want to make sure that nobody falls through the cracks.

Mr. MOLLOHAN. I understand. I will stipulate to that. But are you not moving the responsibilities or assuming that the service provided in these programs, the slack will be picked up in these other programs? In other words, you are cutting BusinessLINC, you are cutting PRIME, and you are assuming other programs are going to absorb this activity?

Mr. BARRETO. The intention is that.

Mr. MOLLOHAN. Are you increasing the funding in those other programs to accommodate that——

Mr. BARRETO. We are not——

Mr. MOLLOHAN. Excuse me. To accommodate that expectation?

Mr. BARRETO. I am sorry. No, sir. We are not.

Mr. MOLLOHAN. Okay. Thank you, Mr. Chairman.

NATIVE AMERICAN OUTREACH INITIATIVE

Mr. WOLF. Mr. Serrano had to go to a New York delegation meeting with the mayor of New York City on the issue of disaster relief. I just wanted to make sure that, for the record, you knew that he had gone to that meeting.

Mr. BARRETO. Thank you, Mr. Chairman.

Mr. WOLF. Also, for the record, I wanted to share with you the findings of a Boston Globe study. Eighty percent of all Native Americans receive no financial benefit from gambling, That was my previous point. And, I think, you might even want to increase that initiative and conduct a special outreach, because there really isn't any organization or any part of the Government—I worked at the Department of Interior for a number of years, and there really

aren't a lot of programs that help Native Americans. So you might want to even plus this up a little bit and think in terms of how you can go out and link with some of the companies that are off the reservation and back East or whatever to help them. I think it would be helpful to check with BIA to find out what tribes are having the most difficult time, and that they would be the ones that you would work with.

DEFINITION OF A SMALL BUSINESS

What is the definition of "small," "small business"? I know it varies. You could be the smallest auto manufacturer. Would you be eligible for a small business loan?

Mr. BARRETO. The traditional rule is anything less than 500 employees, especially for a manufacturing concern, is considered a small business. In some industries, a small business could have very few employees, but their revenues could be so huge that they are not really considered a small business anymore. So sometimes it depends on the industry, especially when you are talking about a non-manufacturing concern.

Mr. WOLF. So it just varies, depending.

When you mentioned in your answer to Mr. Serrano about—I think you said there were $12 million in loans to Virginia and some to New York City, how many individual loans was that to——

Mr. BARRETO. To New York or——

DISASTER LOANS

Mr. WOLF. To Virginia.

Mr. BARRETO. Let me see if I can pull that up for you, sir.

Mr. WOLF. A lot of people were having a very difficult time, as a result of the many companies that were affected in that corridor on Route 1. I was just wondering why the figure was so low. If you don't have it there, maybe tell me for the record how many loans and how many applications there were and how many were denied.

Mr. BARRETO. I will make sure that you have that exact information. We will provide that to you.

I am sorry. I have it. In Virginia, as of March 6th, SBA has issued almost 600 applications. As of November the 2nd, SBA has directly assisted 748 individuals or businesses with loan applications. In other words, we are working with them on their loan applications or other inquiries that they may have.

SBA has right now so far received 164 disaster loan applications. So far, SBA has approved, 82 for $11 million. Eighty-one loans have been closed, 70 disbursements have been made. So it is an ongoing process that we have with them.

We have already done one ceremony where we were able to give out some of the small business checks. We did that with Congressman Moran, I believe. That was early on. But we continue doing that, which, again, a lot of times small businesses don't realize that these kind of programs are available to them. But we have done some PSAs in the area. We have done interviews.

Our district office here is very active and is also out there canvassing and talking to business groups all the time about this. And we are also trying to encourage people, if you are not sure, just call us on the 800 number, or you can log online to our website. Our

website right now is getting 1.5 million visitors—not hits. We are getting 15 million hits, but 1.5 million visitors a week right now. And all of the information on our disaster loan programs and all of our programs is located on the website.

Mr. WOLF. In an average case, from the day the person contacts the Small Business Administration, assuming a loan is granted, how long does the loan process take?

Mr. BARRETO. It has been running about 2 weeks—2 weeks from the time that we receive the application to the time a decision is made. In New York, we were doing loans in some cases in shorter amounts of times than 2 weeks.

Sometimes it will be prolonged, if the case is complicated, if they don't have all their documentation in place, or if they are not sure what their need is going to be. All of those things can be factored into delaying the process.

We try to do it as quickly as we can, and our disaster loan people tell us that we are far ahead of any schedule that we have ever had before inside the agency as far as turning them around.

Now, if an individual applies for a loan and doesn't get a loan for one of the reasons that we have already discussed, obviously SBA's disaster loan program had no benefit to that person. But, by and large, I think that most of the folks that initially qualified for these loans are getting them, and they are getting them quickly.

Mr. WOLF. What is the profile? Have they generally applied to a bank, or what——

Mr. BARRETO. No, no. These disaster loans——

Mr. WOLF. No, not disaster loans. We are leaving the disaster loans.

Mr. BARRETO. I am sorry, sir.

Mr. WOLF. Those who generally get small business loans, what is the profile?

Mr. BARRETO. There is a variety of different ways that it occurs, but obviously, these loans are going primarily through our banks, small banks and large banks.

The big banks, our preferred lenders, they do the bulk of the business. In about a couple of weeks, we are bringing them all in to talk to them to see how they can even do more than that.

Mr. WOLF. Bringing the banks in?

Mr. BARRETO. Yes, we are bringing the banks in to talk to them about new products and new processes that we can put in place to even streamline the process even further.

But, there is a variety of things. Sometimes people will come into the SBA office and the SBA office will work with them, get their business plan together, tell them how the loan program works, and then refer them over to a bank. Sometimes the bank is marketing the SBA loan themselves. The client will go right into the bank, sit down with somebody, and go through the whole process. So it depends.

OPERATING BUDGET

Mr. WOLF. We obviously have a series of votes, so we will try to finish up.

The budget requests $21.3 million for "other operating budget changes necessary to re-establish appropriate current service level

operations." We understand that approximately $13 million is accounted for by annual compensation and benefit increases.

Can you comment on how the balance of the requested funds would be utilized?

Mr. BARRETO. Of the $21.3 million?

Mr. WOLF. Right.

Mr. BARRETO. With your permission, sir, would it be all right if I had our chief operating officer to go through this?

Mr. WOLF. Sure.

Mr. BARRETO. Because I think there are a number of items that are included in that.

Dr. BLANCHARD. Thank you, Mr. Chairman. The increases in the salary and expense administrative budget category include both the President's management agenda items as well as other initiatives and also standard increases in salary and expenses.

Another thing that it includes is the fact—we now, and other agencies throughout the Federal Government—have taken on the responsibility for the pension funds that were transferred to all agencies from OPM. For us that represented about a $18 million increase. So of that increase that you mentioned, $18 million is just that new responsibility for taking care of pensions. Fifteen million is for our workforce restructuring program that the Administrator referred to earlier. Five million is for the e-Government initiative that is a big part of the President's plan to provide services to citizens and businesses more easily. And then we have other initiatives. We already mentioned the Native American initiative. Also, we need some IT, security, and infrastructure upgrades that were highlighted across the Government in response to 9/11.

But with regard to the regular operations, regular salaries and expenses, we are looking at about a $21 million increase, and that covers the basic increases due to inflation and pay raises on about $180 million worth of pay.

Mr. WOLF. And what would it cost you, assuming we have parity on pay, civilian and military, and you are required to absorb that? What will that cost you?

Dr. BLANCHARD. I don't know what the military is being paid, sir, so I don't think I can make a statement——

Mr. WOLF. I think it is 4.1 percent.

Dr. BLANCHARD. It would probably take us up more. I couldn't say exactly how much. I think our increase is only around 2 to 3—yes, 3 percent area.

Mr. WOLF. I think it is 2.7 percent. I am just wondering how much it will require if that provision passes the Congress. How much would you have to absorb? What would be the cost if you get the military pay raise versus what the Administration has recommended for civilians?

Dr. BLANCHARD. I couldn't do the math right here.

Mr. WOLF. Well, can you just do it for the record?

Dr. BLANCHARD. I can get it back to you.

[The information follows:]

For each additional 1.0% change to employee pay, SBA's costs increase by $2 million.

CREDIT UNIONS

Mr. WOLF. Okay. Credit unions. You stated in your testimony the SBA is seeking ways to encourage smaller loans and considering allowing credit unions to participate. Last year, there was an inquiry about this. What are you doing to encourage or utilize credit unions as lenders for the 7(a) program?

Mr. BARRETO. It is interesting to note that credit unions already participate as 7(a) lenders. We have about 71 credit unions that are already involved in the 7(a) program, and we have been in some pretty intensive discussions with a couple of the major credit union organizations in the United States. In fact, I addressed one of them a couple of weeks ago.

The thing that we are looking at and we are trying to get a legal ruling on, Mr. Chairman, is the fact that our regs basically say that we cannot discriminate against anybody that wants to get a 7(a) loan. And oftentimes what you find with certain credit unions is because that membership is closed——

Mr. WOLF. Like Navy Credit Union, something like that?

Mr. BARRETO. Yes, that we need to make sure that we can change our reg and, if we are going to change it, what change is needed to allow it.

But we think this could be a big opportunity. We think this is another distribution channel. A lot of these credit unions are already working with small businesses, so there may really be a significant opportunity here for us and provide another distribution channel for our 7(a) loan program.

Mr. WOLF. Mr. Mollohan, do you have anything else?

Mr. MOLLOHAN. No, Mr. Chairman.

Mr. WOLF. We are down to about 9 minutes, and that will be it. We have a few additional questions that we will just submit for the record.

With that, rather than keeping you for three votes, we will adjourn.

Mr. BARRETO. Thank you very much, Congressman. I appreciate the opportunity. Congressman Mollohan, I appreciate it. Thank you.

Questions for the Record
Small Business Administration
Administrator Hector V. Barreto

CJS Chairman Frank Wolf

8(a) Business Development Program

QUESTION 1: Your testimony indicates that you are undertaking a review of the 8(a) program based on a trend of declining opportunities and other concerns. What are these other concerns?

ANSWER: Declining opportunities is a concern, but SBA is also concerned about the onerous application process, the training and technical assistance provided to 8(a) firms, and the equitable distribution of program benefits. SBA is developing a plan to restructure the program which includes streamlining and automating the 8(a) application process, improving the training and technical assistance to program participants, and facilitating a more equitable distribution of program benefits. SBA is committed to modernizing the 8(a) Program and aggressively pursuing contracting opportunities for all small businesses.

Subsidy Rates

QUESTION 2: You stated in your testimony that SBA has contracted with the Office of Federal Housing Enterprise and Oversight (OFHEO) to create an econometric model to more accurately calculate the 7(a) subsidy rate. How will this model differ from past methods used by SBA and OMB to calculate the subsidy rate? When do you expect this new subsidy rate model to be implemented? Can it be applied to the subsidy rates for all SBA loan programs? Could the new subsidy rate model possibly reduce the FY03 subsidy rate for the 7(a) program?

ANSWER: The model being developed jointly with OFHEO for the 7(a) loan program is dramatically different than the current and past models. This new "econometric" model will rely principally on numerous factors, both programmatic and economic, that have been determined to have statistical significance relative to their impact on future loan performance. The current and past models relied solely on an average of historical performance of programmatic factors, such as defaults and recoveries.

The new model is expected to predict a more reliable and accurate cost of the loan program because of its inclusion of this larger number of factors and their discernible relationship to performance. Results from the model will be available for the FY 2004 subsidy rate calculation for the 7(a) program alone. In addition, SBA plans to develop an econometric model for the 504 program to be used in FY 2005, after SBA has analyzed this methodology and validated its results for the 7(a) program. Distinct models will need to be developed for each loan program

due to the unique relationships that exist between the program's performance and the economic and programmatic factors.

Finally, the budgetary rules under which SBA operates do not allow for the subsidy rate to be recalculated after the technical assumptions have been submitted by the President in his budget request. The only exception would be a recalculation directly related to a statutory change that is enacted after the budget is submitted.

The Federal Credit Reform Act of 1990 (FCRA) requires agencies to use the "current" assumptions for budget execution, which are defined in the Budget Enforcement Act (The Budget Enforcement Act of 1990 amended the Balanced Budget and Emergency Deficit Control Act of 1985) as those assumptions included in the most recent President's Budget. Therefore, agencies cannot change their economic or technical assumptions (i.e., default and recovery rates) underlying the subsidy cost estimate after submission of the President's Budget to Congress.

This prohibition is supported by sound rationale. Prohibiting changes to the current assumptions reduces volatility in subsidy estimates, which could make it difficult for the President and the Congress to provide sufficient budgetary resources for credit and other Federal programs. It also protects the integrity of the technical analysis by removing incentives to lower the subsidy estimate during the appropriations process and budget execution and establishes uniform rules for all Federal credit programs.

The FCRA does provide a mechanism to re-estimate subsidy costs each year. To re-estimate the cost of the loan portfolio, agencies must update their subsidy models in accordance with the actual performance experienced in the loan programs each year. Upward adjustments are funded from permanent, indefinite budget authority, which does not require appropriations. These upward adjustments do not affect agencies' discretionary appropriations. Downward adjustments are returned to the general fund of the Treasury.

The mandate is included in the following FCRA sections: § 502(5)(F), which states: "When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated," and § 502(10), which states: "The term 'current' has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985."

Program Evaluation

QUESTION 3: Over the years a number of similar non-credit programs have been created. The Committee frequently hears claims that some programs are duplicative or are less effective at achieving similar goals to other programs. What system do you have in place now for evaluating programs and making such judgments?

ANSWER: SBA is committed to evaluating several of its non-credit programs for FY 2003, including ED program delivery systems and HUBZone program. In FY 2001, SBA evaluated the SBDC program ("Small Business Development Centers – A Program Review. September 2001" **[see attachment A]**) and carried out three customer satisfaction surveys. To evaluate a program that delivers counseling and training, it is necessary to be able to identify and describe the customers and determine what counseling and training they have received and what other SBA products or services might have been obtained (such as procurement contracts or loans).

The Entrepreneurial Development Management Information System (EDMIS) will enable SBA to identify the clients receiving counseling and training services provided by resource partners and thereby the possibilities to survey these clients as to satisfaction, products and services received and subsequent success as measured by survival and growth of jobs and sales revenue.

Systems in place include the SBDC annual state economic impact report that provides data on sales revenue, jobs retained, jobs created, loans and equity received as well as state and Federal taxes paid. The difficulty lies in assessing the data validity and separating out the effects of obtaining loans and equity on the one hand and counseling and training on the other. SBA needs to work with its resource partners to provide economic impact data and assess data validity.

Questions for the Record
Small Business Administration, The Honorable Hector Barreto
Congressman Bud Cramer

Contract Bundling

QUESTION 1: I've received a number of complaints from small businesses about their inability to compete for business when the federal government bundles contracts.

I was under the impression that in FY02 the Office of Government Cotracting was going to examine the impact of contract bundling on small businesses.

Can you tell me if the SBA has made any progress on understanding the impact of contract bundling on small businesses?

ANSWER: Section 810 of the Small Business Reauthorization Act of 2000 (P.L. 106-554) requires SBA to conduct an analysis of agencies' bundling requirements and submit annual reports to Congress. In January 2002, SBA submitted its first report to Congress that included its analysis of agencies' FY 2001 data through the third quarter. The data showed that 2,358 contract actions were reported to the Federal Procurement Data System (FPDS) as bundled contracts. Of those contract actions only four were new contracts over $5 million, which is the dollar threshold for reporting bundling actions to the FPDS. The data suggest that the current effects of contract bundling are quite limited and that other aspects of acquisition reform may have had a more pronounced impact on the ability of small businesses to compete in the Federal marketplace.

However, SBA was unable to determine if accurate and complete information on all bundled contracts has been reported to the FPDS, without further analysis and review by the reporting agencies. SBA will continue to work with the agencies and conduct an in-depth review of the year-end FY 2001 data when it becomes available.

In addition, on March 18th, the President announced his Small Business Agenda, which includes, among other things, access of small businesses to government contracts. SBA will work with the OMB's Office of Federal Procurement Policy to develop a Federal government strategy for unbundling contracts wherever practicable.

Burden of SBA Regulations on Small and Mid-sized Banks

QUESTION 2: I am concerned about the SBA and its continuing ability to effectively serve the small businesses located in our rural communities.

I understand that some of our small and mid-size lenders sometimes struggle to keep up with changes in SBA rules and regulations. Many of these small banks are penalized for violations of regulations that they were unaware of. And they tell me that the rules are

only getting more and more complicated. The costs of staying current on SBA regulations can be burdensome for smaller lenders.

Often times, these small and mid-sized lenders are the only options for small businesses in our rural communities. It seems that unless something is done to simplify the way our lenders do business with the SBA, we are in danger of cutting small banks and rural America out of the SBA process. Can you comment on that?

ANSWER: SBA is continuing to look for appropriate ways to give smaller and rural lenders better access to SBA-guaranteed loans. Over the past few years, SBA has introduced pilot programs that dramatically reduce the paperwork required for SBA loan guaranties for loans in amounts up to $150,000. To help find new ways to further streamline the SBA loan process, Agency personnel recently met with a very small group of lenders, including two small rural lenders to discuss ways to improve SBA's loan products and processes. As a result of that meeting, SBA is currently considering changes to its SBAExpress pilot program to allow additional lenders to participate in this program. SBAExpress allows lenders to use their own forms and processes. SBA recognizes that participation by rural lenders in the SBA loan program is essential in order for it to assure that its loans are available to meet the needs of rural America. SBA intends its efforts to address the special needs of this important segment of America's economy.

Workforce Restructuring

QUESTION 3: In your FY03 budget request you say that the SBA is going to implement a 5-year Workforce Restructuring Plan.

It also says that the SBA is "testing various alternate District Office operating models and organizational schemes."

The SBA District Offices have historically been an invaluable resource for the small business community across our nation, and it is important that the quality of services provided to small businesses not be degraded during any organizational transition. Can you talk a little bit about your workforce restructuring plans? Do any of these alternate operating models include downsizing workforce in SBA's front-line District Offices?

ANSWER: SBA's workforce restructuring plan will focus on transforming the Agency's mission. In recent years, SBA has focused its restructuring on privatizing and centralizing its small business loan processing and servicing. With the increase in privatization and centralization, the Agency will increasingly focus on program oversight and risk management. Emphasis will be placed on the marketing of the Agency's entrepreneurial services.

This organizational transformation will require change for SBA's workforce as well. Removing processing and servicing functions from the district office will free up SBA employees to

perform tasks that are more inherently governmental than those which the private sector could more appropriately handle. SBA understands that housing large numbers of people in district offices with their limited geographic boundaries is not in the best interest of its customers. SBA will try to get more people into local communities, closer to its customers. In the end, SBA does not see any diminution of service to small business. In fact, SBA sees a dramatic increase in the service level due to more focused attention, better use of resources, more use of technology, and having employees closer to customers.

Questions
Small Business Administration
Congressman Patrick J. Kennedy

7(a) loan program

QUESTION 1: The 7 a loan program is a loan guarantee program that helps small business that have trouble finding credit through other sources. It gave out $94 million in loans to 961 firms in Rhode Island in 2001.

Administrator Barreto, the Administration has requested an approximate 60% reduction in loan authority for the 7 (a) Loan Program but has also stated that this proposal will not have a significant negative impact on access to capital for small businesses. Also, it is stated that the SBA will be able to mitigate the damage of this reduction by attempts to re-direct the larger 7 (a) loans (those in excess of $300,000) to the 504 Loan Program.

The 7 (a) Loan Program and the 504 Loan Program are not similar programs. It is my impression that many of the larger 7 (a) Loans would not even qualify under the requirements of the 504 Loan Program. (The 504 program is specifically for real estate and equipment, and has a new job creation requirement that some firms can't meet.) So the assumption that many of the larger 7 (a) loans could be re-directed to the 504 Loan Program is an invalid assumption.

If these larger 7 (a) loans would not qualify for the 504 Loan Program, and if funds were not appropriated to allow for them to be made within the 7 (a) Loan Program, then wouldn't this result in a significant lack of access to capital for small businesses?

Additionally, it appears that the larger 7 (a) loans pay higher fees, thereby offsetting the less-profitable smaller 7 (a) loans. Is it possible that banks will be less likely to make the smaller 7 (a) loans if they are no longer able to recoup their losses by making the more profitable, larger 7 (a) loans, since they will now be redirected to the 504 loan program? Would this not, in fact, seriously impair or restrict access to capital for small businesses who have small loan needs?

ANSWER: SBA believes that it is appropriate to make full use of all loan program resources available to the Agency. As you are aware, during FY 2001 SBA guaranteed approximately $2.3 billion in 504 program financings. Since the authorized 504 program level was $4.5 billion, this resulted in an excess program capacity of approximately $2 billion. For FY 2003, SBA again has requested a 504 program level of $4.5 billion, and the Administration budget includes a funding request sufficient to support a 7(a) program level of approximately $4.8 billion (exclusive of carryover). In order to take advantage of the excess 504 program capacity, SBA believes that it must try to ensure that lenders and borrowers are fully aware of the 504 program and consider using it for eligible financings where the terms of that program would best meet their needs. For those businesses that require long-term, fixed rate financing for the acquisition of fixed assets, the 504 program may be an appropriate alternative to the 7(a) program. The attached charts of 7(a) and 504 loan approvals by top industry types for FY 2001 (see

Attachment B) demonstrate the considerable overlap in the types of industries which receive high levels of assistance from both loan programs.

SBA understands that not all larger 7(a) loans could qualify for financing under the 504 program. SBA does not intend to foreclose the financing options available to small businesses. However, SBA believes that in some cases it may be appropriate for a borrower to obtain 504 financing for a real estate purchase or other 504-eligible purpose, and then use the 7(a) program to meet other credit needs not eligible for 504 financing, such as working capital, debt refinancing, etc.

SBA is working with its lending partners to refine its products to make all of them more attractive to lenders, and therefore rather than restricting access, SBA believes this will increase access.

SBDCs

QUESTION 2: SBDC are the nation's largest federally funded small business management technical assistance program. They have over 610,000 clients.

In RI, 96 % of businesses are small businesses. Many of them rely on Small Business Development Centers for management and technical assistance.

The current SBDC appropriated budget is level funded. Given the economic situation that our Country has faced over the past few months, how can we afford to flat fund programs like SBDCs, which help small businesses function during "up and down" economic cycles and provides them with vital technical assistance to adjust to changing marketplaces?

ANSWER: SBA believes that a funding request of $88 million shows strong support for the Small Business Development Center program. This level of funding is required to be matched at the local level, resulting in a program of well over $160 million to provide services to 620,000 clients. Like all of its programs, SBA is working with partners and exploring ways to make these programs more efficient and cost effective.

PRIME

QUESTION 3: Congress recognized that many disadvantaged microentrepreneurs lack sufficient training and education to gain access to capital to establish and expand their own small businesses. It enacted PRIME to augment training and technical assistance under the Small Business Act and other legislation. PRIME grantswill help meet more training and technical assistance needs for disadvantaged microentrepreneurs, thereby encouraging entrepreneurship and community development.

Many low-income and very low-income entrepreneurs need training and technical assistance to start, operate, or expand their businesses. In order to achieve measurable

success in the effort to providing direct training and technical assistance to low and very low-income individuals, another goal of the PRIME Act is to expand and build the capacity of microenterprise development organizations ("MDOs") to provide training and technical assistance to the microentrepreneur.

PRIME offers basic business training to new and potential entrepreneurs, regardless of whether they seek access to capital. Just in my own State of Rhode Island, PRIME dollars have been able to reawaken interest in, and support for microbusiness education and assistance at the state and local government levels. PRIME is a much needed resource for Rhode Island's 10,000 microentrepreneurs attempting to sustain and grow existing microbusinesses, and for individuals attempting to develop new enterprises.

Rhode Island is providing a technological infrastructure, effective and continuous technical assistance, quality workforce education and training programs, training and meeting sites, improved purchasing power, mentorship programs, and financial resources such as access to low-interest loans.

Congress passed the Microloan and PRIME legislation as two separate programs in response to the needs of microentrepreneurs across the country. I'm very familiar with the Microloan program and know the incredible role it has played in small business development over the past ten years. PRIME is equally important as it helps people create new businesses and become less dependent on government social services. It provides the grass roots education and motivational training that reaches out to our lowest-income residents, including refugees and recent immigrants trying to achieve their own American dreams, helping them become independent citizens.

A recent study by the Aspen Institute found that 90% of microentrepreneurs don't borrow money. How can the Microloan programs, which focus all of their work on those seeking access to capital, assist that other 90% of the population, as PRIME current does?

ANSWER: A part of the SBA's microlending program does provide assistance to the individuals and nascent businesses that are described in the above question. This is the Non-lending Technical Assistance Program (NTAP). These organizations do not make loans but provide technical assistance that allows developing businesses to get financing from sources other than the SBA. Given the funding available for FY 2002, each organization was eligible to receive up to $120,000 in this fiscal year.

Such technical assistance is also available through a number of SBA's programs, including Women Business Centers, SCORE and SBDCs.

The attached chart (**see Attachment C**) highlights the similarities in the Microloan and PRIME programs.

Microloan Program

QUESTION 4: MicroEnterprises are businesses with fewer than five employees and require less than $35, 000 in start-up capital. Conventional sources of business credit, such as bank financing, are beyond the reach of microentrepreneurs. In addition, microentrepreneurs need ongoing training and technical assistance in areas such as financial management, bookkeeping, marketing their products and services, growing their business, and access to MicroLoan Money.

In addition to loans, Microloan provides technical assistance to companies who have already loaned funds. The budget level funds this technical assistance as well. By providing only level funding for Microloan Technical Assistance it reduces the success of the entire Microloan program. As with most entrepreneurs, many Microloan borrowers require specialized technical assistance to grow their businesses. Technical assistance resources are the key reason that the Microloan Program has experienced a low loss rate despite the many high-risk loans that it makes. The level funding of $17.5 million for technical assistance is estimated, by the Center for Enterprise Opportunity to cause an actual 16-18% decrease in funding for each Microloan intermediary.

In Rhode Island's first year there have been 413 inquiries about the microbusiness training program. The microbusiness training programs have had 198 attendees and graduated 172 people. First-year results indicate that 42 graduates have started a new microbusiness and 22 graduates are in the research and development stage. Economic Impact, Gross sales from 18 of the 42 microentrepreneurs that graduated are estimated at $473,000.00.

How will the Microloan program fully meet the needs of microentrepreneurs if it does not receive more funding that the $25 million for lending and $17.5 for technical assistance that are suggested in the SBA's FY 2003 budget, particularly in light of the elimination of PRIME(see above)?

ANSWER: In order to more effectively use technical assistance dollars, SBA, in collaboration with the microenterprise industry, is working to develop new strategies for distributing technical assistance funds to microlenders. SBA intends to make the technical assistance program more cost-effective by creating a grant funding distribution process that will encourage microloan production and better support the microlenders that have higher levels of lending activity. SBA looks forward to working with Congress as it seeks to develop a more appropriate distribution process. With appropriate changes to the technical assistance delivery structure, SBA believes that the $17.5 million requested for microloan technical assistance will be sufficient to allow the program intermediaries to provide the level of technical assistance so necessary to the success of the small businesses targeted by the program.

SBA intends to make maximum use of all of its programs as well as the other microloan programs available through other federal and local government agencies as well as the private

sector to serve the greatest cross section of borrower needs. The $25 million requested for the microloan program, in conjunction with these other needs, will meet the needs of entrepreneurs.

In FY 2001, an Interagency Workgroup on Microenterprise Development published "Crossing the Bridge to Self-Employment: A Federal Microenterprise Resource Guide." This guide describes the 13 agencies that "provide training and outreach programs" to the microenterprise industry. According to the guide, "many microenterprise programs offer training in critical business skills." A copy of the publication is attached to this response for your use (**see Attachment D**).

Women's Business Centers

QUESTION 5: The SBA's Office of Women's Business Ownership is the only federal office that targets women's business ownership. Women-owned businesses make a critical contribution to our economy. 6.2 million women-owned businesses in the US generate $1.15 trillion in sales. Due to their significant impact, it is clearly important to support the start-up, stabilization, and/or growth of women-owned businesses.

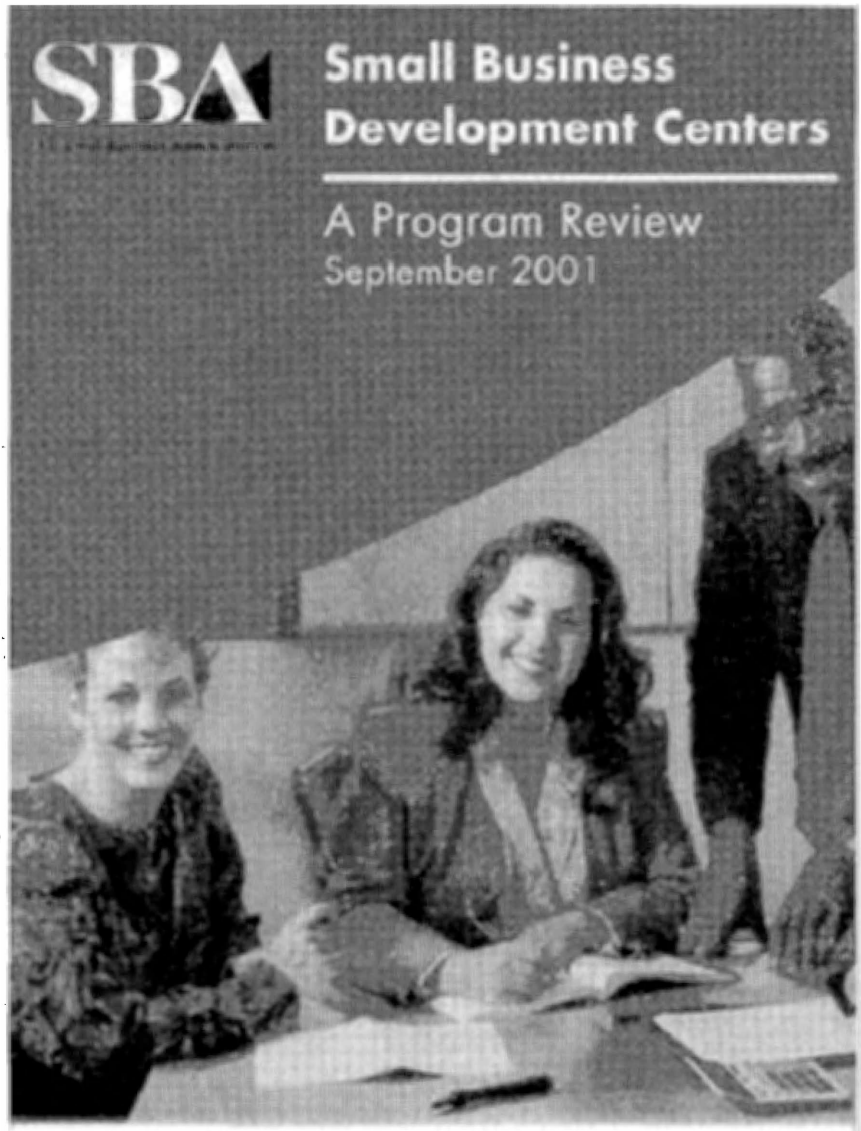
However, the FY 2003 SBA budget does not fully support the Women's Business Centers. It only supports them at $12 million instead of the full $14.5 million authorized.. $12 million will not sustain current centers and will prohibit the establishment of any new centers. WBCs are proven to work, and many current centers serve as mentors for newer centers and build best practices. Inadequate funding will erode the strength of the program and compromise its ability to serve this fastest growing segment of the small business sector.

Can you explain why the Women's Business Centers are not receiving their full authorized funding when it has such a large, well-demonstrated return?

ANSWER: The $12 million request for Women Business Centers (WBCs) in the FY 2003 budget will fully fund all 49 existing "regular" WBCs, as well as 29 sustainability centers with multi-year funding. The law requires that 30.2% of the appropriation must be used for funding of sustainability centers. In addition, with $12 million, 5 new "regular" centers will also be able to be funded.

Women business owners and entrepreneurs will continue to be served by the numerous other programs/services offered by the SBA including: SCORE, SBDCs, BICs, WNET (Women's Network for Entrepreneurial Training), and the on-line Women's Business Center.

ATTACHMENT A


SBA
Small Business
Development Centers
A Program Review
September 2001



A

PROGRAM REVIEW OF

SBA'S

SMALL BUSINESS DEVELOPMENT CENTER PROGRAM

September, 2001

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EXECUTIVE SUMMARY

Few of SBA's programs generate as much controversy, serve as many small businesses, create as many misconceptions, and receive as much Congressional support as the Small Business Development Center (SBDC) program. Historically, Administrations have tried to cut the SBDC budget, question its cost effectiveness, and require that the program charge fees for its services. Just as frequently, Congress has rejected these notions and fully funded the SBDCs.

The SBDC program was created in 1980 and is SBA's largest management and technical assistance delivery partner, with more than 1,000 locations and more than $1 billion in Federal grant funds since its inception. The SBDCs offer counseling, training, and education tailored for particular state and local needs.

SBA has never conducted an overall program review or assessment of the SBDC program. In October 2000, SBA initiated this program review to describe the SBDC delivery system and identify strengths and weaknesses. This review is not a formal program evaluation in the classical sense, but rather a compilation of views and attitudes of key managers within and external to the program and a review of selected program data.

Study Goals

- Educate SBA personnel, stakeholders, and small businesses by describing the program's uniqueness, strengths, and weaknesses;
- Identify "best practices" for emulation network-wide; and
- Recommend ways to improve the delivery network and identify issues for future collaboration.

SBA hired three contractors to conduct this review, using the following largely qualitative data collection methods and sources:

- Site visits
- Telephone interviews
- Focus session input
- National survey
- Analysis of program data

The review seeks to answer a number of questions, document strengths and weaknesses of the SBDC program, and suggest a number of recommendations.

SBDC Strengths

- Service delivery in all fifty states that responds to local needs and offers outreach to small business communities that need help the most;
- Committed and dedicated personnel, who pursue professional development and certification by the Association of Small Business Development Centers (ASBDC);
- Partnerships with public and private sector organizations at state and local levels;
- Industry-specific counseling;
- Skilled loan packaging assistance;
- Research capability through the National SBDC Research Network; and
- Economic impact analysis of counseling.

SBDC Weaknesses

- Little incentive for innovation and nationwide diffusion of "best practices";
- Insufficient use of Internet technology;
- Inconsistency in data definition, collection, and use across the network.
- Inconsistent product and service quality among state and local SBDCs;
- Lack of consensus on appropriate client mix (i.e., any business, or emphasis on high-tech, fast growing firms, start-ups, or pre-venture);
- Limited marketing; and
- Insufficient research on small business needs to guide strategic planning and personnel training.

Recommendations

- Improve the partnership with SBA to include closer collaboration on strategic and annual performance planning, research on small business issues, and use of the network to support/implement SBA initiatives;
- Use the power of the network to create and diffuse innovations;
- Improve capacity to manage for results through use of the Balanced Scorecard in all state centers;
- Use periodic re-competition of cooperative program agreements to ensure quality service;
- Increase use of Internet technology (e.g., online counseling, distance learning, searchable frequently asked questions, online magazine, expert tools) to expand and improve "cross boundary" services, reduce costs, offer convenience, and provide transparency and accountability;
- Introduce consistency in data definition and improve data quality of program performance information;
- Develop additional sources of funding, to include charging fees for selected clients based on the network's capability of serving new high-value needs such as industry-specific counseling and training, environmental and workplace issues, and e-commerce;
- Create an innovation fund to stimulate and foster pilot efforts and new programs;
- Improve the methodology of the biennial economic impact study, thereby increasing its usefulness as an impact measurement tool; and
- Produce a national annual report that presents total costs and aggregate results.

SBA Management of the Program

This review did not focus on SBA's management of the program. But not mentioning the complexity of the relationship between SBA and the SBDCs and its effect on the Agency's ability to exercise oversight over the program would leave the reader with an incomplete picture. Although SBA annually negotiates cooperative agreements with each of the 58 State SBDC lead centers, there are statutory limitations on its management authority. Ultimately, other than by force of negotiation and mediation, SBA's only true leverage over the program is to withhold funding for a particular center.

Over the past 20 plus years since Congress created the SBDCs in the Small Business Act, Section 21, the intent of Congress has been clear. The legislators mandated a *partnership*, not a contractual arrangement, not a pure grant relationship, and certainly not a traditional administrative managerial relationship. Throughout all the iterations of the Small Business Act, Congress unambiguously asserted its intent that SBA and the SBDC

forge a partnership with a significant amount of autonomy given to the SBDCs.

This legislation requires that "programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration." The legislation has created a situation where effective management of the program is difficult. Prohibiting SBA from exercising a type of contractual relationship has made oversight of the program extremely difficult. Given the existing authorizing legislation of the SBDCs, management of the program requires balancing the SBDCs need for autonomy (to ensure a flexible response to local demands) and the fiduciary responsibility of SBA to exercise prudent management and oversight for its funded programs, as required by the Appropriations law.

Each SBDC, in collaboration with SBA's District Directors in the state, is free to address the specific needs of the state's small businesses and become, in effect, an extension of the state's economic development agenda for the small business sector. The SBDC also receives funding and support from the state government, other Federal agencies, and public and private organizations and institutions within the state with an interest in small business.

Summary

The SBDC program has matured substantially over its twenty-year history. The changing needs of small businesses require flexibility and adaptability from the SBDCs. What was required 20 years ago may not be needed today. The current structure of largely independent state SBDCs that do not function very well as a network may no longer be the most effective way of meeting small business needs in a changing world. Increased competition from the private sector in providing counseling and training and the power and ubiquity of the Internet suggest a new business model for the SBDC program. SBA has commissioned this program review to educate policy makers and the public on the value and importance of the SBDC program, highlight "best practices" and selected weaknesses as identified by SBDC and SBA program managers, and recommend improvements.

FOREWORD

The Small Business Development Center (SBDC) program is the Small Business Administration's (SBA) largest management and technical assistance resource partner, with more than 1,000 locations in all 50 states and more than $1 billion in federal grant funds in its 20 year history. The SBDCs offer counseling, training, and other services tailored for particular state and local needs.

This report illustrates the variety, richness, breadth, and depth of the program, as well as identifies areas where improvements are needed, particularly highlighting data validity and reliability, and capitalizing more effectively on program "best practices." Specifically, the study describes program goals, structures, uniqueness, strengths, weaknesses, threats, and opportunities. Finally, the program review develops recommendations that will improve the cost effectiveness and efficiency of SBDC's program delivery. However, it is equally important that this review serve as a catalyst for an open dialogue on how SBA and SBDCs at Federal, state, district, and local levels can work more closely to achieve a common goal: to help more small businesses survive and thrive in this new century.

Since 1980 when the SBDC network was created, globalization, technology, and increased competition have revolutionized the way we do business. America's small businesses have to be innovative and agile to meet the demands of the future. Governments and resource partners must also transform the way they work to more effectively assist their small business customers.

In preparing the contractors for this program review, SBA posed a number of questions related to the program. For example, how has the SBDC evolved to meet future challenges and embraced innovations? Is the SBDC mission still pertinent? Are SBDC goals, processes, and products still relevant and do they provide sufficient value to clients and the American taxpayer? What consequences does Internet technology have for SBDC program delivery and products? Should SBDCs concentrate on pre-venture or existing businesses, or move toward community economic development? How does the increased provision of small business training, distance learning, and information services over the Internet affect the SBDC delivery system? What should be the relationship of the SBDCs to SBA? Are the SBDCs primarily an independent grantee or a full-fledged SBA partner?

This review is a product of SBA's commitment to manage for results. The review, however, does not answer all questions posed above. Consequently, it is hoped that this study represents only the first step in a more constructive dialogue with the SBDCs about strengths and weaknesses, threats and opportunities, and organizational change.

STUDY DESIGN

This report is not a formal program evaluation in the classic sense, but rather a program review that describes the SBDC delivery system and identifies strengths and weaknesses.

The review uses a variety of data collection methods, including:

- **Site visits.** SBA staff visited Pennsylvania, North Carolina, and Washington, D.C. lead SBDC centers to better understand how SBDCs meet local needs and to frame the context for the program review.

- **Telephone interviews.** The contractor interviewed SBA staff in district offices and at headquarters from December 20, 2000 through January 12, 2001. Staff was asked for their views on the SBDC program, its strengths, weaknesses, and challenges; its overall effectiveness; the extent to which SBDCs respond to the needs of small businesses and of SBA; appropriateness of the SBDCs' outreach strategy for new, emerging, and target markets; and identification of best practices that should be publicized to other SBDCs.

- **Focus session.** On January 22, 2001, a facilitator in Dallas, Texas, conducted a focus session with eighteen SBA and SBDC managers at the state, regional, and national level to discuss strategic issues facing SBA and SBDCs.

- **National survey of state and local SBDCs.** In January 2001, the Association of Small Business Development Centers distributed a survey to all of its lead centers. Questions concerned mission, small business needs, outreach, strengths and weaknesses of the program, use of faculty and students for counseling and training, online counseling, online courses, and funding. Twenty-six of the state lead centers responded. A contractor summarized the survey responses.

- **Analysis of program data.** A contractor analyzed counseling, training and economic impact data collected from the SBDC clearinghouse in San Antonio, Texas to provide a quantitative description of outputs and impacts. Data included:

  Counseling data, including total number of cases, hours per case, and type of business (retail, service, wholesale, manufacturing, and construction).

  Training data, including number of training hours, client characteristics, and training topics.

  Annual economic impact data, including jobs created, jobs retained, sales, state, and Federal taxes generated, number of SBA and non-SBA loans and loan dollars, and equity capital that SBDCs helped clients obtain.

SBA PROGRAM MANAGEMENT

This review did not focus on SBA's management of the program. But not mentioning the complexity of the relationship between SBA and the SBDCs and its effect on the Agency's ability to exercise oversight over the program would leave the reader with an incomplete picture of the program. Although SBA negotiates cooperative agreements with each of the 58 State SBDC lead centers annually, there are explicit limitations on its management authority. Ultimately, other than by force of negotiation and mediation, SBA's only true

leverage over the program is to withhold funding for a particular center.

Over the past 20 plus years since Congress created the SBDC Program in the Small Business Act, Section 21, the intent of Congress has been clear. The legislators mandated a *partnership*, not a contractual arrangement, not a pure grant relationship, and certainly not a traditional administrative managerial relationship. Throughout all the iterations of the Small Business Act, Congress unambiguously asserted its intent that SBA and the SBDC forge a partnership with a substantial amount of autonomy given to the SBDCs. The legislation has continued to explicitly describe the majority of the policies available to SBA for management of the program. A key provision that demands joint development and negotiation in this partnership is as follows:

> "The Small Business Development Center Program shall be under the general management and oversight of the Administration, for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration."
> (Small Business Act, Section 21 (a)(3) – as amended December 2000).

SBA's relationship to the Association of Small Business Development Centers (ASBDC) is similarly mandated:

> "Small business development centers are authorized to form an association to pursue matters of common concern. If more than a majority of the small business development centers which are operating pursuant to agreements with the Administration are members of such an association, the Administration is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents (i) announcing the annual scope of activities pursuant to this section (ii) requesting proposals to deliver assistance as provided in this section and (iii) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated cooperative agreement for use on an annual basis when entering into individual negotiated agreements with small business development centers." (Small Business Act Section 21 (A), as amended December 2000).

These legislative mandates appear to require negotiation and mediation from SBA rather than unilateral management. For instance, there are a variety of complex relationships between Federal, state and local officials, University staff, and SBDC center directors. Key relationships include: SBA district directors and SBDC state directors (and/or local center directors); SBDC state directors and University deans; the ASBDC and the state directors and/or University department heads; state and local officials and SBDC state directors; and SBA's Associate Administrator for the SBDC program and all of the focal players mentioned above. The legislation has created a situation where management of the program is difficult. Prohibiting SBA from exercising a type of contractual relationship has made oversight of

the program extremely difficult. Management of the program entails balancing SBDC needs for autonomy (to ensure a flexible response to local demands) and the fiduciary responsibility of SBA to exercise prudent management and oversight demanded by the Appropriations.

Each SBDC, in collaboration with SBA's District Directors in the state, is free to adapt its services and programs to the needs of the state's small businesses and become, in effect, an extension of the state's economic development agenda for the small business sector. The SBA/SBDC partnership also generates other partnerships – with the state in which the SBDC is located -- mostly through funding and support from the state government, other Federal agencies, public and private organizations and institutions within the state with an interest in small business. The partnership requirement, the state-based population funding formula, the required 100 percent match, and the locally negotiated cooperative agreement for delivery of services create the basis of an entrepreneurial approach.

SBDC SYSTEM OVERVIEW

Mission and Objectives

Congress passed the Small Business Development Act of 1980, authorizing SBA to make grants (including cooperative agreements) to entities wishing to establish SBDCs to "provide advice, information and assistance" to small businesses.[1] The purpose of these newly created SBDCs was to "assist small businesses in solving problems, concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development and other disciplines required for small business growth and expansion, innovation, increased productivity, and management improvement, and for decreasing industry economic concentrations." The program is a cooperative effort of the private sector, the educational community, and Federal, state, and local governments.

While each state and local SBDC has crafted a mission statement to reflect the needs of its community, the mission of the SBDC is ***to enhance small business success and community economic growth through provision of entrepreneurial development assistance.*** The mission of the SBDC program is similar to SBA's, that is, *to help small businesses succeed.*

The SBDC program has three objectives that mirror the three dimensions of SBDC clients: (1) pre-venture entrepreneurs or emerging businesses, (2) businesses within a given geographic area (inner city, rural), and (3) specific industries:

- Help small businesses start up, survive, and grow
- Assist community economic development
- Assist specific industries to survive and grow

The SBDCs reach their objectives through Counseling, Training, Information, Assisting clients in obtaining financing, and Working with communities.

The SBDC program delivers counseling, training, and technical assistance at all phases

[1] SBDCs operate under the provisions of 15 USC 648, 13 CFR Part 130, 13 CFR Part 143 or OMB Circular A-110; university-based SBDCs are governed by OMB Circular A-21, while state or local government-based SBDCs are governed by OMB Circular A-87.; a Notice of Award (Cooperative Agreement) issued by SBA; and the provisions of the SBDC Program Announcement.

of the small business life cycle. Services include, but are not limited to, assisting small businesses with financial, marketing, production, organization, engineering and technical problems, and feasibility studies. Special SBDC activities include international trade assistance, technical assistance, procurement assistance, venture capital formation, and rural development.

While the program is national in scope, SBDC assistance is tailored to the local community and the needs of individual clients. Each center develops services in cooperation with local SBA district offices to ensure statewide coordination with other available resources. Assistance from an SBDC is available to anyone interested in beginning a small business for the first time or in improving or expanding an existing small business.

Resources

As of September 2001, there are fifty-eight Small Business Development lead centers: one in every state (Texas has four), the District of Columbia, Guam, Puerto Rico, Samoa, and the U.S. Virgin Islands. It also has more than 1,000 local centers. Within each state, a lead organization sponsors the SBDC and manages the program. The lead organization coordinates program services offered to small businesses through a network of local centers and satellite locations in each state. Local centers are located at colleges, universities, community colleges, vocational schools, chambers of commerce, and economic development corporations.

SBA provides Federal assistance match funds to the SBDC program. To qualify for assistance, the applicant (lead SBDC), and/or its network participants, must provide an additional amount (match) equal to the Federal dollars provided. Not less than 50 percent of Federal funding is required as cash match. The remainder may be indirect and/or in-kind match. For the most part, no portion of the match may be from Federal sources. Program income or fees collected from clients and/or attendees are also excluded from match. No recipient can receive an SBDC grant exceeding the greater of the minimum statutory amount or its pro-rata share of all SBDC grants as determined by the statutory formula set forth in Section 21(a)(4) of the Small Business Development Act. The statutory formula is based upon the population to be served by the SBDC as compared to the total population in the United States, or the minimum statutory amount, which is currently $500,000. Matching funds are provided by state legislatures, local and county municipalities, private sector foundations, state and local chambers of commerce, economic development organizations, public and private universities, vocational and technical schools, and community colleges.

The Federal SBDC funds amounted to $88 million in FY 2001. With a conservative 1 to 1 match, the total cost for the program is about $180 million.

Federal SBDC Program Grant

Fiscal Year	Millions of dollars
1991	55.7
1992	59.0
1993	68.1
1994	68.2
1995	74.9
1996	75.0
1997	73.2
1998	71.5
1999	88.7
2000	83.0
2001	88.0

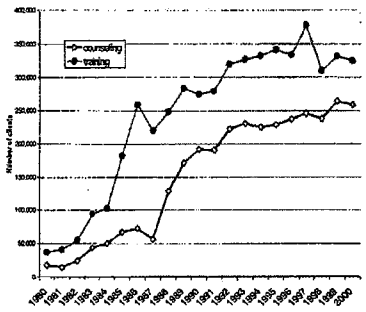
Data were unavailable on the total resources obtained by the SBDC system and how the

resources are used for different types of activities. In the national survey conducted as part of this study, the respondents reported the funding sources as shown in the table. The survey indicates that Federal funds are matched approximately on a one-to-one basis and that the state government support amounts to 15 percent of the total.

Sources of financing	Share
SBA	45%
Federal grant (non-SBA sources)	5%
State government	15%
University	25%
Local government	5%
Program income	5%

SBDC Program Results

The outputs of the SBDC program are primarily clients counseled and trained. These outputs have increased markedly as more states



have joined the program. The number of clients trained seems to have reached a plateau, while the number of clients counseled is still increasing

Number Of Clients Counseled and Trained

The share of clients with long-term counseling (five hours or more) has increased slightly during the 1990s from 20 to 23 percent of all counseled.. Notable is the large increase in pre-venture clients counseled in the 1998 study.

Counseling Statistics

Fiscal year	SBDCs reporting	Counseled clients	LTC clients	LTC pre-venture clients
1998	55	237,655	53,540	26,373
1996	55	237,107	47,601	20,484
1994	53	224,995	48,415	21,136
1992	47	222,497	43,461	15,474

LTC stands for long-term counseling clients.
Source: Biennial national impact studies.

In addition to counseling and training, the SBDC program assists clients in obtaining debt or equity financing. The next table shows the number of SBA and non-SBA loans that SBDCs report having helped all their clients obtain. In addition, SBDCs reported helping clients obtain $688 million in equity financing in year 2000.

Loan Volume Obtained by SBDC Clients

Fiscal year	SBA loans (millions $)	Non-SBA loans (millions $)	Total debt financing (millions $)
1998	386	836	1,222
1999	517	1,288	1,805
2000	471	1,037	1,507

Source: SBDC annual economic impact data reported to SBA.

The next table shows financing obtained for long-term counseling (LTC) clients as reported in the ASBDC biennial impact studies. This data can be compared with SBA program data for 1998 shown in the previous table.

The SBDCs report $1.2 billion of debt financing for all clients in their annual economic impact report to SBA, while the biennial study data shows $2.5 billion of debt financing obtained for LTC clients. This discrepancy may indicate a data validity problem with data supplied by SBDCs to SBA

or a methodological problem with the biennial study.

Financing Obtained by LTC Clients In 1998
(Millions of dollars)

(millions of dollars)	1996	1998
SBA debt financing	902	1,107
Other debt financing	1,537	1,439
Equity financing	907	869
Total financing	$3,344	$3,415

Source: ASBDC biennial impact studies

Counseling and Training Topics

SBDC counseling and training cover a number of areas. In FY 1999, 62 percent of counseling hours was for business start-up and acquisition, 20 percent for sources of capital, and nearly 15 percent for marketing and sales. About one-quarter of all training is focused on pre-business planning while other training is on managing a business, creating a business plan, managing employees, improving marketing and sales and customer relationships, accounting, cash flow management, tax planning, legal issues, international trade, computers, rural business development, technology, and women-specific issues.

Client Demographics

About 79 percent of all clients are white, and 15 percent are African American. Approximately 50 percent of clients represent male-owned firms, 38 percent female-owned firms, and 12 percent jointly owned firms. Our survey showed that 34 percent of clients are pre-venture, 27 are percent start-ups, and 39 percent are emerging businesses two years or older.

Types of clients	Share
Pre-venture (not in business)	34%
Start-ups (in business less than 2 years)	27%
Emerging (in business from 2 to 5 years)	24%
Mature (in business more than five years)	15%

Program Impacts

The SBDC program was a pioneer in developing economic impact studies. The ASBDC has conducted national impact analyses of its program every other year since the early 1990s. In addition, many state SBDCs conduct annual impact analyses on their own.

These studies measure the effect long-term counseling (five or more hours) has on client success, measured by the share of pre-venture clients that start a business, jobs created or retained by clients, growth in sales and tax revenues. The study also measures client satisfaction, and client valuation of services received.

Solely measuring the impact of long-term counseling means that not all SBDC clients are included in the impact analyses. Lont-term counseling clients (LTCs) represent about 10 percent of all SBDC counseling and training clients.

It need also be mentioned that the program impact on LTC clients was a result counseling and a large amount of debt and equity financing that the SBDCs assisted its clients in obtaining, as well as an unknown amount of financing that clients obtained on their own.

The table below shows indicators per LTC client. The average amount of financing (debt and equity) per LTC client is about $65,000. There are significant impacts on sales and tax revenues, and LTC client's perception of the value of SBDC services obtained is about $13,000.

LTC Average per Client Indicators

Fiscal year	Financing per LTC client	Sales impact per LTC client	Tax revenue per LTC client	Value of services perceived by LTC client
1998	$63,859	$98,188	$8,741	$13,422
1996	$70,275	$114,283	$7,164	$10,588
1994	$64,484	$201,632	$12,067	$14,171
1992	N/A	$85,249	$ 6,691	N/A

Source: ASBDC biennial impact study

The table below titled LTC Client Total Estimated Outcomes shows that about half of the pre-venture LTC clients start a business and that the 1998 LTC clients created about 67,000 jobs, with large increases in sales revenues and taxes paid.

LTC Client Total Estimated Outcomes

Fiscal year	Number of LTC clients	Pre-venture clients that start business	New jobs created	Increase in sales revenue (millions $)	Increase tax revenue (millions $)	Value of SBDC services to clients (millions $)
1998	53,540	54%	67,827	5,257	468	718
1996	47,601	53%	55,300	5,440	341	504
1994	48,415	69%	93,007	9,762	584	686
1992	43,461	65%	68,467	3,705	291	N/A

Source: Biennial Impact study.

These results raise a number of questions:

- How accurate are the data?
- Why do the number of loans obtained for clients differ so much between the annual economic impact data provided to SBA and the ASBDC biennial impact study?
- What is the impact of **all** SBDC clients, not just the LTC?
- How much of LTC client impact is caused by the counseling and how much by the $3.4 billion in financing?
- If the LTC client's perceived value of services received is as high as $14,000 for the SBDC assistance, why would these clients object to paying a nominal fee for counseling services?

SBDC STRENGTHS AND WEAKNESSES

A commonly used technique to determine an organization's health and areas for improvement is to list the organization's strengths, weaknesses, opportunities, and threats (so-called SWOT analysis). The data obtained from interviews, focus session, and survey provided the following summary opinions.

Strengths

The SBDC network has significant strengths:

- Effective partnerships with public and private sector organizations,
- Responsive to the local needs of small businesses and pre-venture firms,
- Effective focus on client groups and communities that need help the most,
- Attention to community economic development,
- Industry-specific counseling by industry experts,
- State SBDC certification process,
- Professional staff development programs,
- Delivery of service in all fifty states,
- Analysis of economic impact of long-term counseling,
- Skillful assistance of clients in obtaining debt and equity financing,
- Research capability through the National SBDC Research Network,
- Committed and dedicated personnel.

Weaknesses

The SBDC network also has a number of weaknesses:

- It is a loose federation of individual state SBDCs rather than a network that leverages its resources to achieve its mission.
- It does not have an effective structure for managing the network, such as developing standards and goals, ensuring high and uniform quality of products and services, developing strategies for leveraging the power of the network, and exploiting new technology.
- No systematic process to replicate model programs developed at a state SBDC.
- Non-uniform quality in the delivery of services among state and local SBDCs.
- No consensus among SBDCs on appropriate client mix (i.e. should SBDCs concentrate on pre- venture or existing and what emphasis to be placed on groups such as high-tech, or fast growing firms).
- Insufficient focus on developing and evaluating products and services: for example, substituting training sessions for counseling for pre-venture clients, providing self-help tools rather than low value added counseling, and training counselors to provide more value added assistance, and giving those counselors expert systems and databases to make the counselors more efficient and effective.
- Need for greater competence in information technology, financing and investment, e-commerce, law, international trade and manufacturing technology, despite several islands of excellence providing these specialized services.
- Low volume of online counseling and training.
- Ineffective communications and marketing: the majority of small businesses are unaware of SBDC programs.
- Absence of a core set of SBDC publications and training materials available throughout the United States.
- Lack of knowledge of specific SBA programs that could be utilized by SBDCs clients.

Opportunities

The opportunities lie in leveraging the network, technology, and the strong local support and partnerships to provide cost effective services.

- Leverage Internet technology more to provide personnel training, distance learning, answers to FAQs, Internet magazine, and online counseling.
- Leverage the SBDC network to be more than a quilt of state SBDCs, perhaps to pool resources to create core set of training materials, develop Internet applications, standardize certification of client competencies after pursuing a set of courses, develop FAQ databases, offer specialized counseling for different industries, and offer advice on technical questions available to clients regardless of the home state of the client.
- Develop higher value products and services.
- Encourage innovation; evaluate new programs, products, and services; and promote diffusion of these innovations throughout the network.
- Build on state and local partnerships to assist in community and specific industry economic development in addition to training and counseling of individual businesses or pre-venture entrepreneurs.
- Become more customer centric by providing service anytime and anyplace, serving client needs and helping small businesses start up, survive, and grow.
- Develop client certifications of competence and learning that lenders may recognize as reducing the risk associated with a borrower.

Threats

In many ways, threats are the opposite of opportunities and include:

- Increased competition from the private sector using Internet technology to provide training and counseling.
- Internet technology will provide small businesses with improved access to information and reduce the need for obtaining information from SBDC counselors (e.g. U.S. Business Advisor, expert wizards, databases, and referrals to local resources for assistance).

FOCUS GROUP DISCUSSION SUMMARY

On January 22, 2001, a focus group session of eighteen SBA and SBDC managers at the state, regional, and national level convened in Dallas, Texas, to discuss strategic issues facing SBA and SBDCs.

The group was asked to assess the needs of small business owners and entrepreneurs to become competitive in the twenty-first century. The group identified the following eight top priorities:

- how to gain a basic understanding of Business Management 101,
- how to better utilize information technology,
- how to target and penetrate markets,
- how to attract and retain employees,
- how to effectively participate in e-commerce,
- how to have regular access to capital,
- how to craft a strategic plan that positions a business in the marketplace, and
- how to survive in an economic downturn.

The group supported a common strategy between SBA and SBDC, enhanced partnerships, and improved services to a diverse group of clients; identification of signature programs, publications, and services that can be replicated at the national level; and

development of new projects and success stories for replication.

Perceived SBDC strengths included industry-specific one-on-one counseling; in-depth entrepreneurial training; assessment of business' needs; professional development of counselors including annual ASBDC conference; evaluation of SBDC services through client feedback and ASBDC certification of state SBDCs through national standards; loan packaging; resource guides; local delivery of services and partnerships with local economic developers; and local relationships between SBA district offices and state and local SBDCs.

Perceived SBDC weaknesses included SBDCs not collaborating at a national level; the goaling process being top-down; duplication of efforts among SBA resource partners; inadequate funding; lack of quality assurance; lack of focus on growth-potential clients; inadequate expertise, especially in e-commerce; insufficient use of electronic tools; poor marketing and outreach to small businesses unaware of services; lack of a core base of publications; and insufficient level of export assistance expertise.

Most agreed that the program should focus on existing businesses for overall economic growth, tax generation, and job creation, while others indicated that high-growth companies provided the greatest wealth and job creation. A minority said that the focus should be on new and early stage businesses because SBDC resources are best suited for these clients.

In priority order, the group identified the following actions that should be undertaken to improve service delivery:

- increase the level of communication between SBA and SBDC;
- create a combined SBA and SBDC vision of the future;
- involve SBDCs in the SBA planning process;
- increase cooperation and collaboration; innovate in the delivery of services;
- eliminate duplicative programs;
- highlight best practices;
- invest in technology to deliver services and information;
- create a national e-based counseling network;
- collaborate in the development of training and counselor materials;
- increase client feedback; and
- support high-growth potential small businesses.

Participants identified the following ways to enhance cooperation between the SBA and the SBDC organizations:

- evaluate the different management development delivery systems using the same methodology;
- prepare joint goals and strategies; and
- create an e-mail newsletter that is sent to all counselors, directors, and district and SBA district directors.

RECOMMENDATIONS

The interview, focus discussions, and national survey raised a number of issues and suggested recommendations for the SBDCs and SBA.

Since the SBDC program began in 1980, the relationship of SBA and the SBDCs has changed. The SBDC program has become the largest resource partner supported with funds from SBA. At the same time, Congress has created additional delivery channels that provide the same products as the SBDCs. The table below shows the funding and the number of "clients served" for the various delivery systems. **These numbers are *not* comparable, however, because they do not represent similar services nor do they reflect the total cost of the delivery channel because of matching funds.** For example, the definition of the number of clients served varies among the different delivery systems. SBDCs require a minimum of one hour counseling to register a client served, SCORE requires a minimum of fifteen minutes of counseling, Business Information Centers provide clients access to a computer and publications, and at Women's Business Centers counseling is often provided through referrals.

Funding and Clients Served for Different Delivery Systems

Resource partner	FY 2000 funds from SBA (in 000s)	Cclients served in FY 2000
SBDC	$84,074	582,598
SCORE	$3,469	377,525
Business Information Centers	$495	127,600
Women's Business Centers	$8,926	45,223
OneStop Capital Shops	$3,206	79,711

Much of the friction that has existed between the SBA and SBDCs stems from the statutorily mandated relationship, which is neither a grant nor a contract, but rather a negotiated agreement. SBA district directors negotiate cooperative program grant agreements each year with each state lead SBDC, yet many feel they have little influence and management oversight over the SBDCs.

Focus on Helping Small Businesses Succeed

Both SBA and the SBDCs sometimes had different views of the needs of small businesses and how those could best be met. In fact, both organizations have a common objective: *to help small businesses succeed.* Having a common goal should provide an impetus for SBDCs and SBA to work together by using similar measurement systems and by collaborating in finding ways to increase efficiency and effectiveness.

Many state organizations and some Federal agencies have used the Balanced Scorecard measurement approach to provide a more relevant and comprehensive evaluation approach. Because SBA and SBDCs have the same mission, the two organizations could jointly develop measures, analyze data, conduct performance monitoring, and evaluate impact.

For example, it is not enough that the SBDCs as well as SBA's other business development programs simply count clients counseled and trained, or counseling hours as measures of success. All delivery channels need to document program impacts and what value they produce for the clients and American taxpayers. Impact should not only concentrate on the impact on the client, but also community economic development (such as HUBZones) or specific industries that are important locally.

This is especially important for SBDCs with their broad delivery system.
Focusing on small business success also means that SBA and the SBDCs need to decide who is the appropriate customer (e.g., pre-venture or existing firms, low-tech versus high-tech, general versus industry specific counseling and training). Currently, the SBDC network offers a diversity of products and services, but little attention is paid to setting priorities and deciding where the network achieves the most return on its investment.

Providing increased access to capital is an area where SBA and SBDCs can work together more closely. One of SBA's primary strategies to help small businesses succeed is offering financing to small businesses that cannot obtain financing on reasonable terms elsewhere. The SBDCs assist clients in obtaining financing, so SBA might offer to train SBDC counselors in the business of lending, work with counselors to develop wizards to simplify making loan applications, compare SBA loans with other products, and elicit help in improving SBA loan products.

For the exporting and procurement areas, SBDCs and SBA could collaborate on developing online training materials and wizards for determining risks and comparing different methods of financing.

Leverage SBDC Network

The SBDC network is essentially a loose confederation of state SBDCs that operate somewhat autonomously and independently. However, the SBDCs can maintain individuality and flexibility and still work together to realize enormous economies of scale in creating and improving new programs, products, or services and in developing new methodologies for assessing efficiency and effectiveness. Sharing best practices can help realize significant gains in cost effectiveness.

One area where the network can leverage its resources is to develop high quality products to better serve specialized local needs, specific industry issues, and e-commerce business models. By spreading development costs over the whole network, the SBDC program will be able to increase effectiveness and efficiency.

A second area is to research small business needs and to recognize how effectively those needs are being served by SBDCs and other organizations and then to develop teaching materials based on that research.

A third area is to promote evaluation and diffusion of innovations. The national survey documented (see appendix B) that the SBDC system contains innovative and creative initiatives, but has no mechanism for evaluating those initiatives and diffusing them throughout the system. The National Clearing - House currently has a limited role in collecting information on projects and making the information available but could have a much larger mandate to document, evaluate, and disseminate information and best practices. This might be expanded to have a more active role in innovation evaluation and diffusion.

Additional examples of innovative projects follow:

- Develop a FAQ database to be provided to both clients and counselors via the web.
- Implement a 24 hour/7 days a week answer desk.
- Standardize core training curriculum to ensure high quality materials and teaching.
- Develop and implement an entrepreneurial assessment tool to determine the training needs of entrepreneurs and business

managers. This could also be a tool for banks to assess the managerial risk that a prospective borrower represents.

- Develop standardized certificates for courses such as accounting, marketing, and procurement that will provide small businesses with the tools to succeed and will provide lenders with documentation on the borrower's level of business acumen. These certificates might prove to be a valuable marketing tool for SBDCs.

Leverage Technology

Technology has changed dramatically since the SBDC program was created, and the SBDCs have not kept up. The national survey had two questions on this issue:

- *Do you provide e-mail counseling?* Nearly 85 percent of state SBDC survey respondents provided some sort of e-mail counseling. Many viewed e-mail counseling as a supplement to face-to-face consultation and helpful in providing assistance to distance rural areas.

- *How many online courses are offered by your SBDC on an annual basis?* More than 90 percent of respondents indicated that online courses were not yet offered, but many expressed interest in developing and offering online courses while others expressed disappointment at the lack of response when an online course was offered.

The Internet provides an opportunity for economies of scale in delivering information, counseling, and training. Yet, the SBDCs do not offer many online courses. The Missouri SBDC is developing courses based on a broadband delivery system, but it is unclear how many other SBDCs are supporting this effort.

Technology can also be used to develop expert tools and databases to help counselors when they are assisting a client.

Improve Understanding of Small Business Needs

The interviews and the national survey document that the SBDCs cater to small business needs. However, it was not clear how the SBDCs define these needs. The national survey asked, *In your opinion, what are the top five needs of small businesses?* Sixteen needs were expressed:

- Preparing loans and financial statements
- Accounting
- Developing new markets
- Marketing
- Retaining good employees
- Regulations
- Health care
- Business and strategic planning
- International marketing
- Cash flow analysis and improving cash flow
- Pre-venture counseling
- Management and personnel issues
- e-commerce
- Using appropriate technology/technology integration
- Customer service
- Finding mentors

Different clients need different services. By working together, the SBDCs can meet a diversity of needs:

- *Pre-venture: Not in business.* Individuals interested in starting a business seek SBDC counseling and training assistance to acquire information and skills necessary to start a business. Most SBDCs have

implemented processes to provide basic information (e.g., starting-a-business workshop or basic business guides) so that consulting may be provided to serious clients who are capable of opening viable businesses.

- *Start-up: 0–2 years.* These clients are in the process of starting a business or have already started one. Clients seek information and skills to overcome constraints during the establishment of any business. This is a critical stage for businesses, and one in which SBDC assistance can have a large economic impact on a community.

- *Established: 2+ years.* These are small firms that have gone beyond the initial growing pains and have been in business for more than two years. Clients usually seek assistance when dealing with a specific issue or problem. The SBDC can increase the value of assistance by not only answering the particular question but also by analyzing the company to identify additional issues that will help the young business survive and thrive.

- *High-growth potential: Pre-venture to any age.* These firms are growing or may grow at rates of 25 percent a year or more. SBDC consulting is aimed at helping these firms plan for and manage rapid growth. These businesses face sophisticated management challenges and thus require more in-depth counseling and training and also represent the greatest impact potential.

Improve Measurement of Economic Impact

SBDCs evaluate performance through needs assessments, case studies, publishing of success stories, and client satisfaction surveys. Additionally, the ASBDC measures economic impact of SBDCs through the bi-annual national assessment of impact conducted by Dr. James Chrisman of the University of Calgary.

The national impact study is an ambitious undertaking with a documented methodology. No other SBA entrepreneurial development program carries out similar impact studies. Moreover, the national impact study is done with very little funding. The cost for the consultant is $3,000 for the national study and $1,500 per state study. This level of resources, of course, limits the sophistication of the methodology used. Lastly, as stated earlier, the national survey only collects data from 10 percent of SBDCs clients.

The Chrisman study relies upon an objective assessment of the performance improvements of its long-term business clients who received five or more hours of counseling. The study compares sales and employment in the year following counseling assistance with clients' performance on those measures in the year in which counseling is received. Data for the study are collected by a questionnaire sent to LTC clients. The survey seeks to measure client satisfaction but relies primarily on objective performance measures.

Principal questions[2] that any impact analysis must consider are:

- What is the stimulus, or independent variable?
- Is the sample random? Are the 18 percent who answered the survey truly representative of the other 72 percent who did not?
- Are the respondents' answers accurate?

[2] See also *Performance Measurement in the SBDC Program.* SBA. Office of Inspector General No. 98-09-01.

- Are client benefits the same as the benefits that accrue to a community or state economy, or are the benefits that accrue to a community or state economy essentially zero?
- Are the chosen control groups representative of what would have happened but for the stimulus of long-term counseling?
- Is the cost/benefit ratio calculated in a correct fashion?

The first and most basic question centers on what causes the impact: the counseling provided, the financing obtained, or the skills and energy of the clients? Most likely it is a combination of all three factors making it difficult to attribute causality to the different stimuli. One way is to collect more client micro-data, which will allow looking at differential effects of clients' receiving few or many counseling hours, an approach Chrisman is already experimenting with this year with selected state SBDCs. The definition of the stimulus has consequences also for defining the benefit/cost ratio and the control group. If the stimulus is counseling and financing, then the benefit/cost ratio has to include the cost of financing in addition to cost of counseling. If we include skills and energy of the clients, then we cannot have a control group containing firms that have not changed in the last 5–10 years.

For example, we might compare the number of jobs created through the SBDC long-term counseling, debt, and equity financing package with those estimated for SBA's 7(a), 504 and SBIC programs by calculating job creation coefficients defined as the amount of debt or equity financing divided by the number of jobs created.

Job Creation Constants for Different Programs

Source	Job Creation Constants
1998–1999 Biennial study: debt and equity[3]	$50,350
1999 SBDC economic impact data[4]	$29,207
SBA 7(a) program—estimate[5]	$27,259
SBA 504 program—estimate[6]	$33,366
SBA SBIC estimate[7]	$35,000

Are SBA's loan or equity programs more productive than the SBDC program in creating jobs? It is not possible to answer that question with the data available. The SBDC economic impact data and the 7(a) and 504 loan programs have similar job creation coefficients. What the data suggest is that there is a need to more carefully define the variables used, have comparable data, and then analyze how the job creation constant differs with or without long-term counseling.

Is the SBDC impact study based on a random sample? The answer is no. Are the respondents representative of the total population of SBDC LTC clients? It is difficult to show that the 18 percent that answered the questionnaires are strictly representative of those who did not. But this problem can be addressed by increasing the response rate, by increasing the special sampling of those who did not respond, by reducing the number of questions asked, by using an Internet-based survey, or by using a small random sample with a very high response rate.

Are client benefits the same as those that accrue to the community and the state? While

[3] ASBDC Biennial study
[4] SBDC annual economic impact data submitted to SBA
[5] SBA 7(a) loan data and job creation data provided by contractor reports done in 1992 and 1994
[6] 504 loan program job estimates as mandated by statute
[7] The Arizona Venture Capital Impact Study made by the Zermatt Group (1999).

the survey might correctly estimate job creation, sales, and taxes paid by SBDC LTC clients, this is not necessarily the same as the impact on the community. For example, if an SBDC client buys an existing pizza business as a result of loans and long-term counseling, then the net effect on the local or state community is likely to be close to zero. The economic pie is likely to remain the same. If, however, the client is a start-up dot.com or export company, then it is likely that the economic pie will increase in size. We also have to factor in what the previous owner of the pizza business did with the proceeds of the sales. He might have retired, moved out of the state, or opened a new business. Therefore, by assuming, as the impact study does, that the community and client benefits are the same, the study overestimates impacts on the community or state.

The impact study uses all other small businesses in the state as a control for economic conditions and other factors that might affect client economic impacts. This is an imperfect control. Chrisman indicates that for about $100,000 a good control sample could be obtained from Dunn and Bradstreet. A more precisely matched control group, composed exclusively of small businesses, would improve the validity of the study.

The national impact study purports to show that the counseling program has a large benefit/cost ratio. A problem is that the ratio should include the costs of the financing provided because these represent a cost to society to be balanced by the benefits that accrue to society.

It is important to applaud the SBDCs for their attempt to determine the impact of this federally subsidized program. This study has been refined and improved since its inception in 1988. Clearly the SBDCs are attempting to show impact with limited funds available. However, it is clear that methodological problems need to be addressed. Therefore, it is recommended that SBA and the SBDCs work together to improve the methodology used and apply it to SBA's other delivery channels as well. SBA's Office of the Inspector General reviewed the biennial impact assessment and recommended that additional funding be made available to improve the methodology.

Find Alternative Sources of Funding

Current SBDC strategy appears to be to increase the program with the Federal government providing 50 percent or more of the total funding. Congress has chosen to create and finance competing delivery systems, and the Administration has indicated that the SBDC program should begin seeking alternative sources of funding to fuel growth. This would seem to indicate that SBDCs should seek to reduce costs and develop new products and services that are more competitive with the other delivery systems financed by Congress and which are attractive to other Federal agencies and to state and local governments. SBDCs could provide counseling and training, for example, on environmental and work place issues and on procurement. Moreover, the SBDC network could do more than provide courses and counseling. It could seek to be a premiere service partner helping start-ups survive and existing businesses grow.

In this report, we have indicated that by leveraging the network and technology the program should be able to reduce costs. But SBDCs should also develop alternative sources of funding through client fees and by increasing the amount of specific work it does for Federal, state and local governments. SBDCs might also provide reimbursed

assistance in helping businesses apply for disaster loans; offering technical assistance to SBA microlenders or competing for grant funds identified for 8(a) business development assistance. It no longer seems realistic to assume a continuing growth in Federal grant funding.

Improve Data Quality

The consolidation of quarterly and annual data reported from all of the SBDCs to SBA provided an understanding of some of the data quality issues.

Making comparisons between SBDC data and national data (U.S. census) is difficult for several reasons. One reason is that the national data has more categories (e.g., real estate, health care, food services, etc.) than those provided on the forms completed by the SBDCs. Another reason is the difficulty in categorizing a business. Some may indicate a service when operating a restaurant, and others might designate it as retail trade. Since the service sector is growing faster than the manufacturing sector, perhaps the information forms and instructions could provide additional breakdowns of the service sector to ensure consistency across all SBDCs. Any number of categories could be agreed upon, but it must be emphasized that ensuring consistency is the key to developing useful analyses.

The same critique of type of business categories may be made of the question concerning whether the client is "not in business." The large range between the states concerning clients not in operation (from 4 to 57 percent) raises the question of "what is the definition used" in each SBDC. For example, SBDCs in Nebraska report that the average percentage of clients not in operation is 4 percent. However, 71 percent of their clients indicated they needed assistance with start-up or acquisitions. Similarly, South Dakota indicated approximately 5 percent of their SBDC clients were not in operation, but almost every client wanted start-up or acquisition counseling. These unexplained differences could be due to errors in recording data, transferring data, or simply a lack of understanding and not using the same definition across all SBDCs.

Another incident of inconsistency involving clients requesting start-up counseling is that in some states the number of clients who requested start-up information exceeded the number of clients counseled. For example, in six SBDCs (Iowa, Kansas, Mississippi, South Dakota, Texas (Houston), and Washington) the number of times that start-up counseling was recorded was higher than the number of clients counseled. One possible explanation is that a client came in twice for counseling on start-ups, and it was recorded both times. However, this does not appear to be the case at other SBDCs on start-up counseling. Double counting could be expected when a client requests start-up counseling, and in addition, requests other information (e.g., marketing, computer, etc.). Consistency is the culprit again. In order to make improvements in the program, each SBDC needs to record the counts and the areas in the same manner to provide more reliable data for analysis.

Although the number of clients who indicated they were associated with male-owned business exceeded the number associated with women-owned businesses, the percentage has been decreasing. The percentage of clients of women-owned business rose from 31 percent in 1992 to 39 percent in 2000. The average percentage of women attending training classes for the period 1998 through 2000 was 46 percent, and 27 SBDCs reported averages over

50 percent: It appears that the number of women clients is growing, and that they are not being underserved in the training workshops.

It is unclear how many women are clients. The data collected show the number of women-owned businesses assisted. A female client acting on behalf of a male-owned business but who is not necessarily an owner could seek advice. There appears to be no distinction made on the information form. Therefore, any time the number or percentage of women counseled is used in this report, it is referring to women-owned businesses. Is the ownership issue more important than the gender of the client counseled? Any differences between women clients and women-owned businesses may be small, but this should be clarified. Since a large percentage of the training attendees are not business owners, when the number of women shown as attendees is counted, does this represent number of women attendees or number of women-owned businesses? For purposes of this report, the numbers were assumed to be women attendees.

The areas in which the clients may seek counseling have been classified into 13 categories. During the period 1992 through 2000, 1,416,457 clients (over 65 percent) wanted advice about starting their business or acquiring a business. It is not known how many of these clients started a business. Perhaps counseling even helped them decide not to start or acquire a business. Knowledge about the clients' actions after counseling is an important issue. It is not possible from the aggregated data to determine if those clients who sought advice had an established business, were thinking about starting a business, or simply making inquiries.

Each year each SBDC is responsible for completing an "SBA Economic Impact Data Entry Form" which includes information on number of jobs created, number of jobs retained, sales dollars, taxes, loan dollars, etc. Some SBDCs send questionnaires to their current or previous clients and some do follow-up calls. How the data are used is unclear. Although responses to the questionnaire may provide information about the client's business, the results do not appear to be matched to the client data initially collected. Resources are required to follow-up on client information.

In addition to each state SBDC collecting data, every other year the ASBDC sponsors the Chrisman survey. This survey is helpful in showing the overall productivity of the SBDC program (e.g., jobs created, jobs retained, sales), but questions about what has worked well and what has not or why some businesses are succeeding remain unanswered. The low response rate for this survey is regularly criticized. Follow-up contacts by counselors who may have developed relationships with the clients could increase the number of responses, and perhaps even the quality of the responses (e.g., willingness to discuss sales).

Some changes in the administration of the ASBDC impact survey should be considered. Perhaps representative samples could be chosen from the client lists of the SBDCs rather than mass mailings. This will make it easier to contact non-respondents by additional mailings or by telephone. Incentives, such as a lottery (e.g., offer a computer in a drawing), could be included to induce more participation. Collecting relevant data concerning the clients' activities and operations will assist in showing the value of the SBDC program.

Online tutorials should be developed jointly by ASBDC and SBA to improve the consistency in data collection. In addition to defining and explaining how to complete the informational

forms, these modules should explain why the information is important to both the SBDCs and the SBA. For example, confusion exists over the definition of a "start-up" business. Is it one that is in the process of opening its doors, or is it one in its first or second year of operation?

APPENDIX A: SPECIFIC RECOMMENDATIONS

The recommendations focus on the following topic areas:

- Improve communication and cooperation
- Develop model counseling programs, publications, and training modules
- Focus on the quality and professional development of SBDC staff at state and local level
- Improve research and understanding of small business needs and constraints
- Improve community development and interaction
- Develop an e-commerce strategy
- Improve SBA/SBDC online activities, programs, and services
- Improve efficiency and effectiveness of SBDC program
- Improve data quality

Improve Communication and Cooperation

- *Improve relationship between SBA and SBDCs.* There is a need to improve the relationship between SBA and SBDCs. It is recommended that SBA and SBDCs develop means to improve the communication and strategic orientation between the two groups. SBDCs should contribute to SBA Strategic Planning (required by the Results Act). SBA district director and SBDC director goals should be more similar, and both should be measured and rewarded on these goals.
- *Develop a core set of publications.* Publications need to be consistent throughout the national network.
- *SBA participation in national SBDC conference.* SBA district directors and key Washington, D.C.-based professionals should attend the ASBDC annual national conference.
- *Define the proper role of the district offices in administering the program.* It is important to define the degree to which the SBA district offices negotiate performance criteria and goals, in defining new or changed initiatives for the state SBDC program, and in contacting local centers without the involvement of the state SBDC.
- *SBDCs should help SBA improve loan activity.* SBDCs do not appear supportive of SBA loans, which may be a difficult task because SBA loans are "noncompetitive." It is therefore recommended that SBDCs play a role in providing critique and helpful suggestions to SBA on how to improve SBA's loan packages.
- *Highlight best practices.* Create an annual or semi-annual SBA/SBDC directory of best practices.
- *Develop an innovation fund.* The SBDC funding might include resources to fund, evaluate, and disseminate information about novel programs and services developed at the local level.
- *Create Internet SBDC discussion groups.* SBDC counselors should be able

to share views, best practices, and answer questions on a more regular basis than once a year at the national meeting. By means of online discussion groups, SBDCs can post ideas, solicit answers/reactions, and share knowledge on particular areas of interest to the counselor. This tool is a productive way to stay in touch with the national network of SBDC counselors without having conference calls, face-to-face meetings, or national meetings.

- *Identify best program income-generating strategies.* One state generates $924,723 in program income while another brings in just $621 (the average is $131,000). It is recommended that the ASBDC develop recommendations, guidelines, and best practices on ways to increase program income.

Develop Model Counseling Programs, Publications, and Training Modules

- *Offer consistent products and services.* SBDCs do not offer a national framework of consistent, well-designed, quality products and services throughout their delivery system. SBDCs do not use common tools even for something as basic as a business plan to be used as a handout or start-up training program. In order to promote a brand identity and increase program recognition and regard, ASBDC should help each center offer nationally produced tools and publications to create a consistent level of training and counseling responses throughout the program.

Focus on the Quality and Professional Development of SBDC Staff at State and Local Level

- *Create online database of SBDC talent.* It is recommended that counselors' skills be identified based on SCORE's databank of 605 business-related skills (http://www.score.org/onlinebin/skills/). This online database could be the basis from which small businesses could locate expertise, no matter the location, thus improving the depth of counseling and access to expertise.
- *Expand counseling expertise.* It is recommended that SBDC counselors expand into more diverse areas of counseling and training. In terms of areas of counseling provided, it appears that there is too little focus on technology (3.1 percent), exporting (4.2 percent), computer systems (1.2percent), and personnel (2.1 percent) while marketing (17.7 percent) and sources of capital (22.5 percent) receive much greater attention. Again, warning signals are sounded with such a high focus on business start-up at 71 percent. There is a perception that one of the major reasons SBDCs focus a majority of their resources on new businesses and start-ups is because books and referral sources indicate that SBDCs are the source for free start-up assistance.

- *Provide in-depth counselor training.* To provide high quality counseling in a great number of different areas, counselors need continuous training, quality training materials and access to databases or expert systems.

- *Supplement on site counseling and training with online assistance.* In light of the instant access to information and the ease of posting online queries, there is no rationale for each SBDC to offer all types of counseling and training to all people anymore. SBDCs have an opportunity to specialize based on the counselors' expertise and experience.

Improve Research and Understanding of Small Business Needs and Constraints

- *Determine small business needs.* SBDC/SBA should conduct an annual needs assessment to identify specific informational and technical assistance needs of small businesses. Such a study would guide SBDCs in developing individual niches and interstate referrals based on expertise, not location. Then SBA, in collaboration with the district directors, could work with SBDCs to develop specific online training and counseling tools in response to these needs.

- *Provide better and more market research services to small businesses.* More than 25 percent of SBDC clients seek market research or marketing assistance. It is recommended that the capacity of the national SBDC Research Network be expanded.

- *Develop more impact measures.* One important impact measure is the survival rate of SBDC start-up businesses after three, five, seven years. This data should be compared with existing national statistics on business failure rates. Another measure is the number of "start-downs," SBDCs track only the entrepreneurs who went into business, not the aspiring entrepreneurs saved from going into business. Often it is invaluable to work with SBDC clients only to be able to convince clients it is not the right time to quit their job and go into business.

Improve Community Development and Interaction

- *Focus on community economic development.* Congress has indicated the need to address community economic strength through programs such as HUBzones and Empowerment zones. SBDCs because of their local partnerships could play an even more important role in strengthening community economic development.

- *Reconsider the location of some SBDCs.* Not all SBDCs provide easy access for clients. Certainly expanding on-line services would increase accessibility for clients, but in some instances it might be necessary to consider moving the places where services are provided.

Develop an e-Commerce Strategy

- *Develop e-commerce services.* Most SBDCs are unsure of what products and services to provide relative to electronic commerce and information technology. SBDCs need to develop e-commerce–related tools and programs that focus on partnership building, awareness campaigns, and development of practical and responsive services. Small

businesses are developing websites without competent strategic advice on the essential elements of a well-designed website. Information material such as the 5Cs of a successful website developed by the United Nations could be the basis for training materials. Specifically SBDCs might (1) match SMEs experienced in e-commerce and information technology issues with less experienced SMEs and (2) assist small businesses in developing and refining their websites.

Improve SBDC Online Activities, Programs, and Services

- *Develop online answer desks with a comprehensive listing of FAQs.* In light of efficient and effective twenty-first century technology, SBDCs should dispense with the idea that counseling and training always must be done in person. SBDCs are encouraged to develop online answer desks and answers to frequently asked questions based on the specialty of SBDC counselor, regardless of geographical location. Better yet would be an answer desk function leveraging the power of the SBDC total network rather than that of individual states. With more than 1000 SBDCs providing advice and training to thousands of small businesses on a daily basis, it is probable that the same types of questions are repeatedly asked and answered on a myriad of topics. To increase efficiency and reduce redundancy it is recommended that SBDCs create a comprehensive listing of FAQs along with references to which a client can refer for further information (e.g., books, periodicals, training programs, associations, private sector assistance).

- *Develop quality online client and personnel training modules.* It is recommended that training modules be offered through online, interactive classrooms. Web-based tutorials on different topics can be of immense help in furthering education and in answering important questions. An SBDC review board could certify online courses for content and quality.

- *Create an online magazine/journal.* There is need to create an online electronic journal for small businesses. SBDCs could be the editorial board responsible for planning articles on a variety of topic areas, select the writers, and exercise a review function for publication on the Net.

- *Develop an online business portal.* Partner with the government cross-agency portal for business (http://www.business.gov) and local portals to ensure systematic well-organized information for the business community.

- *Target distant clients for e-mail-based counseling assistance.* Many state SBDCs spend significant travel hours per client when providing counseling assistance away from centers, particularly among rural states. It is recommended that SBDCs expand their volume of on-line counseling.

- *Develop an e-mail-based referral mechanism.* SCORE has developed an e-mail answering service that allows the user to search a skills database of retired business volunteers by topic in order to send a question via e-mail or to find the location of a counselor should the client wish to travel in person. SBDCs should identify the specialization of their counselors and place them in an indexed and searchable database. The unresolved issue is how SBDC counselors with specific expertise can help clients outside the college or state area—and still receive credit for their work. In sum, the national SBDC program should have a directory of local centers that is available online with a listing of counseling skills to encourage cross counseling (e.g., a local counselor in Des Moines can access an expert on e-commerce in New Jersey).

Address Administrative Issues of the SBDC Program

- *Improve the measure of the number of clients served by better tracking short-term clients.* It is estimated that nearly one-third of the short-term clients SBDCs counseled are not captured as clients assisted, simply because a 641 was not completed. Therefore, it is recommended that SBDCs develop a standardized procedure for capturing short-term clients assisted via the Internet, e-mail, and by telephone. This would permit a more equitable comparison with other SBA delivery channels.

- *Develop a national process for client follow-up.* It is recommended that a coordinated national approach be developed to follow-up with clients in order to determine the impact and survival rate of SBDC clients through an annual national survey to assess client satisfaction, growth, and needs.

- *Define economic impact terms.* Data submitted by SBDCs may not appear credible to external evaluators owing to inconsistency in the ways economic impact terms are defined and counted. SBA and SBDC must jointly define jobs created, jobs retained, sales, state taxes, Federal taxes, SBA loan numbers, non-SBA loan numbers, and non-dollars and equity capital so that there is consistency in data collected.

- *Define criteria to determine impact.* It is important to note that the program is valued differently by each category of stakeholder. Educational institutions want to know that SBDCs are financially self-sufficient, legislators want to know how many jobs have been created in a district, clients want to see improvement in their business operations, state directors want to see an increase in counseling and training hours, and SBA values SBDCs in their ability to help deliver on SBA loan goals and programs.

- *Allocation mechanisms.* It is important to conduct an analysis of the formula that is used to allocate the money nationally to the individual states. Is the formula outdated? It is based mostly on population, but if SBDCs start focusing

on minorities, it would be axiomatic that those states with high minority concentrations should receive additional funding. And what about the states that are more export or technology focused? Allocating funds by population may be too simple when considering SBDCs ultimate goals.

- *Charge more for training.* To be sure, SBDCs training programs are moderately priced but perhaps SBDCs should charge more to increase the level of program income and use income to develop more training and to reflect a market price so that SBDCs are not subsidizing the cost of business training.

- *Charge for services.* Many in the SBDC program feel that charging for SBDC services is in direct competition with private sector consultants. Others argue that providing counseling services for free is unfair competition with the private sector. Other arguments against fees include the fact that administrative costs required to collect fees would be significant and SBDC partners such as government entities, agencies, universities, foundations, and the private sector would be less likely to provide funds for a fee-based program. However, if the SBDC program is to grow it cannot expect to do it all with Federal tax dollars. Certainly, SBDCs should try to develop other sources of funding such as expanding the volume of activities provided Federal and state agencies for which they are reimbursed, increasing fees charged for training, and seeking more matching funds from state governments. State government funds only account for 15 percent of total SBDC funding.

APPENDIX B: SBDC ISLANDS OF EXCELLENCE

To identify best practices, Star Performers, or Islands of Excellence within the national SBDC network, a survey of state and local SBDC programs was undertaken along with a review of the ABSDC 2000 Conference Proceedings. SBDC directors were requested to provide a one-paragraph description of any type of counseling technique, innovative program, excellent training materials, effective partnership, quality publication, useful survey, efficient administrative process, or whatever might be satisfactorily replicated within the national SBDC network. Following are responses along with the name of the program and the contact person in the instances that such information was provided, as requested.

Artistic Outreach. The California SBDC hired an artistic outreach consultant to help increase profits and enhance the communities in which they practice their talents.

Board of Directors. The Tennessee SBDC has developed a Small Business Networking Group for small businesses to act as board members for one another.

Business of Art. The New York SBDC developed the program for artisans and craftspeople to increase skills to make a living from art. Workshops provided education and networking and alleviated isolation many home-based artisans experience.

Business Research Service. The Hawaii and Michigan SBDCs provides counselors demographic, marketing, competitive intelligence, and copyright research for its clients. In Hawaii, the research center served 1,565 clients in 2000. Contact the Michigan SBDC for a model *Scope of Work and Guidelines for Student Researcher.* Typical research includes demographic questions, competitive analyses, industry trends, pay rates, legislation, and product acceptance.

Competency Centers. The Virginia SBDC has established a Competency Center program where each of the thirty local SBDCs identifies a specialty or competency area based upon the skills of the staff, the needs of the community served, and/or the focus of the local host institution. The Center has also added a new Competency Center involving twelve SBDCs that use point-to-point video conferencing via the Internet to allow clients and experts to come together electronically for counseling sessions. For more information, please contact Anne Godfrey at (804) 371-8253.

Customer Service Critique. The Pennsylvania SBDC offers a Small Business Shoppers program where consumer behavior students visit the shops of clients who have signed up for the program. The students complete a questionnaire and critique the customer service given. Students make a presentation on their findings to the business owner.

Database for Direct Business Assistance. The Houston SBDC maintains a database of professional service providers, mostly attorneys and CPAs who agree to provide

discounted services to clients, particularly to low-budget start-ups.

Digital Marketing Program. The Connecticut SBDC partners with the University of Hartford to offer a digital marketing program. The program teams students with a small business and a counselor to produce a digital marketing plan and web page.

Distance Learning via the Web. CompanyLearning.com is an Internet-based manufacturing training and information-sourcing program that deals with basic skills development, safety, compliance, technical issues, and management. The goal is to provide manufacturers in Missouri with high-quality online courses that are available 24 hours.

Electronic Commerce Certificate Program. The New Jersey SBDC provides direct e-commerce to clients as a service offering, conducting regular e-commerce management focused workshops, and developing an e-commerce certificate program in conjunction with another center at their host university. For information about New Jersey SBDC e-commerce services, please visit http://www.yourbizpartner.com/ecommerce or contact Nat Bender at webmaster@-yourbizpartner.com or by calling (973) 353-1594.

Electronic Commerce Research. From 1996 to 1998, the Michigan SBDC studied fifteen small businesses that were seeking to increase sales by marketing via the Internet. Businesses received training on Internet commerce, use of e-mail, and online marketing techniques. Websites were developed, and consulting and technical assistance was provided. Upon completion of the study, the Michigan SBDC published *Internet: A Force or Farce for Small Businesses?* For a copy of the publication or more information on the study, please contact Bob Stevens at bobfs@misbdc.wayne.edu.

Electronic Commerce Resource Center. In conjunction with the Electronic Commerce Resource Center, the SBDC has conducted workshops for its clients on a variety of topics such as marketing on the Internet, basic web design, advanced web design, and e-commerce for retailers. Also, university students developed websites for clients as a semester project. A town hall forum for 250 small businesses was held as a joint project with SBA, the Massachusetts E-Commerce Commission, Nortel, Staples, etc. For more information, please contact Georgianna Parkin, Massachusetts SBDC, at gep@msbdc.umass.edu.

Electronic Commerce Strategic Planning. The New York SBDC launched an e-business program to address strategic planning. The initiative began with professional training of SBDC Business Advisors to evaluate and assist existing businesses in establishing an Internet presence. Advisors also received a Strategic Plan format for client use, case studies, and a basic web development kit. An interactive CD ROM combines video, programming, and the use of decision tree formatting will be combined with business advisement to drive the customer/client toward an informed e-commerce solution in response to business need.

Electronic Commerce Strategies, various. The Virginia SBDC program offered a one-day awareness program presented around the state. A gubernatorial committee has been established to develop a solution-based program. The state SBDC has also provided training to local SBDCs; teamed with other agencies and service providers to provide programs, information, and assistance; and serve on committees that are setting up statewide programs. For more information, contact rwilburn@dba.state.va.us.

Electronic Commerce Training. The Colorado SBDC undertakes a number of initiatives on e-commerce such as Legal Issues for Small Business, Marketing on the Internet, E-Biz Essentials, and a 30-hour course on Internet Masters. For more information, contact the Aurora SBDC by voice, 303-341-4849, or fax, 303-361-2953.

Electronic Commerce Training and Guide. The North Carolina SBTDC co-sponsored two major e-commerce conferences in Charlotte and RTP with high profile sponsors. The Center has also developed an e-commerce guide available on their web site at http://www.sbtdc.org. For more information, contact sdaugherty@sbtdc.org.

Electronic Federal Procurement Marketplace. SBA, Clark Atlanta University, and Digital Commerce Corporation launched an agreement in January 2001 to help small businesses take advantage of emerging technologies. Businesses have access to information on emerging technology, e-procurement opportunities, and training to help companies take advantage of the commercial potential of the transferred technologies. Their FedCenter.com is an Internet-based Federal procurement marketplace.

EntrepreneurShop. The Nebraska SBDC opened its EntrepreneurShop in a storefront facility. It includes products (such as books, tapes, and software) for sale as well as training and consulting services.

Environmental Program. The program in Vermont includes ways to improve the bottom line through waste reduction and resource conservation; environmental management assistance providing business with a strategic view of environmental benefits; and compliance assistance to selected industrial sectors. For more information, contact Peter Crawford, pcrawfor@vtsbdc.org (802) 728-1423.

Export Georgia. A group of ten to fifteen Georgia businesses (with export potential) that are successful in the domestic market undertake a series of seven extensive, hands-on workshops designed to prepare the business for international sales.

Exporting: Trade Secrets: *The Export Answer Book*. In its third edition and being adapted in fifteen states and sixty countries throughout the world, this publication produced by the Michigan SBDC answers the most commonly asked questions facing exporters . Licensing agreements are available to states wishing to publish the book under their SBDC logo. For more information, contact Bob Stevens at bobfs@misbdc.wayne.edu.

Exporting for Beginners. New Horizons is an international trade assistance program focused on providing export information, trade leads, market research, and other reports. The program utilizes the International Trade Database Network (ITDN), a trade delivery system that provides timely, detailed market intelligence, and the Virtual Passport Program, which gives businesses the opportunity to enter the global marketplace electronically, and through the use of video conferencing. Both of these programs aid businesses in expanding their markets to a global level. Contact Jon Ryan (319) 336-5235 or Sherry Shafer (515) 271-2655.

Family Business Forum. The Iowa Family Business Forum (IFBF) holds sessions featuring speakers on topics valuable to family businesses. An annual membership program is offered that provides IFBF members with semi-private meetings with forum speakers, roundtables, business assessment, private one-on-one counseling, and business research by sponsors or SBDC staff. The Family Business Forum newsletter provides updates on sessions. Contact Lars Peterson (515) 271-4154.

Graduate Business Student Consulting Competition. The North Carolina SBDC operates a leading Graduate Business Student Consulting Competition, which provides students with real-world strategic planning opportunities, companies with highly focused, tangible recommendations centered on their critical issues, and the universities with outstanding connection with the business community.

Graduate Student Competition. The Ohio SBDC offers an annual graduate student competition in partnership with KPMG in a statewide tiered SBDC client competition. Ten universities participate. For more information, please contact Holly Shick at hschick@odod.state.oh.us.

Inventor Assistance: Inventors Congress. Seven workshops are offered: Inventor First Steps, Determining the Marketability of an Invention; Basics of Patent Searching, Prototype and Engineering Issues, Licensing vs. Starting a Business, The Patent Process, and Funding the Process, all providing opportunities to link with expertise in both the private sector and a university system. Please visit http://www.ndinventors.com for more information.

Hispanic Entrepreneur Series. The Houston SBDC offers training in Spanish on basic business topics. The program has a corporate underwriter, so the classes are provided at no fee.

Hispanic Program. The Connecticut SBDC offers an eleven-week workshop taught completely in Spanish. The class has been offered free throughout the state and average attendance is fifty students. In 2000, 248 certificates were awarded.

Incubator Program. The California SBDC puts incubator businesses together with employer-specific trained welfare-to-work participants. The country provides training and facilities and incentives while the SBDC supplies technical support.

Iowa Business Network Website. Iowa Business Network offers online resources

and solutions to Iowa's entrepreneurs, and has more than 300 online training programs, 500 articles on topics from accounting to exit strategies, and 1,000 links to small business resources. Website visitors can take advantage of the Ask the Experts feature through which responses are provided via email. There are more than 2,000 subscribers. Contact Lars Peterson (515) 271-4154

International Market Research Program. The International Trade Assistance Center in Ohio has become recognized as a leader in conducting international market research using the Internet. Their directory of key Internet sites has been in strong demand.

Inventors' Congress. The North Dakota SBDC collaborates with a patent attorney, patent and trademark depository, and Institute for Business and Industry Development to offer a total of seven six-hour programs in marketability, patent searching, prototype and engineering issues, licensing, and funding. Please refer to http://www.ndinventors.com/seminars.htm.

Iowa Technology Showcase. The Iowa Technology Showcase was attended by 3,700 people in 2000 and featured 100 exhibitors, including Microsoft, IBM, Dell, and Cisco. Training topics included Internet Enable Your Business, Implementing Online Service and Support Strategies, Security and Privacy for the Small Business, and Developing an E-Business Strategy. Contact Lars Peterson (515) 271-4154.

Lenders' Circle. To enhance small businesses' access to capital, the California SBDC is helping form a Lenders' Circle composed of banks and non-profits to set loan requirements and facilitate access to loans set at $50,000 or less.

Learning Web. The Missouri SBDC has created Learning Web, a program that supports the posting of online small business resources for counselors and clients and also includes an expansive distance-learning network and ASBDC.net's library of resources and online courses. Special funds have been dedicated to develop three-part e-commerce courses for women, minorities, and clients in rural areas.

Long-Range Strategic Planning. Shaping the Future began in 1990 and focuses on teaching CEOs of mature businesses the knowledge and skills of long-range strategic planning. Contact Lars Peterson (515) 271-4154.

Management Systems. The New York SBDC developed the Management Quality System to provide detailed integrated customer profiles with relational databases for impact and evaluations. Recent enhancements include Internet-based feedback, monitoring, and quality control.

Microloan Program. In Michigan, the Kent Area Micro Business Loan Services program is a unique coalition of more than thirty organizations, including banks, nonprofits, and governmental offices to fill a financing gap that existed for pre-bankable small companies. In addition to the loan fund, existing programs are utilized to provide pre-credit training and loan packaging education that prepares the borrower for the loan process and ongoing support following the awarding of the loan.

Natural Resource Economic Development. The Minnesota SBDC has a specialized focus on natural resource, value added economic development. Their partner is the University of Minnesota Duluth Natural Resources Research Institute. There is a prototyping lab and seed capital for early stage product development and testing administered by the Northland Foundation.

NxLeveL for Entrepreneurs. Several SBDCs offer this twelve-week, thirty-six-hour business plan writing course. Unlike other programs, NxLeveL addresses special needs of entrepreneurs by providing a practical, hands-on approach. Several guest speakers lend professional expertise.

Online Counseling. The North Dakota SBDC offers online counseling. Potential clients can download the *Statement of Understanding*, *Request for Counseling*, initial assessment forms for start up and existing businesses, *Summary of Money Needs*, and *Business Plan: Your First Step on the Pathway to Success*. For more information, please contact Wally Kearns at walter_kearns@und.nodak.edu.

Online Web Design. The Wyoming SBDC offers an online course to help businesses design a low cost website.

One-Stop Referral. The California SBDC has an e-mail-based one-stop intake process with all economic development partners that form the "Prosperity Network," which makes it much easier for local businesses to receive appropriate assistance.

Private Sector Consulting. The Minnesota SBDC uses a substantial number of private sector consultants to deliver counseling. This enables SBDCs to match clients' specific needs with volunteer expertise. This has been cited as a national best practice by an SBA examiner.

R&D: Minnesota Project Innovation, Inc. MPI assists small technology companies in accessing SBIR and other Federal R&D funding, securing government contracts, and improving their competitiveness through strategic marketing. The SBDC program funds only the R&D funding piece. For more information, contact Pat Dillon, Minnesota Project Innovation, Inc., at (612)347-6751 or pdillon@mpi.org.

Research Services. The Missouri Small Business Research and Information Center (SBRIC) is devoted full-time to conducting research on behalf of counselors who seek assistance with a particular client project or on a particular industry sector, and for other agencies seeking information on issues affecting small business. The center conducts an annual small business environmental scan to assess the condition of small business in Missouri and to assist in anticipating small business needs. SBRIC also researches, writes, and distributes *Industry at a Glance* reports about particular industry sectors of importance to Missouri.

Rural Economic Transition Assistance (RETA). The RETA program provides grants to support the creation of agricultural businesses and long-term jobs for workers displaced by the closing of sugar plantations across Hawaii, while promoting the establishment of a profitable, market-driven, sustainable, and diversified agricultural economy in Hawaii. A total of 274

independent businesses were created, 929 new jobs were created, and 28,000 acres of farmland were put back into production.

SBDC Administration: Milestone Projection Formula. South Texas SBDC goals are developed through a fair and simple goaling process that includes total counseling cases, total counseling hours, total training units and hours, and training attendees. The SBDC is expected to expend 50 percent of its total delivering counseling and training while the remaining 50 percent is for meetings, advocacy, community development, administrative matters, and paperwork. Upon conclusion of the SBDC intervention, the client is required to provide his or her perception of the impact of SBDC assistance including loan dollars, owner investment, change in sales, jobs created, and jobs retained.

SBDC Administration: SBA Liaison. Equivalent to an associate state SBDC director position, the South Texas SBDC employs a liaison to coordinate with the regional SBDC network. The liaison is familiar with SBA's product line and represents it through the SBDC network, and trains the network, providing technical support, promotions such as lender outreach, training, and roundtable event and market research feedback to improve services.

SBDC Administration: *SBDC Online!* Newsletter. The Southern California SBDC has developed *SBDC Online!* newsletter for staff of local SBDCs. It is important to note that the Center has also embarked on a program to instill Baldridge Criteria into their reviews. For copies of past newsletters or for more information, please contact Rolinda Brown rbrown@commerce.ca.gov.

SBDC Administration: Strategic Planning Sessions. The California SBDC utilizes an innovative planning methodology called "Future Search" to develop a shared vision and buy-in for their strategic plan. Participants include ninety key SBA, state, and local SBDC partners and takes less than three days. It follows a specific structured agenda including identifying a common history followed by trends affecting the group. The process resulted in a statewide strategic plan that had buy-in from all six SBA district offices, key funding partners, participating small businesses, and twenty-eight participating SBDC center directors. The Future Search website can be viewed at http://www.futuresearch.net/fsis.htm

Small Business Innovation Research (SBIR). The Iowa SBDC has a well-coordinated partnership with the Center for Advanced Technology Development (CATD) at Iowa State University. Counselors identify small technology clients and explain the generalities of the SBIR program to them and are then referred to CATD for assistance in writing their proposals and referral to the proper Federal agency.

Seed Capital Network. The Minnesota SBA introduces private investors to high tech companies seeking to raise seed capital from $250,000 to $2.5 million. LaBreche Murray, Lindquist and Vennum, PriceWaterhouseCoopers, Silicon Valley Bank, and others sponsor this program.

Self-Employment Assistance. For individuals in New York who will exhaust their unemployment benefits.

Tax Preparation: Tips For Improving Your Tax Returns. The North Dakota SBDC targets existing businesses and is a collaborative effort with the IRS, Social Security Administration, Job Service North Dakota, and the North Dakota Departments of Labor, Workers Compensation, and Tax. For more information, please contact Wally Kearns at walter_kearns@und.nodak.edu.

Technology Training. The Nebraska SBDCs operate a technology training program that provides information technology training—including e-business training—to about 7500 people per year and generates about $1.5 million in revenue per year.

Technology Village. SBDC clients in Minnesota have access to personal computers at the Technology Village, access to more than forty state-of-the-art business applications, e-mail service, access to the UMD CED business assistance library, including reference materials and online materials, software training workshops, and expanded hours of operation. For details, contact SBDC director Lee Bujold, 218-726-8758, or visit the UMD CED website at www.umdced.com. As well, *A Legal Guide to the Internet, A Legal Guide for the Software Developer, A Guide to Intellectual Property Protection,* and an *E-Commerce Readiness Guide for Communities* are available for download at the SBDC host's website, http://www.dted.state.mn.us.

Teenage and Minority Entrepreneurship (TME). The mission of the Connecticut SBDC's TME Program is to help urban minority teenagers make positive choices for their future through exposure to entrepreneurship education and opportunities for self-employment.

Veterans Assistance: Start-Up Training. In Minnesota, a start-up program for veterans offered in collaboration with veterans, SBA, and the Veterans Administration was met with an excellent turnout and rave reviews. For information, contact mary.kruger@state.mn.us.

Virtual Counseling. Minnesota SBDC has developed a capacity for virtual counseling. For more information, please refer to http://www.umdced.com.

Virtual Incubator. The Idaho SBDC in Lewiston has developed an Idaho Virtual Incubator to serve e-commerce needs. Plans are underway to achieve funding to take the program statewide. Their home page is http://www.lcsc.edu/isbdc/ivi.htm. For information, contact jhogge@boisestate.edu.

www.mainebusinessworks.org. The Maine SBDC counsels e-commerce clients frequently, and each year all New England counselors receive joint professional development in e-commerce. Four years ago the Maine SBDC, the University of Southern Maine's Center for Business and Economic Research, EDA Development Districts, and Central Maine Power formed www.mainebusinessworks.org. It has grown to become Maine's primary electronic portal for links and economic development services. Please visit http://www.mainebusinessworks.org and contact R. Scott Robinett if you would like

more details. Maine Small Business Development Centers, (207) 780-4420; http://www.mainesbdc.org

Wholesale Trade Shows. This is a program that started in Maine with the Northern New England Product Trade Show. Vermont and New Hampshire participated, and then Vermont started its own show. Aimed at developing clients for the wholesale trade and preparing them for national shows. For more information, contact Cathy Herlihy cherlihy@dca.state.vt.us (802) 828-5909.

Women's Assistance: Women's Business Enterprise (WBE). The WBE program in Virginia target women managed businesses, starting with two-year self-certification of the business at $75 each. The certification certificate allows the owner to apply for set-a-sides for women businesses, a listing in an annual directory mailed to all registered businesses and to selected sector procurement officers, and a listing in the Virginia Economic Development Pipeline as a women-owned business searchable online. A monthly newsletter on successes or other information that may be useful to the business owner is also produced. For more information, please contact Jennifer Kibby at (804) 371-8258.

Women Business Owner's Roundtable. The Houston SBDC connects experienced women business owners with novices to help improve knowledge and develop a resource network.

Women's Enterprise Center (WEC). The WEC brings together three of the state's largest small business assistance providers to expand the entrepreneurial assistance available to Iowa women. The WEC provides comprehensive entrepreneurial training, business counseling, technology training, and access to capital. Contact Maureen Collins-Williams (319) 236-8123.

Youth Entrepreneurship: Get The Buzz On Biz. The North Dakota SBDC has developed a five-day entrepreneurship camp aimed at students in the sixth through eighth grade. It is for students who want to learn about what it takes to be a successful entrepreneur, and how to organize, manage, and fund a business

APPENDIX C: SBDC DATA ANALYSIS

For each year beginning in 1980 through 2000, the total number of clients counseled and the total number of participants attending training sessions are shown in Table 1. Obviously, there has been an upward trend over the past twenty years. As more SBDCs were established and additional resources obtained, more small business customers were served.

Counseling

Clients seeking counseling are asked to provide a wide variety of information about themselves. They are asked to indicate the type of business in which they are engaged and what type of counseling they are seeking. Ethnicity, military status, gender of ownership, and type of SBA client data are requested. This information not only helps the counselors develop bonds with the clients, but also provides the centers with documentation of the type of clients being served. SBDCs try to ensure that the percentage of clients in various groups mirror the percentage of population of various groups in the geographic area served.

At the national level, data for the year 1992 through 2000 were available for clients counseled and attendees trained for some of the described categories. Tables 2 through 6 provide summaries of some of these data for the past nine years.

The "Type of Business" category indicates whether clients are in business or not, and if in business, the type of business in which they are engaged. Almost 26 percent of SBDC clients (548,177 out of 2,144,262) indicated they were not in business. For those in business, the choices are retail, service, wholesale, manufacturing, and construction. For the nine years shown in Table 2, the largest percentage of clients (39.5 percent) indicated that their businesses were in the service area. The range of percentages for "service" over the nine years was consistent (39 to 41 percent). However, since at least 70 percent of U.S. businesses are in the service sector, this percentage might be lower than expected, except for the possibility that "service establishments" may overlap with definitions of retail, wholesale or construction. Or, on the other hand, it might merely reflect the possibility that many small service-oriented businesses did not seek help from an SBDC.

Retail business represented the second largest percentage of clients (19 percent) followed by manufacturing (9.8 percent), wholesale (4.3 percent), and construction (3.6 percent). Since the sum of all categories including "not in business" total more than the number of the clients responding to the "type of business" question, there is some double counting among the five categories, but the percentage is small (49,385 out of 2,183,773 or 2 percent).

The information provided in Table 3 describes the ownership (either existing or proposed) of the business by gender and the ethnic background of the clients counseled. Although male-owned businesses accounted for 51 percent of the total clients counseled from 1992 through 2000, the percent decreased from 54 percent in 1992 to 49

percent in 2000. Women-owned businesses accounted for approximately 35 percent of the clients overall for the same period. However, each year from 1992 through 2000, the percent increased (31 percent in 1992 to 39 percent in 2000). The percent of jointly owned businesses (men and women) fluctuated during the time period, but the overall percent was about 14 percent.

For the 1992-2000 time period, the overall percentage of clients designated as white was approximately 79 percent; African-Americans totaled about 15 percent; Asians 3 percent; and American/Alaskan Indians 2 percent. Clients who indicated they were of Hispanic origin averaged almost 8 percent, growing annually from 6.3 percent in 1992 to 9.9 percent in 2000, indicating 83 percent growth (13,978 in 1992 to 25,547 in 2000). According to the U.S. Census Bureau's report, "1992 Survey of Minority-Owned Business Enterprises, Hispanic," between 1987 and 1992 the number of Hispanic-owned businesses increased 76 percent (489,973 in 1987 to 862,605 in 1992). In 1997, the number of Hispanic-owned businesses has grown to 1,199,896; this represents an increase of about 72 percent in the five-year period. Moreover, according to the latest U.S. Census Bureau (2000) data, the Hispanic or Latino population is now 12.5 percent (up from 10.2 percent in 1998), and the percentage is expected to continue to grow.

The percent of African-American clients rose from 13.1 in 1992 to 15.7 percent in 2000 representing a little over 39 percent growth (29,083 in 1992 to 40,468 in 2000). Again, according to the 2000 U.S. Census, the African-American population is about 12.3 percent. A similar growth rate of about 43 percent occurred in the Asian clients (2.5 percent in 1992 to 3.8 percent in 2000), with Asians accounting for 3.6 percent of the U.S. population. American Indian or Alaskan native clients increased nearly 83 percent from 1992 to 2000 (1.6 percent in 1992 to 2.4 percent in 2000).

Table 4 contains the number of clients who indicated they were veterans and/or SBA clients. Veterans represented 11 percent of SBDC clients in 1992, but dropped to 8 percent in 2000. Congress passed the Veterans Entrepreneurship and Small Business Development Act of 1999 to encourage assistance to veterans who wanted to start or expand a small business.

Although not all SBDC clients are seeking SBA financial assistance, some do seek help in acquiring SBA loans or help in obtaining bonds or certifications. Table 4 shows a total of 220,467 SBDC clients (10.3 percent) who requested SBA services. The majority of the SBA clients were applicants, followed by borrowers; and 8(a) clients. The clients seeking COC has continued to decline each year. The number dropped from 2,964 in 1992 to only 109 in 2000.

Clients seek assistance in a variety of areas. Table 5 provides an overview of the areas of counseling provided to SBDC clients. The largest percentage of the clients (66 percent) indicated they wanted counseling in the business start-up and/or acquisition area. However, only about 26 percent indicated they were not in business (Table 2). On the surface there would appear to be a discrepancy, but this may not be a contradiction because of several possible

reasons: (1) the client may have other businesses and may either want to start or acquire another establishment; (2) the client may have recently begun operations but believes it is still in the start-up phase; or (3) the client is unclear about the question.

Interestingly, the sum of the individual totals for the type of counseling received exceeds the number of clients counseled. This is understandable because a client could request assistance in marketing and international trade at the same meeting. Although SBA Form 1062 only provides space to record one area, when a client returns for counseling in an additional area, the new area would be recorded, but the client would only be counted once. The recording of the type of counseling received should be reviewed to determine consistency across SBDCs. Twenty-four percent of the clients seek advice about sources of capital and 21 percent seek marketing advice. The other primary areas in which clients seek assistance include: financial analysis (8.8 percent), accounting (6.4 percent), government procurement (5.8 percent), and international trade (5.3 percent). While the overall percentage for technology counseling was small (1.8 percent) for the period, it grew almost 48 percent from 1999 to 2000.

Training

For the period 1992 through 2000, the data show (see table 6) that almost 30 percent of the attendees were business owners, and this number is consistent over the period (a low of 27.4 percent in 2000 to a high of 31.3 percent in 1992 and 1994). Minority clients served through training averaged 18.7 percent, with a range from 14 percent in 1992 to a high of 21.9 percent in 1997. The number of women receiving training (44.6 percent) was higher than the average who received counseling (35 percent). Moreover, the percentage of female training attendees has remained consistent (42 percent to 48 percent) reaching 46 percent in 2000. The average percentage of veterans attending training sessions (8 percent) is lower than those seeking counseling (9 percent), but both categories have decreased since 1992. The percentage of SBA clients attending training sessions has remained fairly stable at around 2 percent over the years, and those indicating international trade have remained approximately 4 percent.

The training topics are chosen primarily based upon needs assessments and requests. Table 7 shows the training topics and the number of sessions (i.e., number of seminars or workshops) conducted in each topic annually for the period 1992 through 2000. The pre-business planning topic represent the largest total number of training sessions (45,282 or 26 percent) across the Nation. Marketing, preparing business plans, and managing a business comprise the next highest number of training sessions (14,103, 13,322, and 11,510 respectively). Computer and technology workshops have seen an upward trend, and together total 15,245 (8.8 percent). In 1992 and 1993, no technology workshops were conducted, but by 1999-2000 almost 1000 workshops were being conducted annually.

Table 8 contains a list of indicators of the SBDC client profiles together with the

maximum, minimum, and average for each indicator.

Clients and Counseling Hours

From 1997 through 2000, the SBDCs in New York have consistently counseled the highest number of clients and provided the largest number of counseling hours (average = 31,672). This ties to the fact that they have consistently received the second highest percentage of funding (6.7 percent) and have the second largest population (6.5 percent) behind only California (11.6 percent population and 7.7 percent of SBA funding). Texas has the second highest overall population, but it is divided into 4 regional SBDCs. The District of Columbia (.2 percent of U.S. population), Guam (.1 percent), and the Virgin Islands (.04 percent) have counseled the fewest number of clients.

There is a high correlation between the number of clients counseled and the population covered by the SBDCs (r = 0.77), and similarly, between the number of hours clients were counseled and the population (r = 0.78). Since SBA funding is generally based on population, the correlation between the population and SBA funding was reviewed and found to be 0.965. For the year 2000, the number of clients counseled (by SBDC) and the SBA funding (by SBDC) were strongly related (r = 0.83); the number of training attendees and SBA funding were also related (r = 0.80); and when total number of clients and training attendees were combined, the correlation was even higher (r = 0.87). This indicates that the numbers of clients counseled and training attendees are directly related to the amount of money available to SBDCs.

For fiscal year 2000, the average number of counseling hours per client was 5.27 hours (1,361,493 hours / 258,306 clients). The Pennsylvania SBDCs had the highest average number of counseling hours per client (approximately 15 hours per client) during the 1998-2000 fiscal years. The centers in Colorado and Alaska averaged the lowest number of hours per client (Alaska 2.62 and Colorado 2.88) for the same period. The average hours counseled per client by the SBDCs were consistent across the years 1998 through 2000.

Table 1: Number of Clients Counseled and Number of Training Attendees

FY	Clients ounseled	Training Attendees	Combined Counseling and Training
1980	17,482	36,618	54,100
1981	14,202	40,381	54,583
1982	24,025	54,594	78,619
1983	43,506	94,019	137,525
1984	50,115	102,384	152,499
1985	66,745	182,417	249,162
1986	72,153	258,991	331,144
1987	56,034	219,638	275,672
1988	128,514	248,298	376,812
1989	171,700	283,257	454,957
1990	191,865	274,437	466,302
1991	190,602	279,534	470,136
1992	222,497	319,535	542,032
1993	230,483	326,289	556,772
1994	224,995	331,987	556,982
1995	228,424	341,148	569,572
1996	237,107	333,513	570,620
1997	240,868	315,210	556,078
1998	237,655	309,382	547,037
1999	263,927	331,464	595,391
2000	258,306	324,292	582,598
TOTALS	**3,171,205**	**5,007,388**	**8,178,593**

Table 2: Type of Business for Clients Counseled

			Type of Business				
FY	Clients Counseled	Not in Business	Service	Retail	Manufacturing	Wholesale	Construction
1992	222,497	40,442	90,739	45,902	24,554	12,669	8,717
1993	230,483	59,141	89,351	44,891	24,506	11,027	8,521
1994	224,995	65,802	83,104	41,093	22,434	10,020	7,752
1995	228,424	62,412	91,966	43,958	23,059	10,551	8,365
1996	237,107	64,715	92,965	44,437	22,811	10,451	8,623
1997	240,868	66,553	96,132	45,521	23,382	10,255	8,386
1998	237,655	61,737	94,239	43,407	22,314	9,118	8,310
1999	263,927	65,886	105,701	49,348	24,456	9,379	9,576
2000	258,306	61,489	103,225	49,786	23,025	8,254	9,316
Total	2,144,262	548,177	847,422	408,343	210,541	91,724	77,566
Percent		25.6	39.5	19	9.8	4.3	3.6

Table 3: Number of Clients by Gender Ownership and Ethnic Background

		Business Ownership			Ethnic Background				
FY	Clients Counseled	Male	Female	Both	White	African American	Asian	Native Alaskan	Hispanic
1992	222,497	119,531	67,949	34,270	175,322	29,083	5,627	3,455	13,978
1993	230,483	124,104	72,452	36,409	185,218	32,615	6,946	3,656	15,623
1994	224,995	116,909	72,538	32,984	176,537	32,509	7,534	3,971	16,792
1995	228,424	116,172	78,420	33,563	183,140	32,201	3,851	6,169	17,272
1996	237,107	119,522	82,685	34,690	184,115	38,877	7,759	4,598	17,717
1997	240,868	121,252	88,811	35,486	195,148	35,822	7,713	4,524	17,967
1998	237,655	115,735	88,019	32,728	186,648	36,426	7,536	4,324	20,114
1999	263,927	128,690	99,197	33,620	202,290	42,582	7,722	5,108	23,111
2000	258,306	127,141	99,599	30,867	198,832	40,468	9,876	6,255	25,547
Total	2,144,262	1,089,056	749,670	304,617	1,687,250	320,583	64,564	42,060	168,121
Percent		51	35	14	79	15	3	2	8

Table 4: Number of Clients Counseled by Military Status and SBA Client Type

		Military Status	SBA Client				
FY Year	Clients Counseled	Veterans	Borrower[8]	Applicant [8&9]	8(a) Client	COC[10]	Surety Bond
1992	222,497	24,878	3,663	6,471	1,394	2,964	150
1993	230,483	25,809	4,141	8,114	1,495	1,049	200
1994	224,995	22,709	4,128	9,182	1,897	520	146
1995	228,424	22,887	4,621	11,456	1,713	1,021	130
1996	237,107	21,542	5,651	13,882	2,172	111	109
1997	240,868	20,908	6,225	17,183	1,912	86	93
1998	237,655	18,927	5,868	20,643	1,374	71	103
1999	263,927	21,168	7,034	26,562	1,669	98	156
2000	258,306	20,700	13,730	29,398	1,617	109	156
Totals	2,144,262	199,528	55,061	142,891	15,243	6,029	1,243
percent		9.3	2.6	6.7	.7	.3	.06

[8] SBA loan borrower
[9] SBA loan applicant
[10] Client in getting Certificate of Competency

Table 5: Number of Clients by Area of Counseling Provided

		Area of Counseling Provided						
FY Year	Clients Counseled	Start-up	Capital	Marketing	Government Procurement	Accounting	Financial	Inventory
1992	222,497	133,786	57,531	51,666	16,741	16,485	18,174	927
1993	230,483	151,638	65,333	51,727	20,701	16,568	19,873	1,342
1994	224,995	149,950	65,873	52,031	18,181	16,403	21,053	1,168
1995	228,424	156,637	68,394	49,509	15,837	14,599	19,509	1,630
1996	237,107	163,013	65,332	51,887	15,629	13,631	20,196	1,338
1997	240,868	173,606	51,008	53,888	8,705	14,548	23,089	743
1998	237,655	121,179	48,807	49,123	8,007	14,913	21,306	708
1999	263,927	180,604	49,463	48,219	11,743	15,101	24,709	772
2000	258,306	186,044	46,395	43,448	9,565	15,075	21,215	670
Total	2,144,262	1,416,457	518,136	451,498	125,109	137,323	189,124	9,298
Percent		66	24	21	5.8	6.4	8.8	.4

Table 5: Number of Clients by Area of Counseling Provided-continued

		Area of Counseling Provided					
FY Year	Clients Counseled	Engineering & R&D	Personnel	Computer Systems	International Trade	Liquidation	Technology
1992	222,497	6,312	3,409	5,069	13,178	1,975	
1993	230,483	10,051	3,916	4,882	12,917	2,834	
1994	224,995	10,544	5,466	4,530	13,204	3,157	5,149
1995	228,424	5,550	4,071	4,036	13,214	2,620	5,225
1996	237,107	2,873	4,421	2,937	12,616	2,775	5,310
1997	240,868	3,497	4,710	2,480	13,045	3,423	4,754
1998	237,655	2,084	5,232	2,511	11,858	3,564	3,685
1999	263,927	2,854	5,118	2,336	13,076	3,697	5,741
2000	258,306	1,495	5,433	2,911	10,126	3,559	8,476
Total	2,144,262	45,260	41,776	31,692	113,234	27,604	38,340
Percent		2	2	1.5	5.3	1.3	1.8

Table 6: Categories of Training Attendees

		Categories of Attendees							
FY	Training Attendees	Business Owners	Minorities	Women	Veterans	Vietnam Veterans	Disabled Veterans	SBA Clients	International Trade
1992	319,535	100,026	44,585	137,485	27,914	12,151	1,208	5,021	10,535
1993	326,289	98,549	51,009	139,495	29,556	13,070	1,612	5,824	14,891
1994	331,987	103,746	57,096	144,687	29,329	12,285	1,605	6,570	15,784
1995	341,148	100,815	62,608	149,248	27,761	11,689	2,033	7,986	12,484
1996	333,513	94,430	61,120	140,428	25,221	10,668	1,426	6,987	13,315
1997	315,210	99,098	69,153	150,501	23,039	8,584	1,571	5,272	12,300
1998	309,382	93,000	64,315	141,015	22,443	7,893	1,818	5,744	13,141
1999	331,464	97,634	69,665	154,850	22,119	7,635	1,923	5,766	10,711
2000	324,292	88,846	68,214	149,144	21,709	6,535	1,656	5,965	10,187
Totals	2,932,820	876,144	547,765	1,306,853	229,091	90,510	14,852	55,135	113,348

Table 7: Number of Sessions by Training Topic

FY Year	Total Number of Session	Training Topic						
		Pre-Bus Planning	Managing Business	Business Plan	Managing Employees	Marke-ting	Customer Relations	Acct/Bud get
1992	15,041	3,336	1,207	943	627	1,432	368	809
1993	16,295	3,768	1,308	1,273	677	1,475	415	907
1994	17,008	4,420	1,270	1,331	584	1,547	349	898
1995	19,474	5,303	1,379	1,700	662	1,619	306	992
1996	18,825	5,475	1,204	1,422	575	1,614	346	967
1997	19,809	5,527	1,179	1,572	599	1,666	326	947
1998	20,535	6,026	1,308	1,671	534	1,544	365	1,047
1999	23,365	5,735	1,394	1,757	557	1,644	392	1,275
2000	21,941	5,692	1,261	1,653	628	1,562	344	1,452
Totals	172,293	45282	11510	13322	5443	14103	3211	9294
Share		26%	7%	8%	3%	8%	2%	5%

Table 7: Training topics continued

FY Year	Total Number of Sessions	Training Topic						
		Cash Flow Mgt	Tax Planning	Legal Issues	Procurem ent	Int'l Trade	Computer	Rural Business
1992	15,041	611	778	500	368	628	1,065	127
1993	16,295	478	974	415	418	816	871	148
1994	17,008	401	962	418	468	850	853	125
1995	19,474	573	900	478	573	993	1,042	106
1996	18,825	433	840	457	570	876	1,168	107
1997	19,809	425	941	451	544	823	1,204	112
1998	20,535	378	907	380	579	910	1,316	113
1999	23,365	391	1,083	497	714	776	1,659	153
2000	21,941	441	1,172	472	667	672	1,661	132
Totals	172,293	4131	8557	4068	4901	7344	10839	1123
Share		2%	5%	2%	3%	4%	6%	1%

Table 7: Training topics continued

FY Year	Total Number of Sessions	Training Topic			
		Women-Owned	Veterans Outreach	Technology	Other
1992	15,041	199	134		1,909
1993	16,295	203	165		1,984
1994	17,008	199	170	288	1,875
1995	19,474	273	129	533	1,913
1996	18,825	203	115	432	2,021
1997	19,809	196	97	390	2,361
1998	20,535	259	91	620	2,469
1999	23,365	260	109	1,178	2,862
2000	21.941	208	116	965	2,831
Totals	172,293	2000	1126	4406	20225
Share		1%	1%	3%	12%

Table 8: Minimum, Maximum, and Average Number and Percentages for SBDC Client Indicators

	2000		1999		1998	
SBDC with ...	**SBDC**	**Ave**	**SBDC**	**Ave**	**SBDC**	**Ave**
the highest number of clients	NY 32,015	4532 clients	NY 29,532	4630 clients	NY 33,187	4169 clients
the lowest number of clients	DC 516		Guam 723		VI 398	
the highest average number of hours per client	PA 16.02	5.27 hrs	PA 16.12	5.96 hrs	Guam 12.95	5.35 hrs
the lowest average number of hours per client	CO 2.25		AK 2.58		AK 2.4	
highest percentage of men counseled	ND 59%	49%	PR 63%	49%	Guam 67%	49%
lowest percentage of men counseled	WY 33%		AZ 28%		AZ 33%	
highest percentage of women counseled	VI 54%	39%	VI 50%	38%	AK 45%	37%
lowest percentage of women counseled	ND 22%		SD 25%		SD .26%	
highest percentage of both men and women counseled	WY 31%	12%	WY 31%	13%	WY 32%	14%
lowest percentage of both men and women	WI 0.4%		IA 3%		Guam 2%	
highest percentage of veterans counseled	SC 12%	8%	SC 12%	8%	OK 14%	8%
lowest percentage of veterans counseled	PR 4%		DC 4%		PR 3%	
the highest percentage of SBA client contacts	CO 88%	12%	NY 51%	13%	RI 34%	12%
the lowest percentage of SBA contacts	ID 1%		SC 02%		CT 2%	
the highest percentage of Am./Alaskan Native clients	OR 22%	2%	AK 16	2%	OK 11	2%
the lowest percentage of Am./Alaskan Native clients	PR 0%		PR & VI 0%		NH 0%	
the highest percentage of Asian clients	Guam 54%	3%	Guam 27%	3%	Guam 66%	3%
the lowest percentage of Asian clients	PR 0%		PR 0%		ME 0%	
highest percentage of African-American clients	DC 74%	16%	VI 78%	16%	VI 80%	15%
lowest percentage of African-American clients	ID 1%		MT 0%		WY 0%	
highest percentage of Hispanic clients	PR 92%	10%	PR 96%	9%	PR 95%	9%
lowest percentage of Hispanic clients	ME 1%		ME 1%		ME 0%	
highest percentage of retail clients	NE 36%	19%	NE 34%	19%	PR 36%	18%
lowest percentage of retail clients	IL 6%		DC 7%		DC 6%	
highest percentage of service clients	Guam 60%	40%	DC 81%	40%	DC 73%	40%
lowest percentage of service clients	IL 15%		IL 18%		IL 19%	
highest percentage of wholesale clients	HI 09%	03%	HI 09%	04%	HI 10%	04%
lowest percentage of wholesale clients	WV 01%		DC 01%		MI 01%	

highest percentage of manufacturing clients	ND 22%	9%	ME 16	0%	MO 17%	9%
	2000		**1999**		**1998**	
lowest percentage of manufacturing clients	VI 2%	4%	DC 0%	4%	DC 2%	4%
highest percentage of construction clients	ND 6		ND 7%		SD 6%	
lowest percentage of construction clients	NH & MA 2%	24%	Guam 1%	25%	Guam 2%	26%
highest percentage of clients not in operation	IL 63%		OK 57%		KY 58%	
lowest percentage of clients not in operation	DE 3%	23%	NE 3%	24%	SD 2%	26%
highest percentage of clients seeking capital advice	WA 64%		VA 59%		MN 65%	
lowest percentage of clients seeking capital advice	WI 1%	17%	WI 1%	18%	WI 1%	21%
highest percent. of clients seeking marketing advice	WA 82%		WA 83%		WA 92%	
lowest percent. of clients seeking marketing advice	VI 4%	4%	VI 4%	4%	VI 3%	3%
highest percentage of clients seeking government procurement advice	AL 35%		DC 29%		SC 23%	
lowest percentage of clients seeking government procurement advice	NE 0%	6%	NE 0%	6%	MT 0 %	6%
highest percentage of clients seeking accounting advice	OR 22%		OR 26%		KS 22%	
lowest percent. of clients seeking accounting advice	DC 1%	%8	VI 1%	9%	NV 1%	9%
highest percent. of clients seeking financial advice	SD 49%		SD 46%		WA 34%	
lowest percentage of clients seeking financial advice	DC 00%	0%	VI 0%	0%	VI 0%	0%
highest percent. of clients seeking inventory advice	HI 2%		WA 1%		VT 2%	
lowest percent. of clients seeking inventory advice	DC 0%	1%	DC 0%	1%	DC 0%	1%
highest percentage of clients seeking R&D advice	PA 4%		AZ 23%		PA 5%	
lowest percentage of clients seeking R&D advice	NJ 0%	2%	DC 0%	2%	DC 0%	2%
highest percent. of clients seeking personnel advice	WA 13%		WA 13%		WA 16%	
lowest percent. of clients seeking personnel advice	VI 0%	1%	AL 0%	1%	DC 0%	1%
highest percent. of clients seeking computer advice	TX0610 7%		Guam 7%		ME 12%	
lowest percent. of clients seeking computer advice	PR 0%	24%	MO 0%	5%	AK 0%	5%

highest percent. of clients seeking int'l advice	TX0678 24%		TX0678 36%		TX0678 37%	
lowest percentage of clients seeking int'l advice	AR 0%	1%	SD 0%	1%	DE 0%	2%
highest percentage of clients seeking liquidation advice	MA 7%		VT 9%		NC 7%	
lowest percentage of clients seeking liquidation advice	VI 0%		AL 0%		VI 0%	2%
highest percentage of clients seeking technology advice	MI 49%	3%	Guam 21%	2%	NC 15%	
lowest percentage of clients seeking technology advice	WI 0%		DC 0%		CO 0%	

For More Information

- SBA offices are located in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. For the office nearest you, look under "U.S. Government" in your telephone directory, or contact:
- Phone: 1-800 U ASK SBA
- Fax: 202-481-6190
- E-mail: answerdesk@sba.gov
- TDD: 704-344-6640
- Your rights to regulatory fairness: 1-888-REG-FAIR
- Internet
  SBA Home page: http://www.sba.gov
  Gopher: http://www.sba.gov/gopher
  U.S. Business Advisor: http://www.business.gov

SBA Partners

Inquire at your local SBA office for the location nearest you.

- BICs — Business Information Centers
- TBICs — Tribal Business Information Centers
- OSCSs — One Stop Capital Shops
- SCORE — Service Corps of Retired Executives
- SBDCs — Small Business Development Centers
- USEACs — U.S. Export Assistance Centers
- WBCs — Women's Business Centers

Publications

- *The Facts About ... SBA Publications* — a listing of free SBA publications

Did you know that in fiscal 2000 the SBA —

- backed a record of nearly $18 billion in financing to America's small businesses?
- approved more than 50,400 small business loans totaling almost $12.4 billion?
- made more than 4,600 investments worth $5.6 billion through its venture capital program — a 33 percent gain over fiscal 1999?
- provided more than 28,000 loans totaling approximately $1 billion to disaster victims for residential, personal-property and business loans?
- extended management and technical assistance to an estimated 1.23 million entrepreneurs through its resource-partner programs?
- responded to almost a quarter million telephone and e-mail inquiries at the SBA Answer Desk?

Did you know that America's 25 million small businesses —

- employ more than 58 percent of the private work force?
- generate more than 51 percent of the nation's gross domestic product?
- are the principal source of new jobs?

All of the SBA's programs and services are provided to the public on a nondiscriminatory basis.

ATTACHMENT B

SBA 7(a) Loan Approvals by Top 25 industry Types for FY 2001

NAICS	NAICS_Description	#Loans	AppvGross	AvLnSz
722110	Full-Service Restaurants	2885	$624,651,455	$216,517
722211	Limited-Service Restaurants	1454	$296,798,482	$204,126
447110	Gasoline Stations with Convenience Stores	983	$532,911,231	$542,127
811111	General Automotive Repair	781	$139,510,526	$178,631
721110	Hotels (except Casino Hotels) and Motels	698	$572,710,689	$820,502
812112	Beauty Salons	683	$65,020,563	$95,198
624410	Child Day Care Services	592	$165,302,111	$279,227
621210	Offices of Dentists	551	$155,611,352	$282,416
621310	Offices of Chiropractors	539	$63,007,311	$116,897
621111	Offices of Physicians (except Mental Health Specialists)	530	$118,000,538	$222,643
445120	Convenience Stores	524	$127,493,315	$243,308
812320	Drycleaning and Laundry Services (except Coin-Operated)	486	$116,784,928	$240,298
445310	Beer, Wine, and Liquor Stores	484	$108,867,849	$224,934
561730	Landscaping Services	461	$55,807,935	$121,058
445110	Supermarkets and Other Grocery (except Convenience) Stores	439	$127,530,403	$290,502
235990	All Other Special Trade Contractors	427	$75,279,832	$176,299
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	381	$48,419,989	$127,087
453220	Gift, Novelty, and Souvenir Stores	368	$39,047,105	$106,106
713940	Fitness and Recreational Sports Centers	358	$78,971,547	$220,591
235110	Plumbing, Heating, and Air Conditioning Contractors	356	$53,561,794	$150,454
811121	Automotive Body, Paint, and Interior Repair and Maintenance	340	$77,428,950	$227,732
235310	Electrical Contractors	298	$57,624,330	$193,370
484110	General Freight Trucking, Local	292	$33,113,572	$113,403
812990	All Other Personal Services	287	$35,239,741	$122,787
451110	Sporting Goods Stores	281	$39,888,142	$141,951

SBA 504 Loan Approvals by Top 25 Industry Types for Fy 2001

NAICS	NAICS_Description	#Loans	AppvGross	AvLnSz
721110	Hotels (except Casino Hotels) and	351	$279,591,000	$796,556
722110	Full-Service Restaurants	288	$122,028,000	$423,708
447110	Gasoline Stations with Convenience	170	$78,367,000	$460,982
621210	Offices of Dentists	123	$39,894,000	$324,341
624410	Child Day Care Services	111	$35,903,000	$323,450
722211	Limited-Service Restaurants	102	$35,350,000	$346,569
621111	Offices of Physicians (except Menta	95	$38,527,000	$405,547
811111	General Automotive Repair	92	$22,217,000	$241,489
811121	Automotive Body, Paint, and Interior	85	$30,079,000	$353,871
811192	Car Washes	74	$24,665,000	$333,311
541940	Veterinary Services	72	$26,087,000	$362,319
541110	Offices of Lawyers	63	$24,800,000	$393,651
235110	Plumbing, Heating, and Air Conditio	56	$15,516,000	$277,071
713940	Fitness and Recreational Sports Ce	54	$28,181,000	$521,870
541330	Engineering Services	47	$18,524,000	$394,128
445110	Supermarkets and Other Grocery (e	42	$25,058,000	$596,619
442110	Furniture Stores	41	$19,771,000	$482,220
235990	All Other Special Trade Contractors	38	$16,879,000	$444,184
233320	Commercial and Institutional Buildin	36	$15,623,000	$433,972
441120	Used Car Dealers	36	$12,484,000	$346,778
812210	Funeral Homes and Funeral Service	36	$14,081,000	$391,139
332710	Machine Shops	33	$12,473,000	$377,970
524210	Insurance Agencies and Brokerage	33	$8,078,000	$244,788
561730	Landscaping Services	32	$10,091,000	$315,344
323110	Commercial Lithographic Printing	31	$13,754,000	$443,677

ATTACHMENT C

PRIME *and* Microloan

PRIME essentially duplicates part of the authority SBA already has under the Microloan program. PRIME is based on providing training to micro-entrepreneurs, regardless of lending. Under the Microloan program, SBA has the same ability to provide management, technical assistance, and training to micro-entrepreneurs regardless of their borrowing. Right now, microlenders can use 25% of their grant funds to help micro-entrepreneurs who are prospective borrowers. Many of these micro-entrpreneurs may not borrow, but they are aided regardless of lending just like in PRIME.

SBA also makes grants through the microloan program to non-lending intermediaries who provide assistance to micro-entrepreneurs. This assistance provides training, and technical assistance just like PRIME. The Microloan program does have a heavy emphasis on lending, but it stills serves the same training and technical assistance purposes as PRIME.

SIMILARITIES

Similar Targeted recipients.
PRIME - "*Disadvantaged entrepreneurs, low-income or very low income persons, economcially disadvantaged*"
Microloans - "*women, low-income, veteran and minority entrepreneurs*"

Shared purposes of technical assistance to entrepreneurs.
- PRIME gives "technical assistance" to microentrepreneurs through intermediaries, regardless of borrowing. Definition - "*assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.*" *Sec. 172(12) of PRIME Act*
- Microloan program also gives "technical assistance" to microentrepreneurs regardless of borrowing. Definition - "*marketing, management, and technical assistance to assist low-income entrepreneurs ...obtain financing*" *Sec. 7(m)(1)(A)(iii)(III) SBAct.*

Capacity Building for intermediaries
- Microloan program allows SBA to provide up to 7% for technical assistance for intermediaries to ensure that such intermediaries have knowledge and skills for microlending
- PRIME allows use of 15% or more of grants to provide training and capacity building services for microenterprise development organizations to develop microenterprise training and services

DIFFERENCES

Technical Assistance
- PRIME has no lending aspects. Training and assistance of entrepreneurs covers 75-85% of funds
- Microloan technical assistance is mostly lending related. Non-lending TA is limited. Only 25% to prospective borrowers or limited grants to nonlender intermediaries

Capacity Building

- PRIME funds for training and assistance of microenterprise development organizations. 15-25% of funds
- Microloan capacity building is for microlending institutions only (up to 7% of total funding)

ATTACHMENT D

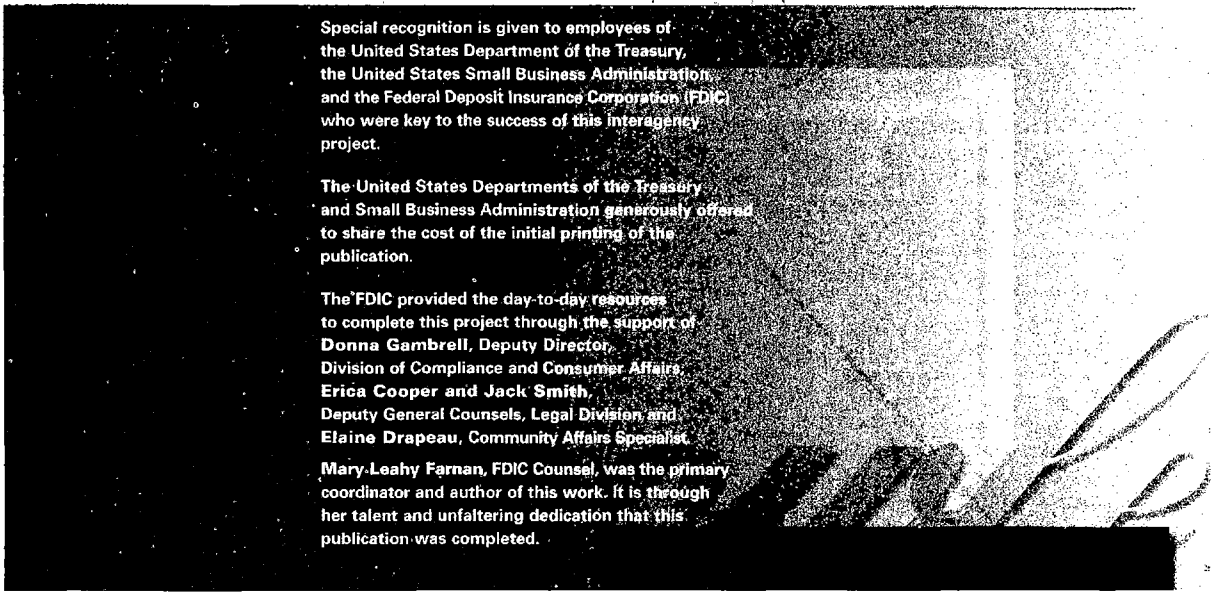
A joint effort of the Interagency Workgroup on Microenterprise Development
Crossing the Bridge to Self-Employment
A Federal Microenterprise Resource Guide

Special recognition is given to employees of the United States Department of the Treasury, the United States Small Business Administration and the Federal Deposit Insurance Corporation (FDIC) who were key to the success of this interagency project.

The United States Departments of the Treasury and Small Business Administration generously offered to share the cost of the initial printing of the publication.

The FDIC provided the day-to-day resources to complete this project through the support of **Donna Gambrell**, Deputy Director, Division of Compliance and Consumer Affairs; **Erica Cooper and Jack Smith**, Deputy General Counsels, Legal Division; and **Elaine Drapeau**, Community Affairs Specialist.

Mary Leahy Farnan, FDIC Counsel, was the primary coordinator and author of this work. It is through her talent and unfaltering dedication that this publication was completed.



Individuals involved with micro-enterprise programs at both the federal and local level enthusiastically provided substantial amounts of information about their programs for this publication to ensure that it would be a comprehensive and worthwhile resource. The intermediaries were a vital link in getting the story from the microentrepreneurs. A special thanks is extended to all microentrepreneurs - those who generously allowed their story to be told and others. Their drive and determination are the foundation of the success and growth of micro-enterprise programs at every level. The contributions of the persons listed below are gratefully acknowledged. Their time and energy made this publication possible.

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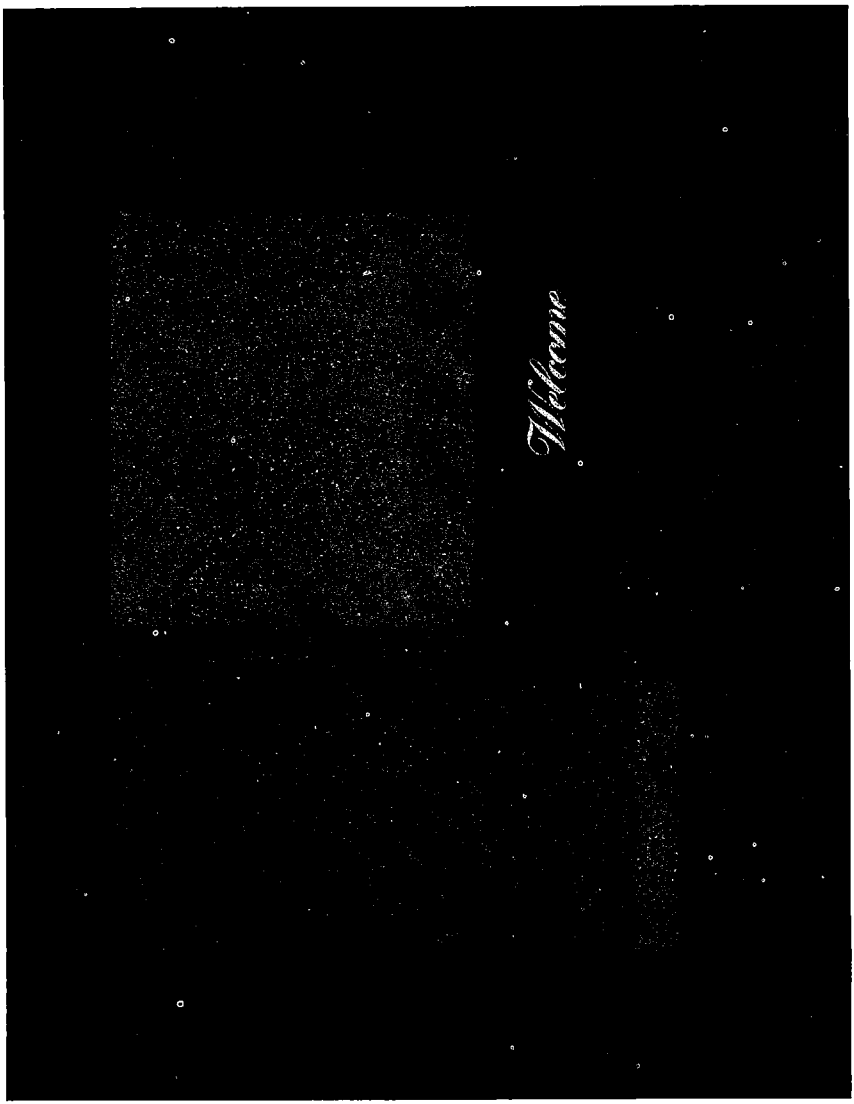
United States Small Business Administration

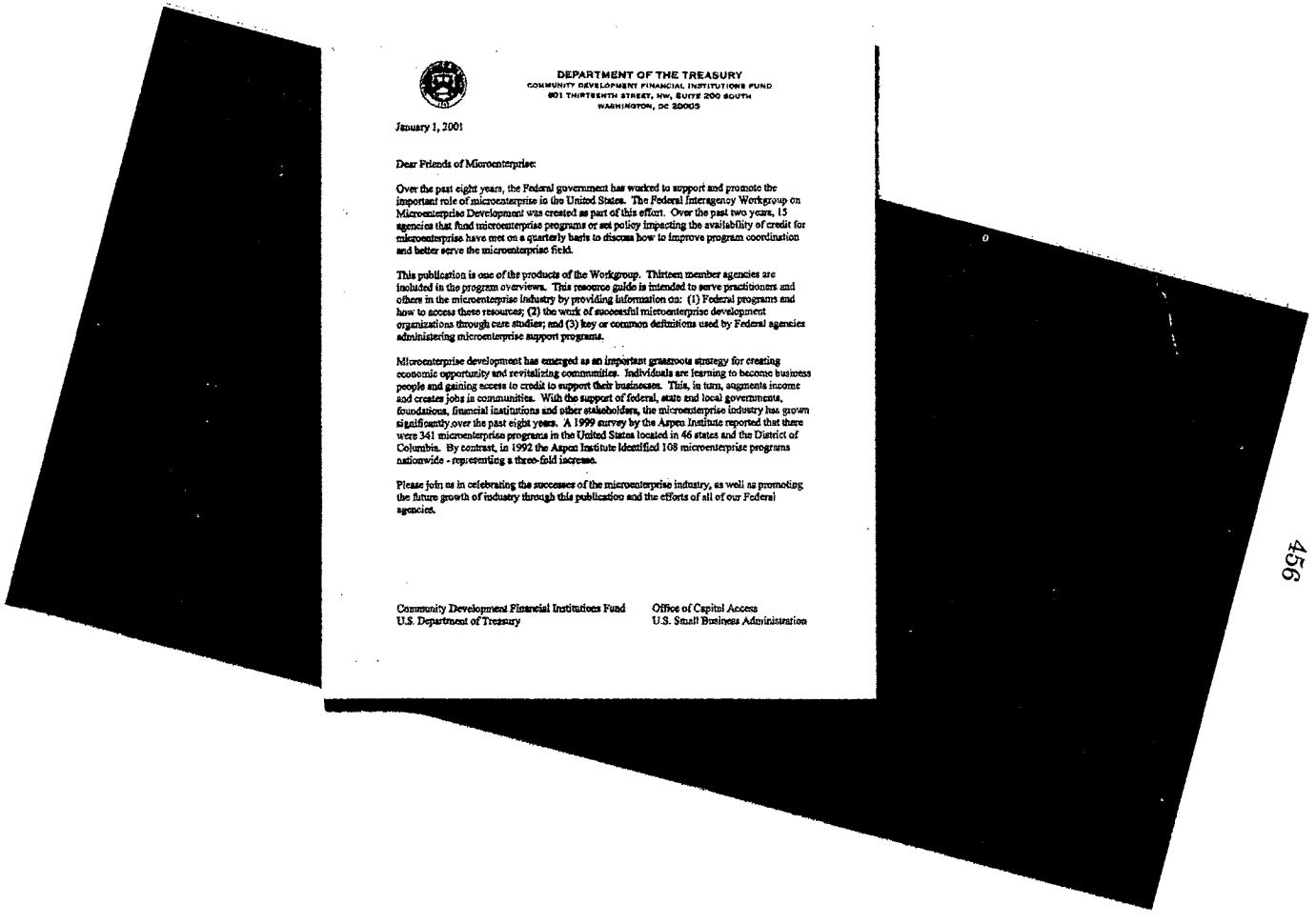
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Microenterprise Development Branch

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Welcome



DEPARTMENT OF THE TREASURY
COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND
601 THIRTEENTH STREET, NW, SUITE 200 SOUTH
WASHINGTON, DC 20005

January 1, 2001

Dear Friends of Microenterprise:

Over the past eight years, the Federal government has worked to support and promote the important role of microenterprise in the United States. The Federal Interagency Workgroup on Microenterprise Development was created as part of this effort. Over the past two years, 15 agencies that fund microenterprise programs or set policy impacting the availability of credit for microenterprise have met on a quarterly basis to discuss how to improve program coordination and better serve the microenterprise field.

This publication is one of the products of the Workgroup. Thirteen member agencies are included in the program overviews. This resource guide is intended to serve practitioners and others in the microenterprise industry by providing information on: (1) Federal programs and how to access these resources; (2) the work of successful microenterprise development organizations through case studies; and (3) key or common definitions used by Federal agencies administering microenterprise support programs.

Microenterprise development has emerged as an important grassroots strategy for creating economic opportunity and revitalizing communities. Individuals are learning to become business people and gaining access to credit to support their businesses. This, in turn, augments income and creates jobs in communities. With the support of federal, state and local governments, foundations, financial institutions and other stakeholders, the microenterprise industry has grown significantly over the past eight years. A 1999 survey by the Aspen Institute reported that there were 341 microenterprise programs in the United States located in 46 states and the District of Columbia. By contrast, in 1992 the Aspen Institute identified 108 microenterprise programs nationwide - representing a three-fold increase.

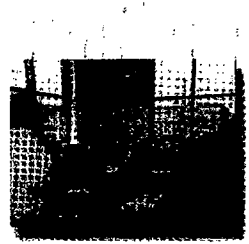
Please join us in celebrating the successes of the microenterprise industry, as well as promoting the future growth of industry through this publication and the efforts of all of our Federal agencies.

Community Development Financial Institutions Fund
U.S. Department of Treasury

Office of Capital Access
U.S. Small Business Administration



The concept of 'microenterprise' development has its roots in the recognition of a previously untapped market - skilled or motivated individuals who could provide desired services to the public but lacked access to traditional forms of credit and, in many cases, business and financial expertise. The microenterprise theory is simple - loan these individuals small amounts of money for business start-up costs, make the loan terms affordable, and give them business training and support. This formula has proven to be a success. Many individuals have borrowed as little as $50 to $500 for equipment or raw materials, learned basic accounting and bookkeeping skills, and successfully launched their own self-supporting small business.



Today the term 'microenterprise' is commonly used to describe a business with up to five employees, which requires $25,000 or less in start-up capital, and does not have access to the traditional commercial banking sector. Many aspiring microentrepreneurs have little formal business training and varying levels of education. Thus, the training and technical assistance provided by microenterprise programs can often be the biggest factor in the success of a new business. In addition, microenterprise programs offer access to credit either directly or by forming partnerships with community organizations such as banks and financial intermediaries that offer loans and financial products. Microentrepreneurs gain access to markets through marketing, sales concepts, and networking, which are vital to the success of their business. Finally, business counselors continue to work with entrepreneurs to evaluate the development of their microenterprise and keep it on the road to growth and success. This combination of strategies has resulted in the empowerment and self-sufficiency of thousands for whom access to financial capital had previously been extremely limited.

While the first microenterprise lending pioneers operated in developing countries, microenterprise strategies have also proven to be effective in the more developed U.S. economy. Microentrepreneurship may provide full-time employment for those in poorer urban or rural communities, or a part-time income supplement for low-wage jobs. Successful American microentrepreneurs include retailers in ethnic communities who provide specialized goods, artisans and craftsmen, individuals who provide personal or business services, and a variety of businesses in isolated urban or rural communities where few products are readily available.



The federal government's recognition and support of the microenterprise model has helped spur the growth of microenterprise programs across the United States. Federal agencies have been able to assist individuals through community-based organizations that provide microloans and training to microentrepreneurs. These federal agencies, forming the Interagency Workgroup on Microenterprise Development, encourage the continued development of microenterprise in America through policymaking, support, technical assistance and funding for microenterprise programs. This publication illustrates how the federal programs are implemented and how aspiring entreprenours can access resources.

Seven agencies in the Interagency Workgroup on Microenterprise Development offer funding programs and/or resources that target a specific segment of the microenterprise population based on the overall mission of the agency. The agencies are:

United States Department of Agriculture

United States Department of Commerce

United States Department of Health and Human Services

United States Department of Housing and Urban Development

United States Department of Labor

United States Department of Treasury

United States Small Business Administration

Six other agencies in the Interagency Workgroup on Microenterprise Development regulate the nation's financial institutions:

Board of Governors of the Federal Reserve System

Federal Deposit Insurance Corporation

Federal Housing Finance Board

National Credit Union Administration

Office of the Comptroller of the Currency

Office of Thrift Supervision

These regulatory agencies provide training and outreach programs. They encourage and enable financial institutions to become active partners in microenterprise programs at the local level. The National Credit Union Administration is unique among these regulatory agencies in that it is authorized to make loans and grants to its member institutions. These agencies' policies and community development programs promote and support the continued participation of financial institutions in microenterprise development.

The Program Overviews section of this publication describes the work of each agency in the microenterprise effort. The focus of each program is explained and





an outline of applicant eligibility requirements is provided. In some cases the federal funds reach individuals through intermediary organizations. In those situations, persons interested in learning more about a program at the local level can obtain additional information by calling or writing the contacts listed in the Appendix of this publication.

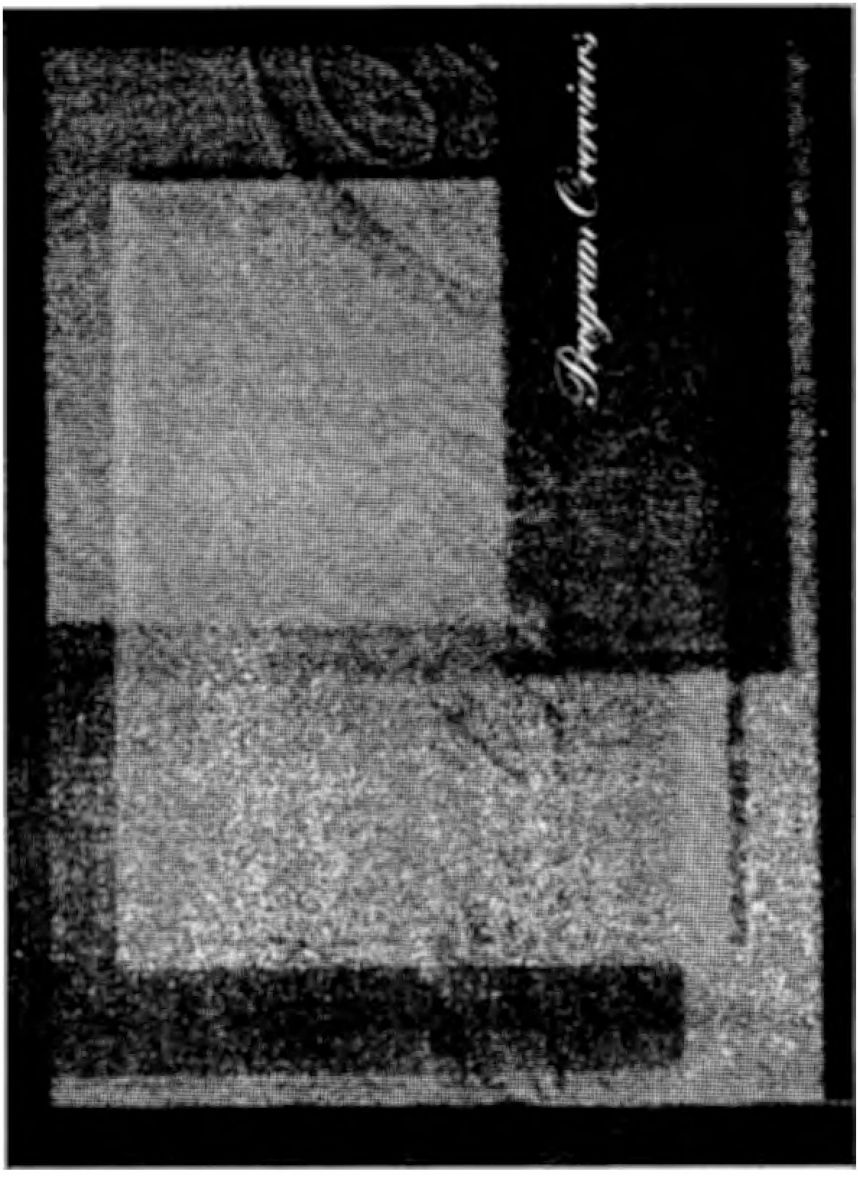
Access to loans and grants is only part of the microenterprise story. Education and technical assistance are also integral components of microenterprise programs. Many microenterprise programs offer training in critical business skills such as budgeting, basic bookkeeping, tax preparation, business planning, marketing and advertising. Some microenterprise programs provide assistance in the loan application process. This training and assistance may be provided through one-to-one counseling, classroom sessions or through peer group exchanges. Participants in microenterprise programs are often required to successfully complete such business-related courses in order to secure approval of a microloan. Microentrepreneurs generally receive continued technical support beyond the initial stages of their business development as they strive to expand their business.

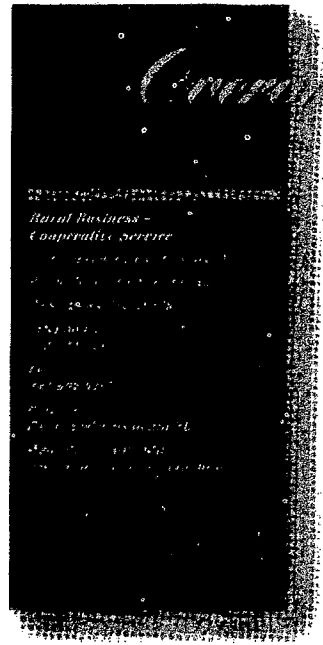
The Case Studies section of this publication provides accounts of aspiring microentrepreneurs in cities and towns across America who have benefited from microenterprise programs supported by federal agencies. The programs, the people and the pride in their accomplishments are real. These stories confirm the effectiveness of microenterprise as well as the spirit of partnership and cooperation which often develops between the microentrepreneur and those who contribute to his or her growth in the business world.

The Corporation for National Service and the United States Agency for International Development (USAID) are also member agencies in the Interagency Workgroup on Microenterprise Development. Although they make important contributions in the microenterprise field, their mission is outside the scope of this publication. The Corporation for National Service recruits and trains the Volunteers in Service to America (VISTA), some of whom may ultimately work in a microenterprise-related project. The work of the VISTA volunteers is highlighted in the Case Study provided by the National Credit Union Administration. USAID is active exclusively in the international microenterprise arena.

The federal agencies participating in the Interagency Workgroup on Microenterprise Development hope the information and resources in this publication will contribute to the continued growth of domestic microenterprise programs. Potential microentrepreneurs may find an avenue to pursue their dream of owning their own business. Community-based organizations, financial institutions and support groups – from non-profit concerns to individuals with business-related skills - may find they can assist in the training and mentoring of aspiring microentrepreneurs. The contacts listed in this publication, both at the Washington, D.C., headquarters and the local level, are genuinely committed to the support and expansion of efforts in the microenterprise field. We encourage you to contact them to answer your questions and provide assistance.

January 2001


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Rural Business-Cooperative Service Business Programs

The Rural Business-Cooperative Service Business Programs work in partnership with private sector and community-based organizations to provide financial assistance and business planning. The seven business programs offer help to fund projects that create or preserve quality jobs and/or promote a clean rural environment. The programs' financial resources are often leveraged with those of other public and private sector credit source lenders to meet business and credit needs in under-served areas. Eligible recipients of these programs include individuals, corporations, partnerships, cooperatives, public bodies, nonprofit corporations, Indian tribes and private companies. All programs are administered through the Rural Development State Office.

Here is a brief description of each of the seven business programs offered.

Business and Industry Direct Loan Program

The Business and Industry Direct Loan Program provides loans to public entities and private parties that cannot obtain credit from other sources. Loans to private parties can be made for improving, developing or financing business and industry; creating jobs; and improving the economic and environmental climate in rural communities (including pollution abatement). Assistance is available in rural areas (including all areas other than cities of more than 50,000 people and their immediately adjacent urbanized or urbanizing areas). The maximum aggregate Business and Industry Direct Loan amount to any one borrower is $10 million.

Eligible Applicants
Eligible applicants include any legally organized entity, including cooperatives, corporations, partnerships, trusts or other profit or nonprofit entities, Indian tribes or federally recognized tribal groups, municipalities, counties, any other political subdivision of a state, or individuals.

Business and Industry Guaranteed Loan Program

The Business and Industry Guaranteed Loan Program helps create jobs and stimulate rural economies by providing financial backing for rural businesses. The program provides guarantees up to 90 percent of a loan made by a commercial lender. Loan proceeds may be used for working capital, machinery and equipment, buildings and real estate, and certain types of debt refinancing. The primary purpose is to create and maintain employment and improve the economic climate in rural communities. This is achieved by expanding the lending capability of private lenders in rural areas, helping them to make and service quality loans that provide lasting community benefits.

Business and Industry loan guarantees can be extended to loans made by recognized commercial lenders or other authorized lenders in rural areas (including all areas other than cities of more than 50,000 people and their immediately adjacent urbanized or urbanizing areas). Generally, recognized lenders include federal or state chartered banks, credit unions, insurance companies, savings and loan associations, Farm Credit Banks or other Farm Credit System institutions with direct lending authority, a mortgage company that is part of a bank holding company, and the National Rural Utilities Finance Corporation.

The maximum aggregate Business and Industry Guaranteed Loan that can be offered to any one borrower is $25 million.

Eligible Applicants

Eligible applicants include any legally organized entity, including cooperatives, corporations, partnerships, trusts or other profit or nonprofit entities, Indian tribes or federally recognized tribal groups, municipalities, counties, any other political subdivision of a state, or individuals.

Intermediary Relending Program

The Intermediary Relending Program's purpose is to finance business facilities and community development projects in rural areas (including all areas other than cities of more than 25,000 people). The Rural Business-Cooperative Service makes loans to intermediaries who relend funds for business facilities or community development through the establishment of revolving loan funds.

All loan funds received by an intermediary must be reloaned to ultimate recipients. Interest income and fees may be used for administrative costs, technical assistance to borrowers or debt retirement. All collections from the operation of the established revolving loan fund that are not used for the above authorized expenses must be made available for relending to eligible ultimate recipients.

Loans must be to establish new businesses, expand existing businesses, generate employment opportunities, save existing jobs or create community development projects.

Eligible Applicants

Eligible applicants include private nonprofit corporations, public agencies, Indian groups, or cooperatives that meet the criteria of the program. Ultimate recipients may be private or public organizations or individuals. At least 51 percent of the owners or members of both intermediaries and ultimate recipients must be United States citizens or admitted for permanent residency. Both intermediaries and ultimate recipients must be unable to obtain the proposed loan elsewhere at reasonable rates and terms.

Rural Business Enterprise Grants

Rural Business Enterprise Grants are used to finance and facilitate development of small and emerging private business enterprises located in areas outside the boundary of a city of 50,000 or more and its immediately adjacent urbanized or urbanizing area.

Grant funds may also be used for the acquisition and development of land; construction of buildings, plants, equipment, access streets and roads, parking areas, and utility and service extensions; refinancing; fees for professional services; technical assistance and related training for adults; startup operating costs and working capital; financial assistance to a third party; production of television programs to provide information to rural residents; creation, expansion and operation of rural distance learning networks; and establishment or funding of revolving loan programs.

Eligible Applicants

Eligibility is limited to public bodies, private nonprofit corporations and federally recognized Indian tribal groups. Public bodies include incorporated towns and villages, boroughs, townships, counties, states, authorities, districts, Indian tribes on federal and state reservations, and other federally recognized Indian tribal groups in rural areas. Small and emerging businesses with less than 50 new employees and less than $1 million in gross annual revenues that have, or will utilize, technological innovations and commercialization of new products are eligible for assistance.

Rural Business Opportunity Grants

Rural Business Opportunity *Grants provide funds for technical* assistance, training and planning activities that improve economic conditions in rural areas. The program's mission is to promote sustainable economic development in rural communities with exceptional needs.

Eligible Applicants

Applicants must be located in rural areas (which includes all areas other than cities of more than 10,000). Nonprofit corporations, public entities, Indian tribes and cooperatives are eligible.

Rural Economic Development Loans

Rural Economic Development Loans are zero-interest loans and grants to Rural Utilities Services-financed telecommunication and electric utilities intended to promote rural economic development and job creation projects. Loan proceeds are used to promote rural economic development and/or job creation projects including project feasibility studies, start-up costs and incubator projects.

Eligible Applicants
Loans are made at the discretion of the Rural Business-Cooperative Service Administrator to any Rural Utilities Services borrower that is not delinquent on any federal debt or in bankruptcy proceeding.

Rural Economic Development Grants

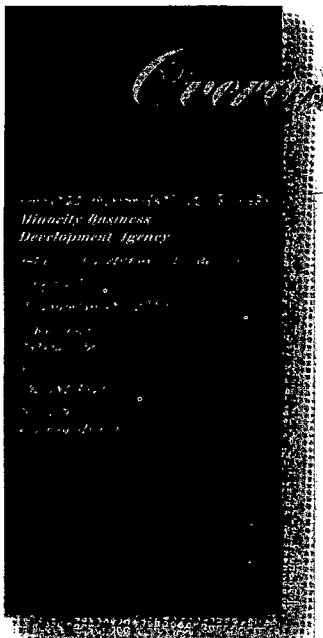
This program provides grants from the Rural Business-Cooperative Service to rural communities through Rural Utilities Service borrowers. The grants are to be used for revolving loan funds for community facilities and infrastructure, and for assistance in conjunction with rural economic development loans.

Rural Utilities Service borrowers receive grants to establish revolving loan funds on a non pass-through basis. The borrowers, in turn, provide zero-interest loans to foster rural economic development. Initial loan funds may be used for projects such as community development, and providing facilities and equipment for education and medical care. Loans made from the repayment of initial loans may be used for any rural economic development purpose agreed to by the borrower and the Rural Utilities Service.

Grant funds may also be used for project feasibility studies and technical assistance; community development assistance; projects that provide education and training to rural residents to facilitate economic development; and projects that provide medical care to rural residents.

Eligible Applicants
Funds are granted to any electric or telecommunication Rural Utilities Service borrower that is not financially distressed, delinquent on any federal debt or in bankruptcy proceedings.

Overview



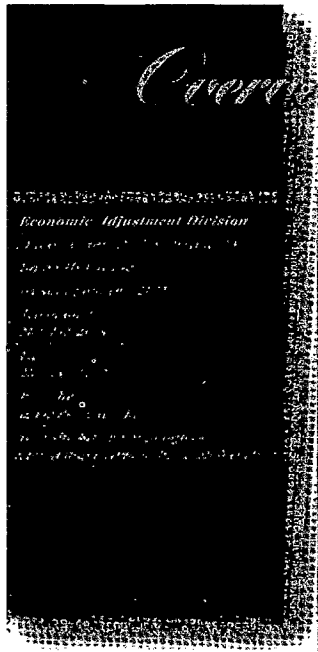
Minority Business Development Agency's microenterprise resources

The Minority Business Development Agency (MBDA) of the United States Department of Commerce is the only federal agency created specifically to foster the establishment and growth of minority-owned business in America. MBDA funds Business Development Centers (BDCs) that provide minority entrepreneurs with one-on-one assistance in writing business plans, marketing, management and technical matters, and financial planning to assure adequate financing for business ventures. Staffing the BDCs are business specialists with knowledge and practical experience needed to run successful and profitable businesses.

MBDA also has three Web-based tools – the Resource Locator, the Phoenix-Opportunity Database and the Market Analyst – to respond to the needs of microentrepreneurs throughout the country. The Resource Locator allows microentrepreneurs to search for resources that specialize in starting, operating and expanding businesses. Users are able to search MBDA's database by geographic area for resources such as manufacturing, technology, international trade, electronic commerce or management and technical assistance. The Phoenix Database contains a listing of minority-owned enterprises doing business in the United States. MBDA uses the database in conjunction with the Opportunity Database to match listed minority companies with contracts and other business opportunities via e-mail. Once registered on MBDA's database, minority microentrepreneurs can post opportunities, access contract opportunities and seek business partners. The Market Analyst is available through one of the many local BDCs located throughout the nation. With the help of trained market analysis and business development professionals on staff, a microentrepreneur can conduct extensive market research in a specific geographical area.

Eligible Applicants

Through resource and development centers, MBDA provides assistance to socially or economically disadvantaged groups who own or wish to start or expand their own businesses, including African Americans, Native Americans, Puerto Ricans, Spanish-speaking Americans, Eskimos, Aleuts, Asian Indians, Asian Pacific Americans and Hasidic Jews. Interested individuals should contact their local MBDA Regional Office for the address of the nearest participating center.



Revolving Loan Fund Program

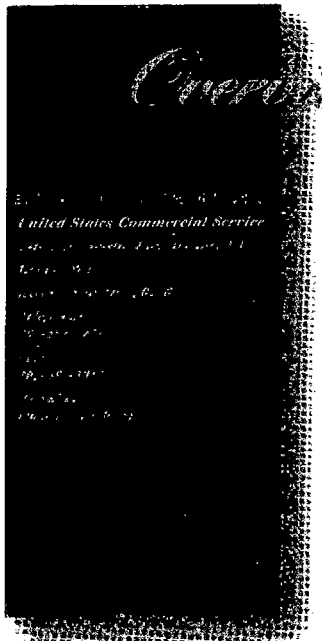
The Economic Development Administration, Department of Commerce, was established in 1965 to generate jobs, help retain existing jobs and stimulate industrial, technological and commercial growth in economically distressed areas of the United States. The Economic Adjustment Program is one of the many programs administered by the Economic Development Administration.

The Economic Adjustment Program assists state and local interests in planning and implementing strategies designed to adjust or bring about change to an economy. The program focuses on areas that have experienced or are under threat of serious structural damage to the underlying local economic base. Changes to the local economic base may result from industrial or corporate restructuring, natural disaster, reduced defense expenditures, depletion of natural resources or new federal laws or requirements.

The Revolving Loan Fund Program, one tool of the Economic Adjustment Program, assists small- and medium-sized businesses in economically distressed communities. It gives financial support to eligible intermediaries such as political subdivisions, nonprofit organizations and economic development districts. Intermediaries use program funds to make loans, provide loan guarantees and offer financial assistance for establishing, enhancing and expanding businesses, which often include microenterprises. Funds may also go to public, private and nonprofit organizations for business training, technical assistance and business support services to microentrepreneurs. All grant recipients are required to develop a Revolving Loan Fund Plan summarizing how the Revolving Loan Fund will be used to support the area's comprehensive economic adjustment strategy.

Eligible Applicants

Eligible applicants include states, cities or other political subdivisions of a state, or a consortium of the subdivisions; Indian tribes; institutions of higher learning; and public or private nonprofit organizations or associations acting in cooperation with officials of a state's political subdivision. Complete funding availability information is published annually in the *Federal Register*. Previous funding levels can be found at *www.doc.gov/eda/html/prgtitle.htm*. Business owners interested in locating a Revolving Loan Fund in their area may contact the appropriate regional office for their state at: *http://www.doc.gov/eda/html/1c_regoffices.htm* or consult the *Economic Development Directory* at: *http://www.doc.gov/eda/html/1a12_edd.htm*.



United States Commercial Service: Three Special Initiatives

The Department of Commerce established the United States Commercial Service in 1980 to help U.S. firms, particularly small and medium sized enterprises, expand their markets beyond the United States. Today, the Commercial Service supports U.S. business through its network of 105 domestic and 158 overseas offices in 84 countries. The Commercial Service administers three separate initiatives that provide access to export assistance to the nation's small businesses.

Women in International Trade Initiative

The Women in International Trade Initiative uses the expertise, global network, and experience of the Commercial Service to meet the needs of women in international trade. Through strategic partnerships with women's organizations both in the United States and abroad, the Commercial Service reaches small women-owned businesses that can benefit from export assistance. To help women enter international markets, the Commercial Service leads business development trade missions that introduce women to prequalified sales prospects, agents, distributors, and joint venture partners.

One of the most frequently encountered obstacles for small women-owned enterprises is the lack of qualified personnel to develop the business's export capabilities. The Commercial Service addresses this issue by providing a trade specialist to prepare the company for international business by working at the company for several weeks as a consultant.

Eligible Applicants
All women-owned companies interested in exporting are eligible to participate in the Initiative.

Global Diversity Initiative

The Global Diversity Initiative, created in 1999, seeks to increase the number and capability of minority firms engaged in international trade. The initiative not only results in an increase in the nation's exports, but boosts economic development in minority communities.

The Global Diversity Initiative's Market Entry Program prepares firms to sell products and services internationally by providing training, ongoing consultation and support, and participation in trade events. The Market Entry Program is typically a training program that utilizes a team of local presenters to prepare firms to sell their products and services in identified markets. Subjects covered in the training program include Channels of Distribution, Pricing for Export, Methods of Payment, Documentation and Logistics, Legal Issues, E-Commerce, and Commercial Service programs. International trade specialists from the Commercial Service administer the program in cooperation with federal, state and local partners.

After completing the Market Entry Program, firms are invited to participate in a trade event. Trade Specialists identify trade missions, trade shows, international buyer programs, and/or reverse trade mission opportunities for Market Entry Program participants. These events enable participants to utilize the skills developed from their training and to participate in an event where they meet with prospective buyers or clients. The ultimate goal of the program is for the firms to negotiate and complete an international sale.

Eligible Applicants
To be eligible for participation in the Global Diversity Initiative program, firms may be at any stage of export readiness and must have a potential for success in the international market. An applicant's business should have been in operation for at least two years and offer a product or service suited for export. Firms should have a positive net worth and should have marketing materials, such as brochures.

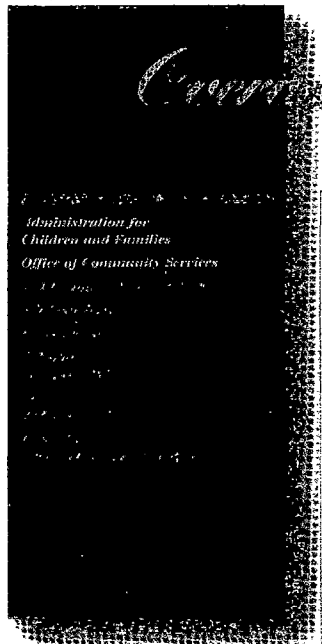
Rural Export Initiative

Through the Rural Export Initiative (REI), the Commercial Service seeks to provide rural companies with export assistance and global market research to facilitate their access to international trade services and to increase the number of rural companies engaged in exporting. REI helps rural firms overcome the "distance penalty" by using e-commerce and technology-based services such as virtual trade shows and marketing briefings via teleconferencing. As part of its commitment to serving rural firms, the Commercial Service has established 18 Export Assistance Centers in rural areas.

Through REI's Native American Program, the Commercial Service works with Native American communities to introduce small firms to the benefits of international trade. Included in this program are international trade promotion opportunities for Native American products and the Native American Export Incubator Programs in South Dakota, Washington State, Arizona and New Mexico. The goal of the Native American Export Incubator program is to develop export markets for Native American businesses while training them in international business procedures and marketing.

Eligible Applicants

The Rural Export Initiative targets companies located in metropolitan statistical areas that have a population of 150,000 or less. All rural companies interested in exporting are eligible to participate in REI.



Job Opportunities for Low-Income Individuals

The Job Opportunities for Low-Income Individuals (JOLI) Program is administered by the Office of Community Services, Administration for Children and Families, within the United States Department of Health and Human Services. JOLI is a job-creation program authorized by Congress under the Family Support Act of 1988. The program's purpose is to demonstrate and evaluate ways of creating new employment and business opportunities for certain low-income individuals.

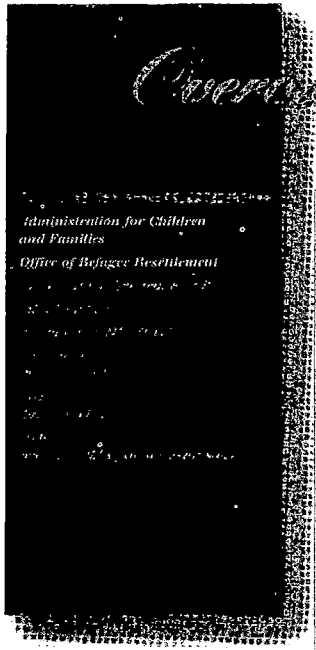
The JOLI Program awards grants to nonprofit organizations, including community development corporations, which, in turn, develop projects that will create new jobs and employment opportunities for welfare recipients through:

- self-employment,
- microenterprise,
- business expansion, and
- new business ventures.

Any individual eligible to receive Temporary Assistance for Needy Families under Title IV of the Social Security Act or whose income level does not exceed 100 percent of the official poverty line is eligible to participate in a project conducted under the JOLI Program.

Eligible Applicants

Any nonprofit organization, including community development corporations, exempt from taxation under Section 501(c) 3 or 4 of the Internal Revenue Code is eligible to apply for funding under the JOLI Program.



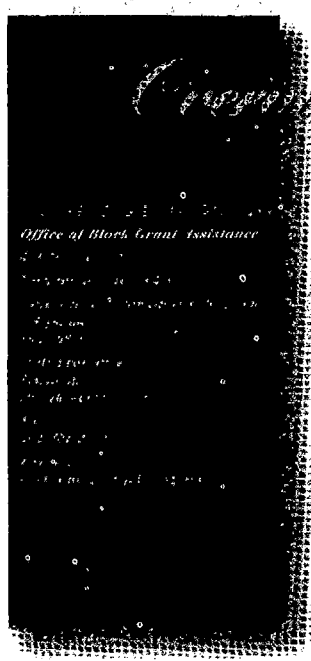
Office of Refugee Resettlement Microenterprise Development Project

The Office of Refugee Resettlement (ORR) assists refugees and Cuban and Haitian entrants to achieve economic self-sufficiency and social adjustment as soon as possible after arriving in the United States. Federal funds are provided to support services that help refugees achieve this goal.

ORR awards grants to states to furnish temporary financial and medical assistance, social services, and preventative health services to arriving refugees. ORR also awards grants from the Director's discretionary funds to public and private nonprofit agencies for projects that assist refugees to acculturate through employment services, English-language training, education and health services. Through these discretionary funds, ORR is able to support micro-enterprise development for the refugee population.

Eligible Applicants

All public and private nonprofit organizations are eligible to apply. Applicants are invited to submit competing grant applications in response to program announcements, which may be found on the ORR Web site along with application materials. Funding availability is published in the *Federal Register*. Awards are based on the competitions' outcome, ORR Director's decisions, and the availability of funds.



Community Development Block Grant Program

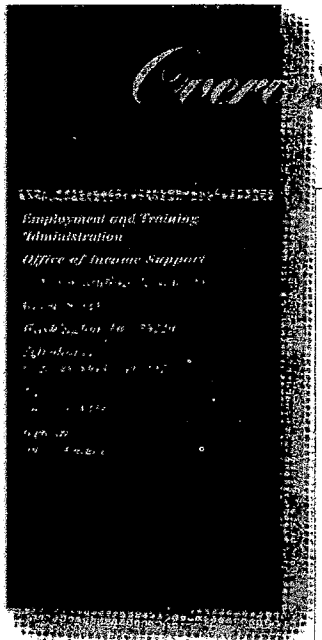
The Community Development Block Grant Program provides eligible metropolitan cities and urban counties (called "entitlement communities"), as well as states, with annual direct grants to revitalize neighborhoods, expand affordable housing and economic opportunities, and/or improve community facilities and services, principally to benefit low- and moderate-income persons.

Although the rehabilitation of affordable housing has traditionally been the largest single use of Community Development Block Grant Funds, the program has become an increasingly important catalyst for economic development activities that expand job and business opportunities for lower income families and neighborhoods. It has also moved toward supporting the growth of some of its key partners, primarily nonprofit community-based organizations.

Recipients use Community Development Block Grant Funds to provide direct financial assistance to microenterprises through grants, loans, loan guarantees, and other forms of financial support to establish, stabilize, and expand microenterprise. Micro-entrepreneurs and persons developing microenterprises also benefit from technical assistance, advice, and business support services. Finally, Community Development Block Grant Funds provide general support through such services as peer support programs, counseling, child care and transportation.

Eligible Applicants

Central cities of Metropolitan Statistical Areas, other metropolitan cities with populations of at least 50,000, and qualified urban counties with populations of at least 200,000 are entitled to receive annual grants. Funding is awarded based on assessments of community needs, including income, population, housing overcrowding, age of housing and population growth lag compared to other metropolitan areas. The State Community Development Block Grant Program is a separate component of the program. It provides funds to the states to allocate among localities that do not qualify as entitlement communities.



Self-Employment Assistance

When unemployment insurance was introduced in the 1930s, unemployed workers could expect to eventually return to their same or similar jobs. Today, many unemployed workers are faced with no prospect of reemployment in their former career fields. In the 1980s, the federal government began exploring various European programs that offer assistance to unemployed workers who want to become self-employed. Based on the European models, the Department of Labor funded pilot projects in Washington State and Massachusetts.

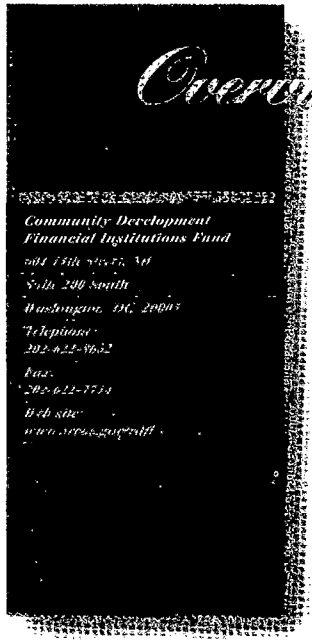
The pilots were a tremendous success and showed that self-employment assistance for the unemployed was cost-effective for the participants, the federal government and society as a whole. In 1993, Congress enacted legislation permitting states to adopt self-employment allowance provisions as part of their state unemployment insurance laws.

States have the flexibility to establish their own Self-Employment Assistance programs within guidelines issued by the Department of Labor, which administers the programs through State Workforce Development Agencies.

Although the programs and eligibility requirements vary slightly from state to state, each program essentially allows unemployed individuals identified as likely to be unemployed long-term the opportunity to establish a microenterprise. Self-Employment Assistance program participants typically have long, solid work histories and find themselves the victims of events such as mass layoffs or plant shutdowns. The Department of Labor provides funds through various sources (such as the recently enacted Workforce Investment Act) that can be used for entrepreneurial training and technical assistance, and the equivalent of unemployment insurance payments during the business training and start-up periods.

Eligible Applicants

The following states have implemented Self-Employment Assistance programs: New York, Maine, Oregon, Delaware, New Jersey, California, Maryland and Pennsylvania. Unemployed workers in those states should contact their state Department of Labor for information about the program and eligibility requirements.



Overview:

Community Development Financial Institutions Fund: Three Programs

The Community Development Financial Institutions Fund (CDFI Fund) was created in 1994 to expand the availability of credit, investment capital and financial services in distressed urban and rural communities. The CDFI Fund provides capital to institutions that serve distressed communities and low-income individuals. Its activities leverage private-sector investments from banks, foundations and other funding sources.

CDFI Fund initiatives that provide funding to microenterprise organizations are outlined below. Since the CDFI Fund's creation, more than $400 million in awards have been made to community development organizations and financial institutions.

Community Development Financial Institutions Program

The Community Development Financial Institutions Program (CDFI Program) uses limited federal resources to invest in and build the capacity of private, for-profit and non-profit financial institutions to provide capital and services to underserved people and communities. Institutions such as microenterprise loan funds, community development banks, credit unions, non-profit loan funds and venture capital funds may apply to the CDFI Fund for status as a CDFI. The CDFI Fund invests in CDFIs using flexible tools such as equity investments, loans, grants and deposits, depending upon market and institutional needs.

The CDFI Program has three separate components: Core, Intermediary, and Small and Emerging CDFI Assistance (SECA). The Core Component is the CDFI Fund's main program under which CDFIs, or entities proposing to become CDFIs, may apply for financial and technical assistance. The Intermediary Component is specifically for intermediaries that focus primarily on providing financial assistance to other CDFIs. The SECA Component was designed to build the capacity of CDFIs, or entities proposing to become CDFIs, that have significant potential for generating community development. The SECA Component allows all CDFIs to apply for technical assistance grants and those CDFIs that are small and emerging may apply for both technical assistance grants and limited amounts of financial assistance.

CDFIs provide a range of financial products and services including mortgage financing for first-time home buyers, financing for needed community facilities, commercial loans and investments to start or expand small businesses, loans to rehabilitate rental housing, and financial services needed by low-income households and local businesses. CDFIs also provide technical assistance to small businesses and credit counseling to consumers. CDFIs currently serve rural and urban areas in 49 states and the District of Columbia, Puerto Rico and the Virgin Islands.

The applicant CDFI must submit a five-year business plan and demonstrate its ability to raise comparable non-federal matching funds. Each applicant is evaluated in a manner similar to a private investor determining the investment-worthiness of an institution. An applicant's ability to create community development impact and execute its Comprehensive Business Plan is part of the CDFI Fund's assessment of the applicant.

Eligible Applicants

Applications for funding under each component of the CDFI Program are accepted once a year. An applicant must be a non-governmental financing entity with community development as its primary mission, serve eligible target markets, provide development services and otherwise meet the requirements set out in 12 C.F.R. § 1805.200. Notices of Funds Availability for funding rounds are published in the *Federal Register*.

The CDFI Fund accepts applications for CDFI certification on a continuing basis. Eligibility requirements for certification are contained in 12 C.F.R. § 1805.201(b).

Bank Enterprise Award Program

The Bank Enterprise Award (BEA) Program recognizes the key role that traditional financial institutions play in facilitating community development. The program provides incentives for regulated banks and thrifts to invest in CDFIs and to increase their lending, investment and financial services in distressed communities. "Distressed communities" are those that meet minimum income and unemployment criteria under the regulations in effect at the time of application. The program supports the community reinvestment efforts of financial institutions.

The BEA Program seeks to encourage insured depository institutions to invest in CDFIs and to provide lending, investment and service activities aimed at revitalizing distressed urban and rural communities. The CDFI Fund makes awards to selected applicants that:

- invest in or otherwise support CDFIs;
- increase lending and investment activities within distressed communities; or
- increase certain services and assistance within distressed communities.

Activities eligible for awards include deposit liabilities in the form of savings or other demand or time accounts; financial and community services; and loans such as consumer, single-family, multi-family, commercial real estate, business, agricultural and related project investments.

Eligible Applicants

Eligible applicants are depository institutions insured by the Federal Deposit Insurance Corporation. Applications for Bank Enterprise Awards are accepted once a year. Notices of Funds Availability are published in the *Federal Register*.

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Presidential Awards for Excellence in Microenterprise Development

At the direction of President Clinton, the CDFI Fund designed and implemented a non-monetary award program in 1996 to bring wider attention to the important role and the successes of domestic microenterprise development across America. The Presidential Awards program grew from a commitment of the United States at the United Nations Fourth World Conference on Women, held in Beijing, China, in September 1995.

The Presidential Awards reflect a national commitment to microenterprise development and to enhancing entrepreneurial opportunities for all Americans. By recognizing outstanding microenterprise development and support organizations, the Presidential Awards program advances an understanding of "best practices" in the field of microenterprise development.

Awards are made in the following categories designed to recognize the diverse activities, purposes and challenges that the microenterprise industry faces:

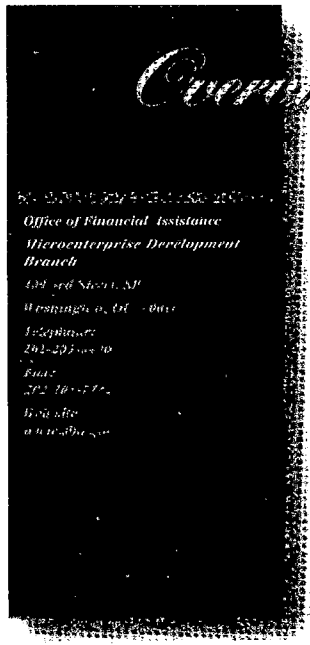
- Excellence in Providing Access to Capital
- Excellence in Developing Entrepreneurial Skills
- Excellence in Poverty Alleviation
- Excellence in Public or Private Support for Microenterprise Development
- Excellence in Program Innovation

Eligible Applicants

Microenterprise Development Organizations—those organizations whose primary purpose is microenterprise development—are eligible for an award in the following categories: Access to Capital, Developing Entrepreneurial Skills and Poverty Alleviation. Eligible applicants for the public or private support award are Microenterprise Support Organizations—entities that do not work directly with microentrepreneurs as their principal activity, but support the efforts of Microenterprise Development Organizations through technical assistance, research and other activities.

Both Microenterprise Development Organizations and Microenterprise Support Organizations are eligible for the Program Innovation awards—floating awards that may be given to no more than two applicants in any one or more of the other award categories.

Applications for the Presidential Awards are accepted once a year. Notices inviting applications are published in the *Federal Register*.



PRIME:

Program for Investment in Microentrepreneurs

The Program for Investment in Microentrepreneurs (PRIME) was established in November 1999 under Title VII of the Gramm-Leach-Bliley Act and is administered by the United States Small Business Administration (SBA). PRIME provides grant funding to qualified organizations for:

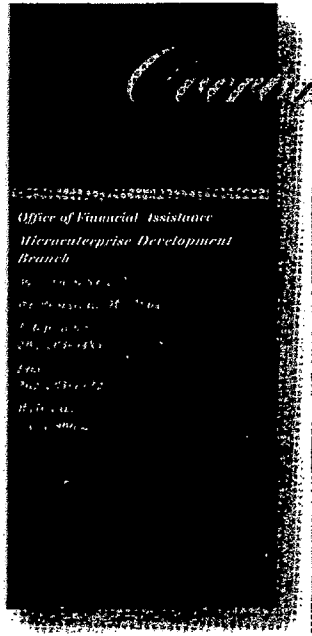
- training and technical assistance to disadvantaged microentrepreneurs;
- capacity-building services to microenterprise development organizations that assist disadvantaged microentrepreneurs;
- research and development regarding best practices for training and technical assistance; and
- other activities deemed by the SBA administrator to be consistent with the purposes of the program.

Eligible Applicants

An organization is eligible to apply for funding under the PRIME Program if it is:

- a private nonprofit entity that seeks to serve microenterprise development organizations and programs (i.e., an intermediary);
- a nonprofit microenterprise development organization or an organization that has a demonstrated record of delivering microenterprise services to disadvantaged microentrepreneurs, and is accountable to a local community working in conjunction with a State or local government or Indian tribe; or
- an Indian tribe acting on its own, if the Indian tribe can certify that no microenterprise development organization or program exists within its jurisdiction.

The SBA will make periodic announcements in the *Federal Register* about the governing regulations, application instructions, and funds availability.



Microloan Program

The Microloan Program, originally enacted in October 1991, authorizes the United States Small Business Administration (SBA) to provide loan and grant funding to intermediary lenders and non-lending technical assistance providers. From the original 37 program participants in 1992, the program has grown to include more than 140 intermediaries and non-lending technical assistance providers. The Microloan Program assists women, low-income individuals, minorities, veteran entrepreneurs, business owners and other capable individuals to operate successful business concerns, and assists small business concerns in those areas suffering from a lack of credit due to an economic downturn.

Under the Intermediary Lender part of the Microloan Program, the SBA makes direct and guaranteed loans available to qualified intermediaries. They, in turn, provide small-scale loans, averaging $7,500 or less, to start-up, newly established or growing small business concerns for working capital, materials, supplies or equipment. Intermediary lenders are required to provide business-based technical assistance to microloan borrowers.

The SBA provides grants under the Non-lending Technical Assistance Provider program to eligible nonprofit entities that, together with non-federal matching funds, support intensive marketing, management and technical assistance to low income clients seeking private sector micro-level financing for their businesses.

In addition, capacity-building funds are available to provide technical assistance to organizations acting as intermediary lenders or having the potential to do so.

Eligible Applicants
An organization may apply for intermediary lender status if it:

- Is a private nonprofit community development corporation, a quasi-governmental economic development entity, or an agency of or a nonprofit entity established by a Native American tribal government;
- Has made and serviced short-term fixed rate loans of not more than $25,000 to newly established or growing small businesses for at least one year; and
- Has at least one year of experience providing technical assistance to its borrowers.

An organization may apply as a Non-lending Technical Assistance Provider if it is capable of providing technical assistance to small businesses and is not an SBA microlender.

A small business must apply directly to the intermediary lender serving its geographic location. A small business is eligible to apply for a microloan if it is a for-profit business that meets SBA-type of business requirements and size eligibility standards.

Connection:

Women's Business Center Program

Office of Women's Business Ownership
409 3rd Street, SW
Washington, DC 20416
Telephone
202-205-6673
Fax
202-205-7287
Web Site
www.sba.gov/financing/special/wbc.html

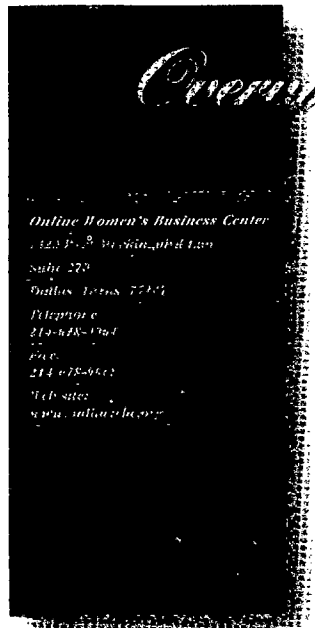
The United States Small Business Administration (SBA) offers grant funding to private nonprofit economic development organizations to provide financial management, general business management and marketing assistance to women-owned businesses. The SBA's network of 93 Women's Business Centers provides a wide range of services to women entrepreneurs at all levels of business development. Located in 46 states, the District of Columbia, Puerto Rico, American Samoa and the Virgin Islands, the centers provide long-term training and counseling to existing and potential women business owners, many of whom are socially and economically disadvantaged.

Women's Business Centers provide financial, management and marketing services and expertise to women starting or growing their businesses. Each organization offers services and training in accounting and government contracting. Technical assistance, financial counseling, business plan assistance and microlending information are also available.

The centers make a special effort to assist women on welfare become self sufficient. Many administer programs and workshops in business ownership, other employment or a combination of the two. Some centers offer transportation and child care so women can attend training classes. A few offer classes in the local neighborhoods.

Each center tailors its programs to the needs of its constituency. Many centers have found that providing support services such as domestic crisis counseling and child care makes the biggest difference in whether women remain enrolled in the training courses. Due to a lack of work experience, basic skills and self esteem must be addressed before business development. Other centers provide business development and support services in the same way.

All of the centers provide training, counseling and technical assistance to the SBA's programs at a minimum. A number of centers are also intermediaries for the SBA's Microloan Program and the Low-to-Moderate Income Program.



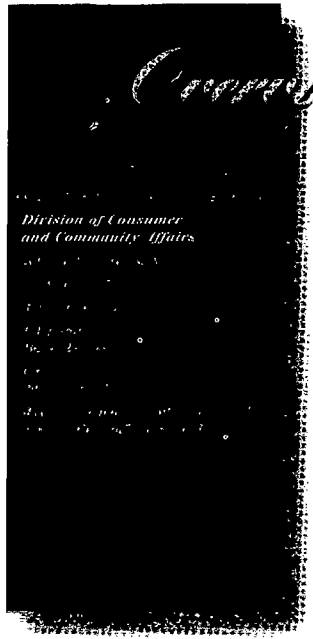
Online Women's Business Center

The United States Small Business Administration (SBA) provides grant funding for the Online Women's Business Center, a free interactive Web site. This Internet resource provides comprehensive training, counseling and information in English, Spanish and Russian, and will soon be available in French and Japanese.

The Web site *(www.onlinewbc.org)* features:

- Business information, including examples of principles and practices, reference guides, management tools and techniques, government procurement processes and opportunities, e-commerce, international trade and other business resources;
- Documentation on emerging and accomplished women entrepreneurs;
- Online mentoring, counseling and networking opportunities;
- Instructional programs through "chat" sessions among women from around the country;
- Late-breaking business news and statistics; and
- SBA services available to prospective women small-business owners.

E-mails can be sent through the Web site on any topic relating to women-owned business. The e-mails are forwarded to the appropriate local Women's Business Center for response. Each Women's Business Center is required to monitor and maintain updated information on its respective Internet site.

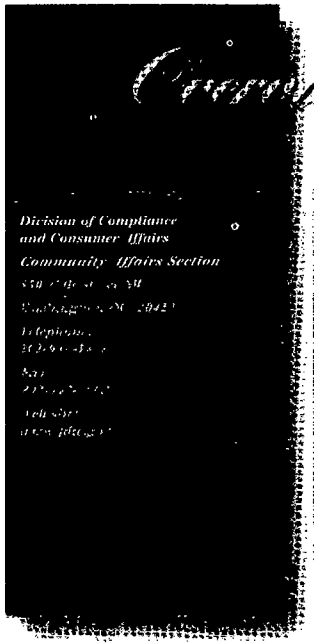


Community Affairs Program

The Federal Reserve System's Community Affairs Program was established in 1981. The program provides ongoing outreach, educational and technical assistance services to help financial institutions, community-based organizations, government entities and the public understand and address financial services issues affecting low- and moderate-income persons and communities. The program's mission is to support the Federal Reserve System's economic growth objectives by promoting community development, and fair and impartial access to credit.

Community Affairs Offices (CAOs) are located at the Board and at each of the 12 Federal Reserve Banks. Each CAO establishes its own program and develops specific products and services to meet the informational needs in its regional market. These information products and services fall into three major areas:

- **Publications**
  The CAOs publish a variety of publications that highlight community reinvestment activities and cover topics such as fair lending, and small and micro business technical assistance.
- **Conferences, Training and Presentations**
  The CAOs sponsor and participate in a variety of public forums that provide information and guidance on Community Reinvestment Act-related requirements, and community investment and development opportunities.
- **Technical Assistance**
  The CAOs provide a wide range of technical information on community and economic development, including information on affordable housing development partnerships, and small and micro business lending.



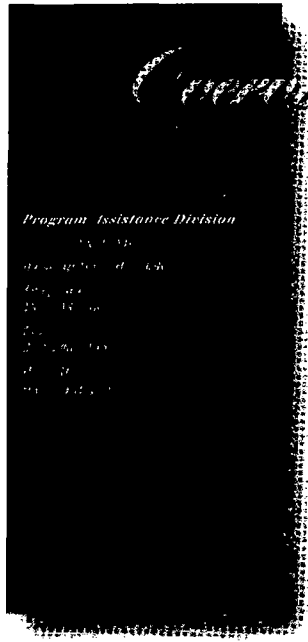
Community Affairs Program

In 1990, the Federal Deposit Insurance Corporation ("FDIC") established a Community Affairs Program that promotes compliance with the Community Reinvestment Act (CRA) and the fair lending laws by FDIC-supervised institutions. The fair lending laws and regulations were designed to ensure access to credit by all sectors of communities, to prohibit discrimination in lending, and to promote fair lending practices. The FDIC's Community Affairs staff help to ensure equal access to credit, work with lenders and the public to revitalize communities, and serve as intermediaries to further fair lending objectives.

The FDIC's Community Affairs staff are located in Washington, D.C. and in the agency's eight regional offices. Specifically, the staff:

- encourages financial institutions to help meet the needs of their communities, including low-and moderate-income neighborhoods and individuals, consistent with safe and sound operations.
- meets regularly with bankers, community organizations, small businesses, and local government leaders to promote partnerships among public and private organizations, to identify local credit needs, and to develop strategies to meet those needs.
- sponsors and conducts conferences and seminars to help educate bankers and consumers about the CRA and other fair lending laws and regulations.
- serve as technical advisors to bank examiners on fair lending issues.
- support community and economic development initiatives, including microenterprise projects, through their outreach and technical assistance initiatives.

FDIC promotes banks' compliance with fair lending laws, including the Community Reinvestment Act, through on-site examinations, community outreach, responses to complaints and inquiries, and other efforts.



Overview:

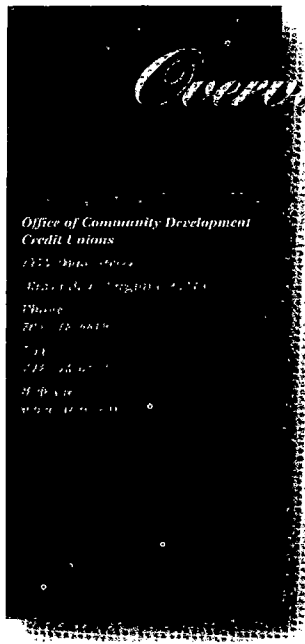
Federal Home Loan Bank System Programs

The Federal Housing Finance Board has regulatory and supervisory oversight responsibility for the 12 Federal Home Loan Banks (FHLBanks). Among other duties, it ensures the safety and soundness of the Federal Home Loan Bank System (System), establishes policy for Community Investment Cash Advances programs and the Community Support Program, and oversees the FHLBanks' financial performance and operations.

Each of the 12 FHLBanks is a government-chartered, member-owned corporation. Members of the System are financial institutions (federal and state-chartered thrift institutions, commercial banks, credit unions and insurance companies) that purchase stock in the FHLBank in whose district they are chartered. Institutions join in order to access long-term advances/loans and to meet liquidity needs. As of March 31, 2000, the System's membership totaled 7,435. Other entities, such as state and local housing finance agencies, may join as associate members.

- **Community Lending Programs**
  The FHLBanks provide low-cost advances/loans (and, in some cases, grants) to members to support the Affordable Housing and Community Investment Cash Advance (CICA) programs. The Affordable Housing Program targets households with incomes below 80 percent of the area median. Targeted incomes in the CICA programs range from 80 to 115 percent of the area median income or another limit established by a FHLBank. CICAs may be used to provide assistance for small businesses; geographically defined beneficiaries (projects located in targeted geographical areas), and individual beneficiaries (projects in which at least 51 percent of the salaries created or retained are at or below the targeted level, or at least 51 percent of the families who benefit from or are provided services are at or below a targeted income level).

- **Community Investment Officers**
  Each FHLBank is required by statute to designate a Community Investment Officer to implement community lending and affordable housing advance programs. Through on-site visits, sponsorship of regional conferences and other means, the Community Investment Officers provide technical assistance and outreach to promote these programs, and help members of the System identify opportunities to expand financial and credit services in underserved neighborhoods and communities.



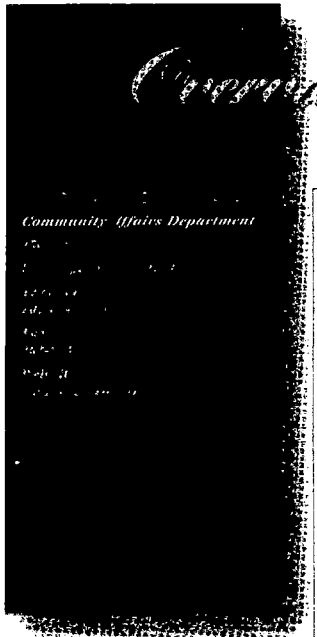
Community Development Revolving Loan Fund for Credit Unions

The National Credit Union Administration (NCUA) created the Office of Community Development Credit Unions in early 1994 to provide assistance to community development credit unions designated as "low income." Federal credit unions that serve low-income groups and underserved areas may apply to NCUA for the "low-income" designation. Among other things, low-income credit unions may participate in special funding programs such as the Community Development Revolving Loan Fund for Credit Unions.

The Community Development Revolving Loan Fund (CDRLF) supports low-income credit union initiatives that stimulate economic development and community revitalization efforts—increased income, education, home and business ownership and employment opportunities. The CDRLF makes reduced rate loans and provides technical assistance grants so the participating credit union may provide needed financial services and help stimulate the economy in the communities they serve. The NCUA's policy is to revolve low-interest loans to qualifying credit unions as often as practical in order to gain maximum impact on as many participating credit unions as possible.

During 1999, the CDRLF granted nine loans totaling $1.9 million. Sixty-nine loans totaling $7.5 million were outstanding at year-end. Also in 1999, the technical assistance grants program, financed with earnings from the CDRLF, provided operational funding for organizational and staff development, marketing, audits and purchase of equipment. CDRLF approved 103 grants totaling $343,500.

Eligible Applicants
A credit union must have a current low-income designation to participate in the CDRLF. The National Credit Union Administration annually publishes measurement standards to be used in awarding the "low-income designation" to credit unions.



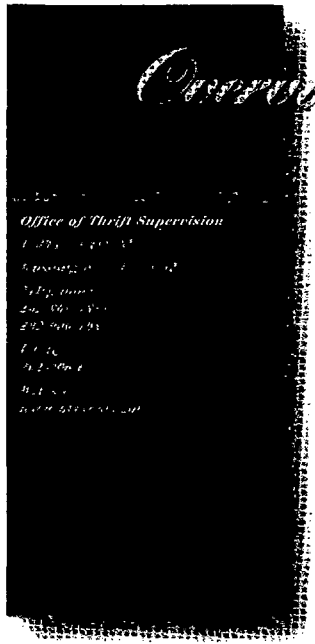
Community Affairs Program

The Office of the Comptroller of the Currency (OCC) charters, regulates and examines approximately 2,500 national banks and 66 federal branches and agencies of foreign banks in the United States, accounting for 58 percent of the nation's banking assets. The mission of the OCC, established in 1863 as a bureau of the Department of the Treasury, is to ensure a safe, sound and competitive national banking system.

The OCC's Community Affairs department encourages national banks to be leaders in providing credit, investments and financial services, including microenterprise development. Its staff assists consumers, particularly in economically disadvantaged communities, to achieve broader access to financial services, and works with bankers and their community development partners to promote community economic development by:

- Establishing working relationships and facilitating partnerships among banks, community development corporations, other community development intermediaries and the OCC;
- Encouraging bank investment, lending and services for low- and moderate-income persons and small businesses, including microenterprises;
- Advising national banks; community development organizations; local, state and federal governments; and bank examiners on bank compliance with the Community Reinvestment Act and the expansion of access to credit and capital; and
- Providing training and technical assistance on economic and community development lending and investing, financing affordable housing development, and supporting small businesses with start-up and expansion finance and working capital.

The OCC supports the banks' efforts in the microenterprise arena by providing technical assistance to community development intermediaries that promote microenterprise development. The Community Affairs programs provide outreach, educational and technical assistance to national banks on community development opportunities, issues and partnerships. The OCC also sponsors or co-sponsors regional and national forums and workshops on small business development that help to promote opportunities such as microenterprise development.

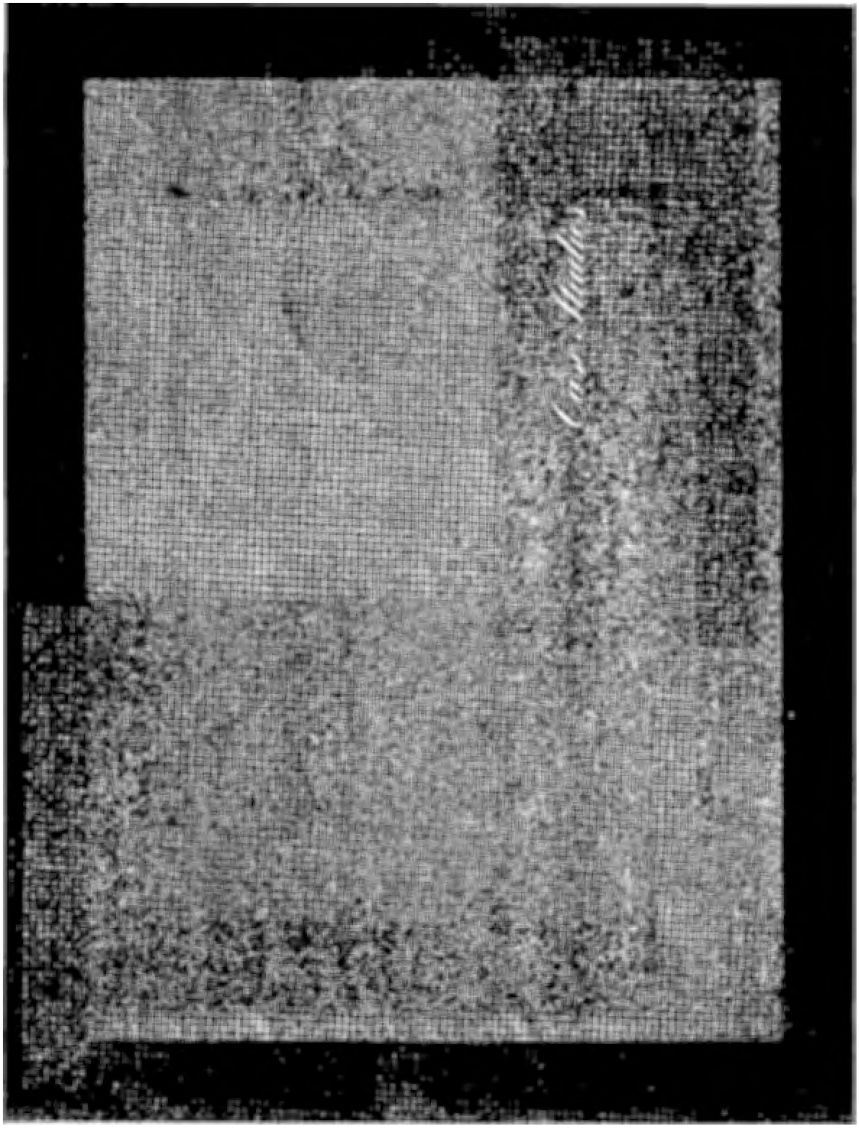


Community Affairs Program

The Office of Thrift Supervision (OTS) is the primary regulator of all federal and many state-chartered thrift institutions, which include savings banks and savings and loan associations. The OTS was established as a bureau of the Department of the Treasury on August 9, 1989. The OTS has five regional offices located in Jersey City, Atlanta, Chicago, Dallas and San Francisco. Its expenses are funded entirely through assessments and fees levied on the institutions it regulates.

In 1993, the OTS' Community Affairs Program was created to support the thrift industry in helping to meet the credit and financial services needs of the thrifts' communities, particularly those with areas and individuals in greatest need. The program's mission is to actively assist the thrift industry's efforts to meet its obligations under the Community Reinvestment Act, and to provide safe and sound loans, investments and financial services for low- and moderate-income individuals and communities and other areas of greatest need. Community Affairs offices are located in Washington, D.C., and each of its five regional offices.

The OTS supports the efforts of its regulated financial institutions in the microenterprise arena through financial and technical assistance to intermediaries that promote microenterprise development. Primarily through the Community Affairs Program, the OTS provides outreach, educational and technical assistance to its regulated financial institutions on community development opportunities, program issues and possible partners. The OTS sponsors regional forums and workshops for local thrift institutions to promote opportunities to build partnerships and support community development initiatives such as microenterprise development.



Case Study:

Community Development Revolving Loan Fund Program

Featuring:

Bethex Federal Credit Union
2B East 170th Street
Bronx, New York 10452
Telephone:
718-299-9400
Fax
718-293-4958
Web site:
www.bethex.org

The Community Development Revolving Loan Fund (Fund) is a source for below-market rate loans and technical assistance grants to low-income designated credit unions. The loans and technical assistance grants are used to improve credit union operations and service to members.

The Office of Community Development Credit Unions was created in 1994 to administer programs designed to establish, strengthen and improve the operations of small and low-income designated credit unions. To secure the 'low-income' designation, a credit union must meet the definition in Section 701.34 of the National Credit Union Administration Rules and Regulations. The section requires documentation that a majority of the credit union's members/households earn less than 80 percent of the national average household income.

Community development credit unions primarily serve residents of distressed and financially underserved areas. Their roles on is to empower their members by teaching them principles of money management and saving. This, in turn, helps spur economic development and revitalization of the local communities.

The Office of Community Development Credit Unions administers the Community Development Revolving Loan Fund. The Fund provides reduced rate loans and technical assistance grants to low income credit unions to assist them in delivering financial services to their members.

The Bethex Federal Credit Union (Bethex), located in Bronx, New York, has approximately $5 million in assets. The Fund has made two below-market rate loans to Bethex totaling $320,000. The loan proceeds provide funds for the credit union's small business lending and gives Bethex and other low-income credit unions the ability to add to members who may not otherwise qualify for a conventional loan.

An article in the April 15, 1999, edition of *The Bronx Times* highlighted Bethex's role in community development. The story illustrated how funds from the Community Development Revolving Loan Fund benefited Bethex member Kimberly Arrington and helped her on the road to owning her own business.

Just over five years ago, Ms. Arrington—a single mother of three—was struggling to get by on public assistance. Today, she is the proud owner of Kimberly's Unisex Salon at 749 East 187th Street in the Bronx. According to Ms. Arrington, commercial banks were not interested in underwriting her loan. Her big break came when she visited South Bronx Overall Economic Development Corporation (SOBRO) and was referred to Bethex.

Bethex advised Ms. Arrington during the business loan application process, assisted her in gathering all the necessary financial information, and even lent a hand in purchasing furniture for her salon. She attended a basic business training course through the Entrepreneurial Assistance Program at SOBRO, courtesy of Bethex.

Bethex has worked closely with Ms. Arrington from the very beginning. Even after Bethex approved her business loan, its support and encouragement continued. Ms. Arrington has now been in business for over a year. When her business hit a seasonal slump, Bethex provided a business loan consultant. The consultant services, made possible by a grant from Citicorp Foundation, helped Ms. Arrington reorganize her books, review her marketing and organizational structure, revise certain business strategies and work out miscellaneous financial issues.

Bethex is fortunate to have the on-site volunteer services of an AmeriCorps*VISTA program member, who assists loan recipients from business start-up to day-to-day support. The AmeriCorps*VISTA member serves as a liaison between the credit union and the microentrepreneur. Working as a team with the credit union's business loan consultant, the AmeriCorps*VISTA member provides valuable input to the financial side of the project. Since small business support is a primary focus of the AmeriCorps*VISTA member's service at Bethex, the member can devote the hours and energy necessary supporting the microentrepreneur.

Ms. Arrington is the first in her family to own a business. After a year in operation, she now has three employees—an indication of her success. "Bethex really helped make my dream come true," she said.

Results

Bethex began focusing on small business development in its community around 1989. At that time, the credit union had under $1 million in assets and received few grants. Its first small business loan of $2,000 went to a woman who invested in a hot dog wagon. Through hard work and cooperation between the credit union and its members—made possible by a unique blend of federal funds, AmeriCorps*VISTA volunteers and private grants—Bethex has developed a program that benefits all concerned. Through funds made available by the Community Development Revolving Loan Fund, Bethex has been able to build a successful, inclusive program aimed at potential microentrepreneurs.

Key Players and Their Contributions

Bethex Federal Credit Union
The Bethex Federal Credit Union—a community-based financial cooperative—is a non-profit organization whose mission is to serve the needs of its members. Like a bank, the credit union offers its members many financial services such as savings accounts, checking accounts, credit cards and multiple loan products. Through its emphasis on microenterprise, Bethex helps build a stable community by lending money and providing technical assistance to microentrepreneurs. Members and employees are actively encouraged to patronize the microentrepreneurs—this emphasis provides additional incentive and support.

South Bronx Overall Economic Development Corporation (SOBRO)
The South Bronx Overall Economic Development Corporation (SOBRO) is a non-profit, grant-supported community development, job education and training firm. It was founded on the belief that the problems of abandonment and poverty in the South Bronx must be addressed by providing job skills and bringing business—and, therefore, jobs—back to the community. SOBRO provides technical, financing and consulting assistance to local companies. Its workshops, seminars and small business training are a cornerstone of microenterprise development in the Bronx.

AmeriCorps*VISTA
AmeriCorps*VISTA members volunteer to work in disadvantaged communities full-time for one year. Members are assigned to local public and private non-profit organizations and work toward meeting community needs determined by the community.

Funding: Sources and Uses

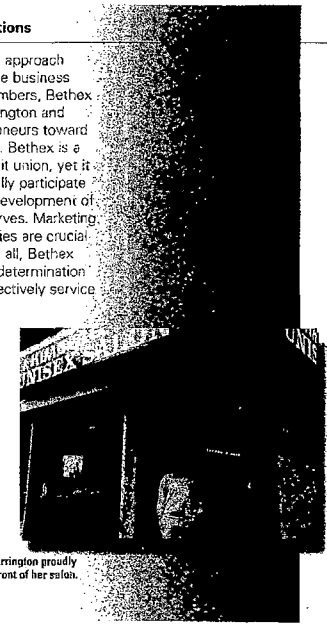
National Credit Union Administration
Congress established the Community Development Revolving Loan Fund in 1979 through a $6 million appropriation aimed at stimulating economic development in low-income communities. In 1986, the National Credit Union Administration (NCUA) was charged with sole administration of the Fund. The NCUA Board adopted amendments to Part 705 of NCUA Rules and Regulations on September 16, 1987, and began making loans/deposits to participating credit unions in 1990. Since that time, the revolving loan fund has generated nearly $22 million in loans. Congress recently appropriated an additional $4 million to the Fund, raising its assets to nearly $12 million.

AmeriCorps*VISTA
AmeriCorps*VISTA has been meeting the needs of low-income communities since 1965, when President Lyndon B. Johnson established it as "Volunteers in Service to America" (VISTA). VISTA became part of AmeriCorps in 1993. The Corporation for National Service (located at 1201 New York Avenue, NW, Washington, D.C. 20525) oversees the AmeriCorps*VISTA program, which is Congressionally funded through the Domestic Volunteer Service Act *(42 U.S.C. § 4950 et. seq.)*.

Citigroup Foundation
A grant from Citigroup Foundation provides the funds for a business loan consultant to assist microentrepreneurs on an individual, as-needed basis. Available support includes marketing and organizational assistance.

Special Considerations

Through a hands-on approach aimed at building the business strengths of its members, Bethex has guided Ms. Arrington and other microentrepreneurs toward reaching their goals. Bethex is a relatively small credit union, yet it is able to successfully participate in the growth and development of the community it serves. Marketing and outreach activities are crucial in this effort. Above all, Bethex has the desire and determination to find a way to effectively service its loan applicants.



Kimberly Arrington proudly stands in front of her salon.

Case Study:

Capital Works™

Featuring:
Capital Works

YWCA of New Castle County
215 King Street
Wilmington, Delaware 19801
Telephone:
302-658-7161
Fax:
302-658-7547
Web site:
www.microbusinesschamber.com

Capital Works provides microenterprenuers across Delaware access to capital and developmental training.

Background and Overview

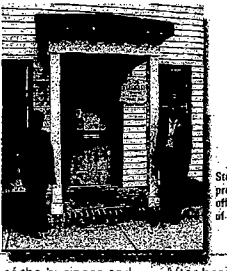
Capital Works is a replica of Working Capital, the largest microloan program in the United States and the 1997 recipient of the first Presidential Award for Excellence in Microenterprise Development.

With Working Capital as a model, the YWCA of New Castle County, Delaware, and the First State Community Loan Fund partnered in 1994 to serve the needs of small community-based businesses in the state. Through the partnership, Capital Works was born. Capital Works provides loans to a wide spectrum of microentrepreneurs including caterers, day care centers, seamstresses, screen printers and computer specialists. It also supports home businesses, storefront businesses and street vendors.

When it began, Capital Works was supported by grants from Delaware's Economic Development Office and the United States Department of Agriculture, with the state of Delaware providing the core funding. A grant from the Rural Business-Cooperative Service of the United States Department of Agriculture allowed Capital Works to expand from northern Delaware through the rest of the state. Capital Works has also solicited volunteer contributions from local banks, which give needed support for program operations.

Microentrepreneurs can take advantage of Capital Works' opportunities through two different lending programs: Team Success and Owner Option.

Any self-employed business owner can apply to participate in the Team Success Loan Program. For most participants, a Team Success loan is their first business loan. Team Success loans help self-employed entrepreneurs with



Starr Hargraves (right) proudly shows her new office to Brenda Whitehurst of Capital Works.

limited financial resources build a credit history, expand their business network, obtain loans and increase business-related skills.

As the name implies, Team Success is a peer-based microenterprise-lending program in which business owners work in teams of 3 to 10 members. Each team, self-selected and self-directed, acts as a support group, a lending committee and a networking vehicle. It elects its own officers, develops by-laws, and meets regularly to share insights, talents, skills and experiences.

The program is structured to inspire both individual and group achievement. Members have access to loans of $500 to $6,000 in set increments. Among other things, a participant must successfully complete successive business-training modules—with topics ranging from basic business recordkeeping to accounting analysis—to satisfy the loan requirements at each level.

The individual's success is tied to the group. Each group member's ability to borrow is frozen if one member falls behind on loan payments. The group support helps ensure that loan payments are made timely. Moreover, through shared responsibility and mutual support, Team Success members build their businesses through access to additional capital, and enhance their credit standing by making regular loan payments.

The Owner Option Loan Program is designed to increase economic opportunity to more established microbusinesses in Delaware. Microentrepreneurs may borrow from $1,500 to $10,000, depending on their ability to meet the lending criteria. A Capital Works staff member conducts an assessment of the business and a site visit; an acceptable credit history and collateral are required. A loan committee of senior YWCA and First State Community Loan Fund staff reviews the loan application. In the Owner Option program, microentrepreneurs receive an incentive (a discount on their loans' annual percentage rates) to participate in the programs of the MicroBusiness Chamber of Commerce, the YWCA's sister microenterprise initiative. Capital Works operates in conjunction with the MicroBusiness Chamber of Commerce to offer networking events, educational seminars, Internet training and marketing assistance.

After hearing about Capital Works, Starr attended an informational meeting in January 1999. There she met two other hopeful microentrepreneurs, and they formed a loan group. After she completed the program's group development phase in March 1999, Starr received her first loan, quit her job and opened her own office.

During its first year, Starrlite Travel & Tour grossed sales exceeding $40,000. Starr has hired full- and part-time employees, and is purchasing her own 21-seat motor coach for tours. She continues to participate in Capital Works and has advanced three steps on the loan-eligibility ladder.

Starr attributes her success to her spiritual relationship, her family and Capital Works. Interaction with other Capital Works members gives Starr the support she needs in marketing and building a customer base. Her first brochure is being developed and printed by a fellow Capital Works member. Starr says, "It just keeps getting better and better."

"It just keeps getting better and better..."

Starr Hargraves

The combination of Capital Works and the MicroBusiness Chamber of Commerce at the YWCA represents an innovative model for microenterprise development. The availability of both group and individual microloans designed to meet the immediate financial needs of businesses, coupled with access to market strategy, presents a unique microloan strategy. Supported by business growth through training, technical assistance, procurement and links to the larger business community, these programs have become a national model of excellence and a mainstay for Delaware-based microbusinesses.

Results

In 1998, the Delaware Economic Development Office surveyed 100 businesses participating in Capital Works to determine whether the program was having a positive impact on business operations. The survey focused on issues and challenges reported by participants when they joined the program. According to the survey results:

- 96% reported better access to business funding;
- 94% reported the ability to develop a sound business plan;
- 85% reported increased access to outside business resources;
- 85% reported a greater ability to find other businesses to address common challenges or to pursue joint opportunities;
- 71% reported better access to supplies and equipment;
- 70% indicated increased traffic to their business;
- 70% indicated an average monthly sales increase of $1,250 or more; and
- 40% increased their line of products/services.

Key Players and Their Contributions

YWCA of New Castle County, Delaware

The YWCA manages and operates the Capital Works program, and is the starting point for program participants. The agency works in the community, recruits program participants and volunteers, provides training sessions and facilitates Team Success loan groups.

Capital Works works closely with the YWCA's other microenterprise initiative, the MicroBusiness Chamber of Commerce *(www.microbusinesschamber.com)*.



Starr books another tour.

This is a collaborative effort among the YWCA of New Castle County, the U.S. Small Business Administration's Office of Women's Business Ownership and the Delaware State Chamber of Commerce. The MicroBusiness Chamber of Commerce is designed to provide services to microbusinesses with five or fewer employees. In addition to the educational and networking opportunities, members enjoy access to membership benefits of the State Chamber of Commerce and the YWCA.

The First State Community Loan Fund

The First State Community Loan Fund is a not-for-profit community development financial institution that specializes in supporting small businesses, microenterprises and affordable housing in the state of Delaware. It provides funding for the Capital Works loan programs and furnishes all administrative support for outstanding loans.

Funding: Sources and Uses

The Rural Development, Rural Business-Cooperative Service of the United States Department of Agriculture plays a vital role in supporting Capital Works and similar microenterprise programs throughout the country. Its Rural Business Enterprise Grant Program assists non-profit corporations, public bodies and federally recognized Indian tribal groups to develop small and emerging business enterprises. Grant funds provide technical assistance and are used to establish revolving loan programs to small, emerging or home-based businesses that are typically under-served and lack sufficient access to capital for their business needs.

Funding from federal, state and local sources is used for all aspects of Capital Works' operations including staffing, administrative support, program supplies and materials. Capital Works receives a Rural Business Enterprise Grant from the United States Department of Agriculture, and a grant from the Economic Development Administration, United States Department of Commerce. Annual funds on the state level designated for microenterprice development are allocated from the Delaware Economic Development Office.

At the local level, Bank of America and PNC Bank donate office space and equipment for Capital Works in Kent County and Sussex County, respectively. The majority of area banks are solicited annually for contributions. In 1999, the following financial institutions made donations ranging from $5,000 to $35,000:

- Banker's Trust Delaware
- Chase Manhattan Bank
- First Omni Bank
- Greenwood Trust
- Morgan Guaranty Trust
- PNC Bank
- Traveler's Bank
- Wilmington Savings Fund Society, FSB

Special Considerations

Capital Works attributes its success across Delaware to two main factors: the unique services provided to microenterprises, and the strong collaborative efforts of the MicroBusiness Chamber of Commerce and its partners. With the powerful combination of Capital Works and the MicroBusiness Chamber of Commerce, microbusinesses have an array of resources at their fingertips to help them succeed. No matter what a business's stage of growth or development, it can become even more successful through programs offered by the YWCA.

Case Study:

The Cooperative Business Assistance Corporation Microloan Program

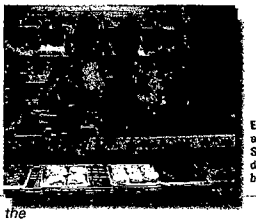
Featuring:
Cooperative Business Assistance Corporation
433 Market Street
Suite 201
Camden, New Jersey 08102
Telephone:
856-966-8181
Fax:
856-966-0836
Web site:
www.hometown.aol.com/cbac2000/page/index.htm

The Cooperative Business Assistance Corporation is a private nonprofit organization that provides business financing and creates jobs in the South New Jersey region.

Background and Overview

The Economic Development Administration's Revolving Loan Fund provides economically distressed communities with a flexible and continuing source of capital. Coupled with other economic development tools, the program contributes to long-term economic stability and growth in the communities it serves. Grants to capitalize or recapitalize a Revolving Loan Fund are awarded to local governments, regional development organizations and states. Revolving Loan Fund financing is expected to be strategically targeted to those industrial sectors, businesses and investments that, individually and collectively over time, will increase the competitiveness of local industries and individual businesses and strengthen the economic base.

The Cooperative Business Assistance Corporation (CBAC) in Camden, New Jersey, is a certified Community Development Financial Institution providing market or below-market rate business loans and technical assistance to small businesses located in or moving into the South Jersey region, primarily Camden, Gloucester and Atlantic Counties. The CBAC also encourages private investment in the city of Camden by leveraging public funds with private funds it obtains through loan participations with partner banks in the area.



Elizabeth Santana and her husband, Salin, with their display of delicious baked goods.

The CBAC began offering microloans in 1993 with funding from the Economic Development Administration. The portfolio has grown to over $800,000. The corporation recently employed an accounting assistant to oversee the bookkeeping and financial accounting of its microloan borrowers, which helps the businesses become more successful and prevents possible loan losses to the revolving loan fund. The CBAC can now be more proactive and identify potential accounting problems before they negatively impact the microbusinesses.

The CBAC offers six different loan products to meet the needs of urban businesses located primarily in Camden, New Jersey. Its microloan programs are especially suited to small start-up or smaller businesses with financing requirements up to $30,000.

Santana's Bakery, located in a small shop on River Road in Camden, is one of many microloan fund success stories. The bakery's owner, Elizabeth Santana, began working with the CBAC in the fall of 1998. Her first $10,000 microloan purchased baking equipment and furnished working capital to start her Hispanic bakery. After six months of increasing sales, Ms. Santana received a second loan of $8,000 to buy a larger oven for the bakery.

Over the first two years, the business's annual sales grew from $70,000 to $152,000. In spring 2000, Ms. Santana began expanding her business again. Her goal is to boost sales yet again by selling bread to stores and restaurants wholesale. Already she has 12 daily stops for her products. Ms. Santana is guided by the training and marketing support she has received through the CBAC's assistance. She has calculated that "578 loaves is breakeven for the new wholesale store." Ms. Santana's success is also benefiting others. With bakery sales increasing, Ms. Santana found she needed more help. The bakery now has four employees, and is off to an ambitious start.

Results

Since the inception of the CBAC's microloan program, the corporation has funded 79 microloans, totaling over $1 million, with capital from the Economic Development Administration and additional matching funds. The CBAC's current microloan portfolio contains 42 loans valued at over $400,000. To date, 85 percent of the microloan borrowers are still in business, and 69 percent of the microloans have been made to minority- and women-owned businesses.

Key Players and Their Contributions

The Cooperative Business Assistance Corporation partners with seven area banks that provide additional loan capital, make contributions toward meeting administrative expenses and promote private investment through loan participations. Bank employees serve on the CBAC's Board. The partner banks are Commerce, First Union National, Summit, Hudson, Sun National, Mellon, and PNC.

The corporation also provides access to technical, accounting, and marketing support for its business borrowers through the services of the Latin American Economic Development Association, New Jersey Economic Development Authority, Empowerment Zone Business Services, and Regional Small Business Development Corporation. The CBAC works in partnership with these organizations in teaching and mentoring entrepreneurs, developing business plans and obtaining funding for the businesses.

Funding: Sources and Uses

In addition to the funds provided by the Economic Development Administration of the United States Department of Commerce, the Cooperative Business Assistance Corporation receives additional funding for its microloan and other loan pools from various organizations and foundations, including the:

- United States Department of Housing and Urban Development
- United States Small Business Administration
- United States Department of Treasury
- New Jersey Fund for Community Economic Development, and
- New Jersey Urban Enterprise Zone Authority.

Special Considerations

Santana's Bakery's success is representative of many clients of the Cooperative Business Assistance Corporation. Elizabeth Santana has been able to move from working for others to supporting herself, and employing others, in a very short time.

Many microloan clients are, however, unable to support themselves on start-up business revenues until their fourth or fifth year of operation. Some CBAC clients choose to operate part-time businesses for the life of the loan, and beyond. Others, like Ms. Santana, find they are able to be self-supporting very quickly and are natural entrepreneurs.



Sallie Santana's talents as a baker contribute to the bakery's success.

501

Case Study:

Coastal Enterprises, Inc. Refugee Microenterprise Programs

Featuring:
Coastal Enterprises, Inc.
P.O.Box 268
Wiscasset, Maine 04578
Telephone:
207-882-7552
Fax:
207-882-7308
Web site:
www.ceimaine.org

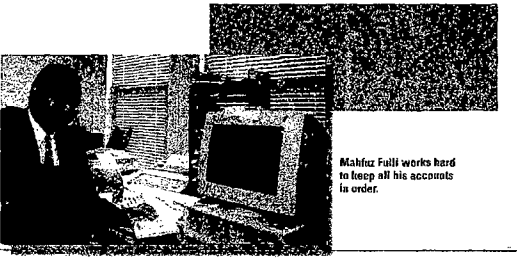
To assist refugees in becoming economically self-sufficient through self-employment and to help refugee communities in developing employment opportunities and capital resources by providing business training, technical assistance and credit access.

Background and Overview

The Office of Refugee Resettlement (ORR) began supporting microenterprise programs for refugees in 1991. The office provides grants to mutual assistance associations, voluntary resettlement agencies, microenterprise organizations, other community-based organizations and state governments. Most of the refugees serviced by the program have limited English language proficiency, little or no established credit, few if any assets, and little or no American business experience. The program has assisted over 800 microbusinesses, more than 600 of which are newly established businesses. More than 4,000 refugees have gained entrepreneurial skills and knowledge through the program.

ORR also provides a grant to the Institute for Social and Economic Development (ISED), which helps organizations that receive ORR microenterprise grants to maximize their program performance. It works with organizations on program design, effective linkages with the refugee community, and organizational issues through site visits to the agencies, and telephone and e-mail consultation. ISED also facilitates shared learning among the grantee agencies in semiannual workshops and computer linkages via a listserv.

Coastal Enterprises, Inc. (CEI) is a private, non-profit community development corporation and community development financial institution located in Maine. Throughout the state, CEI provides financing and technical assistance in developing medium, small and microenterprises; community facilities, such as child care; and affordable housing. In 1991, CEI received its first funding from ORR for the New Americans Microenterprise (NAME) Project.



Mahfuz Fulli works hard to keep all his accounts in order.

Project NAME was a collaborative effort involving CEI, Catholic Charities Maine Refugee Resettlement Program, Portland Adult Community Education, and Maine Centers for Women, Work and Community. Program services included classroom training, one-on-one technical assistance and access to credit through CEI and other sources.

CEI continues to assist the refugee community in the greater Portland area through its current program, StartSmart, which operates in partnership with Catholic Charities Maine Refugee and Immigration Services and Casco Bay Partnership for Workplace Education. Like Project NAME, StartSmart promotes the economic self-sufficiency of refugees with literacy-sensitive group training in business plan development and business management. Individual business counseling is also offered to address specific issues. Support for new microentrepreneurs does not end with the completion of their initial business training. StartSmart staff work diligently to develop long-term relationships with clients by providing ongoing support, training and access to capital and loans.

Since 1991, 164 refugees from over 20 countries have received business training and technical assistance through CEI, resulting in the start-up, strengthening or expansion of 35 businesses. Seven refugee-owned businesses have received nine loans totaling $42,950.

The experience of one young Ethiopian refugee illustrates the impact of this type of project. Mahfuz Fulli approached CEI in 1992 with two business ideas. He participated in business training and learned to assess the feasibility, viability, risks and rewards of his business ideas. Based on this assessment, he decided to open a commercial cleaning business. At the business-training graduation, he was introduced to a member of the Project NAME Advisory Committee who had a residential cleaning business and offered him support. She became his mentor and helped him develop industry-specific expertise. She also introduced him to the owner of a commercial cleaning business, whom Mahfuz was able to "job shadow" for three months learning through experience how to run a cleaning business.

Mahfuz started his business on a part-time basis while continuing his employment. Working with borrowed equipment, he reached a level of $18,000 in sales per year. It became apparent that he would need to acquire his own equipment if his business was to expand. In 1993, he applied to CEI for a $6,500 loan. He had a good plan for making the transition from a part-time to a full-time business. However, he had no credit history and inadequate collateral. CEI granted the loan. The business continued to grow, and in July 1996 Mahfuz received a second loan of $15,000 to finance his business expansion. In the intervening period, he successfully made the transition to a full-time business, which became his sole source of support. He created one part-time and two full-time jobs for members of his community. He also obtained a mortgage from a local financial institution to finance the purchase of a house, brought over his fiancé from his native Ethiopia and started a family.

With hard work and substantial support from CEI, Mahfuz was able to grow his business. He built its internal capacity, while increasing the scale and complexity of contracts and maintaining a competitive advantage by offering quality services at a reasonable price. His business continues to flourish. He is an active member of the business community and remains both a participant and supporter in CEI's refugee microenterprise program.

Results	Key Players and Their Contributions		
With support from the Office of Refugee Resettlement, CEI has translated its experience in providing microenterprise development services into a program targeted to refugees. CEI continues to provide assistance to refugees interested in microenterprise as a path to economic self-sufficiency. In addition, CEI has been able to leverage ORR support with private funds and to expand its services to the immigrant community.	**Coastal Enterprises, Inc.** Coastal Enterprises, Inc. is a private, non-profit community development corporation. Its primary activity is providing financing and technical assistance to small businesses that offer income, employment and ownership opportunities to low-income people in Maine. CEI has been actively involved in microenterprise development since the mid-1980's; it has provided training and technical assistance to 10,000 new and existing entrepreneurs and provided roughly $7 million in loans to more than 500 microbusinesses. CEI is the lead agency in coordinating the work of collaborating organizations, and providing training, technical assistance and access to business financing.	**Catholic Charities Maine Refugee and Immigration Services** Catholic Charities Maine Refugee and Immigration Services (RIS) (formerly Refugee Resettlement Program) is the resettlement agency in Maine and serves approximately 200 newly arrived refugees each year. RIS provides support in outreach and recruitment, case management, interpreter services, consultation in cultural issues and critical linkages to employment opportunities for individuals who choose not to pursue self-employment.	**Casco Bay Partnership for Workplace Education** Casco Bay Partnership for Workplace Education (CBP) is a regional resource for participatory, learner-centered workplace education. CBP has expertise in adult education, including working with students who are linguistically and culturally diverse. CBP provides assistance in ensuring that training and project materials are culturally sensitive and linguistically appropriate to the population it serves.

		Funding: Sources and Users	Special Considerations
Institute for Social and Economic Development The Institute for Social and Economic Development (ISED) consults with the CEI refugee microenterprise program. During annual site visits, ISED staff members speak with refugee clients and meet with the project team to discuss implementation progress and issues, provide insights, and share the approaches various other grantee agencies are using to address problems that CEI is facing. CEI project team members attend the semi-annual ORR microenterprise grantee workshops. The team has access to other microenterprise programs via the grantee listserv and to ISED consultation services via telephone and e-mail.	**Maine Centers for Women, Work and Community** Maine Centers for Women, Work and Community provides a range of employment and career development services. It created a model curriculum for an intensive business planning training program that was used as the basis for the training provided in Project NAME. **Portland Adult Community Education** Portland Adult Community Education (PACE) offers a wide range of vocational and educational training to adults throughout the greater Portland area. PACE provides vocational education for refugee and immigrant populations and offers classes in "English as a Second Language."	**Office of Refugee Resettlement** The Office of Refugee Resettlement is authorized under the Immigration and Nationality Act to award grants; contract with public and private, non-profit agencies to help refugees obtain the skills necessary to reach economic self-sufficiency; and make loans for the purpose of carrying out its responsibilities. Funding from ORR covers the cost of training and technical assistance. It was also the source of capital for loan funds in CEI's refugee microenterprise programs.	By providing funding for microenterprise development targeted specifically to refugees over the past nine years, ORR has achieved several goals: It has opened opportunities for refugees to become economically self-sufficient. It has leveraged additional funds from local banks and other funding and business financing sources. It has also encouraged the entire microenterprise industry in the United States to recognize the refugee segment of the population, stimulating significant activity beyond its funding.

Case Study:

Working Smart

Featuring:

Metropolitan Development and Housing Agency

701 South 6th Street
Nashville, Tennessee 37206
Telephone:
615-252-8505
Fax:
615-252-8559
Web site:
www.nashville.org/hndfra

The city of Nashville seeks to assist residents of the Nashville Enterprise Community, particularly residents of public housing, in achieving economic self-sufficiency by providing training opportunities and other related services that pertain to small business and microenterprise development. The Nashville Enterprise Community is comprised of several census tracts in South Nashville, designated by the United States Department of Housing and Urban Development in 1994 for economic and community development.

Background and Overview

The signature piece of the Nashville Enterprise Community's economic development strategy was the construction of an economic development center—the Southside Enterprise Center (Center). It was built within the Nashville Enterprise Community and houses a variety of economic development and community services programs. Housing the Center's services in a neighborhood facility allows more efficient service delivery and coordination, and is more convenient for Enterprise Community residents. Through the Nashville Enterprise Community Program, funds are channeled for economic development in low- and moderate-income neighborhoods.

The Center opened its doors the first week of August 1996, and is fully leased to non-profit organizations, government agencies and several microenterprises. A variety of job-related services is available at the Center. For example, residents can participate in a life skills/personal development training course, enter a job or entrepreneurial training program, and receive placement assistance.

One of the more successful programs operating out of the Center is the Metropolitan Development and Housing Agency's "Working Smart" program. Working Smart outfits people with skills, technical help and money to start a microbusiness through an eight-week entrepreneurial training program offering classroom training in topics ranging from accounting and taxes to sales. Training focuses on both personal development and business development. Participants are schooled in such areas as self-motivation, conflict resolution, image building, finance and marketing fundamentals, personnel management, and customer service. Participants also prepare professional business plans.

The foundation of Working Smart's growth in the microenterprise area was provided through a grant from the Department of Housing and Urban Development (HUD) to Nashville's Metropolitan Development and Housing Agency. Five local banks also donated funds for a revolving loan pool and, in the program's infancy, additional funds needed for training participants. The revolving loan fund is available to program graduates with sound business ideas. At the start of the program, participants present their ideas to a loan committee. The loan committee is comprised of staff from the Metropolitan Development and Housing Agency and the Entrepreneur Guidance and Training, Inc., as well as various lender representatives. The committee provides feedback on the idea's feasibility as well as the applicant's credit history and likelihood of qualifying for a loan. Loans are granted in amounts up to $6,000 for startup costs at the prime rate, plus 2 percent.

Nashville resident Nella Pearl Frierson could not be more pleased with the Working Smart program. This participant combined the business skills she learned in the program with initiative, ingenuity and braiding skills taught by her mother. Ms. Frierson is now the proud owner of Pearl's Braid Shop in South Nashville. Ms. Frierson, a single mother of five, depended on welfare payments for about 15 years before discovering Working Smart. She supplemented her welfare payments by braiding the hair of customers who came to her home. Working Smart taught Ms. Frierson the necessary business skills and the basics of setting up and operating a business. The program even assisted her in finding commercial space for her new venture.

Upon graduating from Working Smart, Ms. Frierson left her front porch and opened her own shop on Lewis Street in Nashville. She built a solid client base and soon found her business had outgrown her work space. With additional assistance from Working Smart, Ms. Frierson relocated to a larger shop at the Southside Enterprise Center on Lafayette Street, and her clients followed. By applying the business skills she acquired in the Working Smart program, her business expanded and others in the community are benefiting from her entrepreneurial skills. Pearl's Braid Shop now employs at least two part-time employees, and its gross annual earnings continue to grow.

Ms. Frierson has come a long way—from braiding hair to supplement her welfare checks in a public housing project, to owning a thriving business and her own home. Ms. Frierson's dreams have come true, thanks to Working Smart and the Metropolitan Development and Housing Agency's home ownership training and lease purchase program.

Ms. Frierson's story is just one example of Working Smart's successes, but it exemplifies what the program can achieve for its participants—and the community.

Results

HUD has recognized the Nashville Enterprise Community as a top national performer. Working Smart graduates have been profiled in the local press and in the *New York Times*. More than 96 people have completed the Working Smart training program, and 37 startup loans have been made. These businesses are now providing services and goods to their communities, including hair care, landscaping, baked goods, auto detailing, computer services and clothing.



Working Smart graduates successfully complete an 8 week micro-business training program.

Key Players and Their Contributions

Metropolitan Development and Housing Agency
The Metropolitan Development and Housing Agency is the local agency responsible for administering the Enterprise Community and Community Development Block Grant programs in Nashville-Davidson County. For the Working Smart program, the Metropolitan Development and Housing Agency contracts with Entrepreneur Guidance and Training, Inc. to operate the required training program, and to service the loans. The Metropolitan Development and Housing Agency manages the loan funds and the loan portfolio.

Entrepreneur Guidance and Training, Inc.
Entrepreneur Guidance and Training, Inc. operates the training program required for all Working Smart participants, and services the loans to participants. It advertises the Working Smart program in the community to recruit potential participants, develops the training modules and conducts all classroom and workshop sessions. Entrepreneur Guidance and Training, Inc. also provides technical assistance to Working Smart graduates throughout the initial stages of their new businesses.

Five Nashville banks provide financial contributions and many valuable services to Working Smart. Through the program, banks can have a positive impact on a portion of the community they might not otherwise reach through conventional small business lending. As illustrated by their comments below, the banks are an integral part of Working Smart, and their enthusiasm is unmistakable.

AmSouth — AmSouth's financial support is just one element of its successful partnership with the Working Smart program. AmSouth also provides ongoing technical assistance, board and committee oversight, and staff training. Its many volunteers have received a personal sense of satisfaction seeing the Working Smart program participants grow into successful business owners. AmSouth participates in numerous microenterprise programs across its nine-state market area. Working Smart serves as AmSouth's prime model of success, efficiency and true community development through a partnership that brings the diverse resources of a community together to improve its quality of life.

Bank of America — Bank of America has participated in Working Smart since the program's inception. Following its initial cash pledge of $50,000 over a five-year period, Bank of America branched into other areas of support. It furnishes classroom training materials, and a Bank of America employee volunteers to serve on the program's Loan Committee. Working Smart participants are also welcome at the Bank of America-sponsored Small Business Resource Center. This separate resource supports the Working Smart program with business planning assistance and guidance. Working Smart provides Bank of America with an avenue of support for the true small business entrepreneur in his or her quest to succeed.

First Union Bank — First Union makes an annual financial contribution to the Working Smart loan pool, and its representatives serve on the Selection and the Loan Review Committees. The Selection Committee is a unique

part of Working Smart. Candidates present a business idea to this committee, whose members draw on their banking and community experiences to point out the proposal's strengths and weaknesses and give direction in developing a business plan. The Selection Committee also reviews a candidate's credit report and, if necessary, makes suggestions to improve credit standing prior to the candidate applying for a loan. Working Smart is one of over 30 microlending initiatives supported by First Union throughout its operation region.

SunTrust Bank — SunTrust is an active participant on Working Smart's Loan Advisory Council, thanks to the volunteer services of its employees. The Loan Advisory Council interviews prospective participants and reviews their proposed business plans, personal financial condition and credit bureau reports. Bank employees also teach classes on various banking topics. SunTrust Bank makes annual financial contributions in support of the day-to-day operations of the Working Smart program, as well as to the Metropolitan Development and Housing Agency's loan pool.

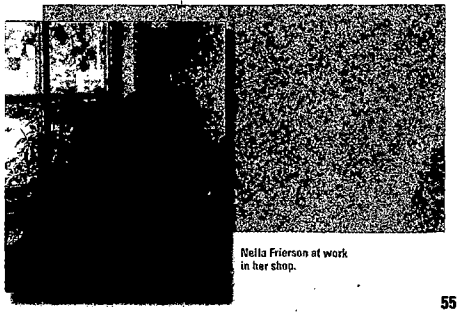
Union Planters Bank — Union Planters Bank is proud to be a continuing participant in Nashville's Working Smart program. Since the program's creation, Union Planters has made annual financial contributions of at least $5,000, and its employees have volunteered their services on various committees. The visible, productive results that Working Smart graduates exhibit on both a personal and business level reward the Union Planter employees for their contributions and efforts. Due to the efforts of banks such as Union Planters, Working Smart graduates have re-established their credit and obtained various financial services from the banks that have contributed to their success.

Funding: Sources and Uses

Funds from HHS Social Services Block Grants and HUD Community Development Block Grants are used for training and other services provided by Entrepreneur Guidance and Training, Inc. The loan fund is comprised solely of contributions from participating Nashville banks. Working Smart participants may borrow a maximum of $6,000 for a three-year term.

Special Considerations

Due to its success, the Working Smart program has been replicated in another area of Nashville, outside of the original Enterprise Community. With the success of the Southside Enterprise Center, two more alert centers have opened in the Enterprise Community. These centers are similar in concept but more focused on the delivery of basic services, including community policing, code inspections, social services and welfare-to-work offices.



Nella Frierson at work in her shop.

Case Study:

Self-Employment Assistance Program

Featuring:
New York State Department of Labor
State Office Campus – Building 12
Room 266
Albany, New York 12240
Phone:
518-485-6176
Fax:
518-457-1413
Web site:
none, at the moment

To offer dislocated workers (those identified as having difficulty becoming reemployed) the opportunity to start their own businesses.

Background and Overview

Congress enacted federal legislation in 1993 authorizing states to offer unemployed individuals assistance in becoming self-employed as an option under the State unemployment insurance program. The Self-Employment Assistance Program—born from the legislation—provides certain eligible individuals the opportunity to start their own businesses while collecting payments equivalent to unemployment insurance benefits.

New York was the first state to establish a Self-Employment Assistance Program. The United States Department of Labor approved the state's plan in 1995, and it has since become a model program for other states.

Participation in a Self-Employment Assistance Program is not automatic. Applicants are chosen if they are identified as likely to exhaust their unemployment benefits for reasons such as they have obsolete skills or occupations, or find themselves the victims of plant shutdowns or mass layoffs. Participants in New York's Self-Employment Assistance Program face long-term unemployment essentially because the job market no longer needs their skills and experience. Many participants were previously employed in professional, technical or managerial occupations.

Potential participants must first fulfill the eligibility and application requirements. For example, applicants must be at least 18 years old, agree to locate their businesses in New York and cannot have received more than 12 unemployment insurance payments in their current period of benefits. Once accepted into the Self-Employment Assistance Program, participants must complete the

program's educational component, which includes at least 20 hours of entrepreneurial training in such topics as starting a business, developing a business plan, marketing strategies, financing and taxes.

Program participants are excused from the unemployment insurance Program's full-time work-search requirement so they can work full-time at starting a business. In lieu of receiving normal unemployment insurance payments, participants receive Self-Employment Assistance payments in the same manner and duration as normal unemployment insurance payments. However, benefit extensions are not available to Self-Employment Assistance participants.

Victoria Fox of Syracuse, New York, is one example of the thousands of formerly unemployed workers who have successfully completed the Self- Employment Assistance Program. Victoria had been employed for many years by a company that underwent a corporate downsizing and laid off over 700 employees, Victoria among them. While standing in line to file for unemployment insurance benefits, Victoria pictured herself on the road to fulfilling a lifelong dream—a thought not many would have under such dire circumstances, but one shared by three of her unemployed co-workers.

The four former co-workers heard about the Self-Employment Assistance Program in a reemployment workshop, and decided to take a chance starting their own business. Victoria applied and was accepted to the Self-Employment Assistance Program, then received counseling and technical assistance through the state of New York's Small Business Development Center (a process she says was very helpful). While starting her business, she had the added support of 26 weeks worth of unemployment insurance benefits.

Today, five years later, Victoria and her co-workers are still in business. Their company, Accessibility Solutions, Inc., is a provider of a wide range of accessibility lifting equipment for the disabled. Its products help break the barriers caused by stairways and entranceways, both indoors and out. Victoria is the President of Accessibility Solutions, Inc. and her co-workers are the company's officers. Each person contributes his or her particular area of expertise.

Accessibility Solutions' 1999 receipts far surpassed $1 million. Victoria takes great pride in having faced the challenge of long-term unemployment by establishing her own business, and creating job opportunities for others. The unemployment insurance office is a distant memory for Victoria these days, but she will always be grateful for being given the chance to create Accessibility Solutions, Inc. while on unemployment insurance benefits.

Victoria is one example of a company grossing well over $1 million in 1999, but many other program participants have had similar successes. Even those earning less are thrilled and proud to have an enterprise that they started themselves.

Results

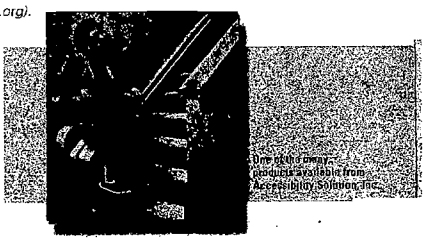
In New York state, nearly 8,000 participants have completed the Self-Employment Assistance Program. Sixty-eight percent have started a small business that has become their primary source of income. Another 12 percent have started a small business that they supplement with a wage and salary job. And 11 percent have found wage and salary employment resulting from their participation in the Self-Employment Assistance Program. These results have been consistent for every year that surveys have been sent to former participants. Businesses have emerged in every region around the state, and in every conceivable industry and service. The types of businesses range from computer services, to farms, to auto dealerships and banks. The top performing business grossed well over $2 million in 1999, and employed 16 persons.

Key Players and Their Contributions

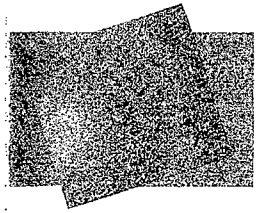
New York State Small Business Development Center
In every region around the state, the local Small Business Development Center partners with the New York Department of Labor to provide workshops, training and counseling. The tremendous success of the Self-Employment Assistance Program is a direct result of the centers' active participation, which provide free confidential, personalized counseling for both start-up and existing businesses.

Service Corps of Retired Executives
The Service Corps of Retired Executives (SCORE) is a national nonprofit association comprised of over 12,000 volunteers who donate their time to assist aspiring entrepreneurs. SCORE members are working or retired business owners, business executives or operations managers. SCORE provides business counseling, conducts low-cost workshops focusing on various aspects of operating a successful business, and runs a CyberChapter to provide e-mail answers to business questions *(http:\\www.score.org)*.

Cornell University's Cooperative Extension Program
Cornell University runs Small Business Start-up workshops across New York state. The attendance cost is nominal, and often free. Many locations offer specialized services geared toward agricultural businesses.



Internal Revenue Service
The Community Relations Office of the Internal Revenue Service works with New York's Self-Employment Assistance Program to provide free one-day sessions for small business owners. The curriculum covers "everything you need to know" about business practices from the Internal Revenue Service's perspective.



Funding: Sources and Uses

The 1993 federal legislation allowing states to establish a Self-Employment Assistance Program did not include a dedicated funding stream to run the programs. New York state runs its program with a combination of administrative funding from various sources, all administered by the United States Department of Labor.

Unemployment insurance funds are used to pay the Self-Employment Assistance program participants.

Under the Wagner-Peyser Act, the United States Department of Labor is charged with allocating funds to states for establishing and maintaining state employment service offices, which provide a wide range of labor-exchange services and information to job seekers. Under the Act, the funds may also be used for services and activities related to the Self-Employment Assistance Program.

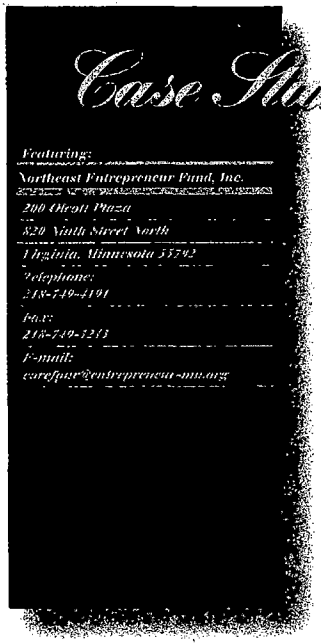
Finally, the United States Department of Labor's Dislocated Worker program provides states with funds for employment and training services to assist dislocated workers in finding new jobs. The program also provides some funds to the New York State Small Business Development Centers to help offset the cost of providing services to Self-Employment Assistance Program participants.

Special Consideration

The New York State Self-Employment Assistance Program has received national recognition. In 1994, the Interstate Conference of Employment Security Administrators presented its top award for innovations in employment, the *Architect of Change Award*, to the New York State Department of Labor. The award included a $25,000 stipend to benefit the program. The Small Business Administration awarded its 1998 *Vision 2000 State Model of Excellence* Award for the outstanding work of the New York State Department of Labor and the New York State Small Business Development Centers for Self-Employment Assistance Program participants.

Case Study:

Northeast Entrepreneur Fund, Inc.



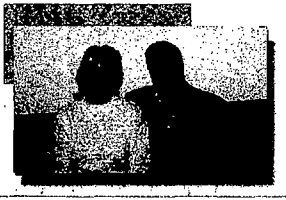
The Northeast Entrepreneur Fund fosters an entrepreneurial spirit and encourages economic self-sufficiency through the growth of small business and self-employment opportunities in northeastern Minnesota.

Background and Overview

The Community Development Financial Institutions Fund (CDFI Fund) designates organizations as Community Development Financial Institutions (CDFIs), which are specialized financial institutions that work in market niches that have not been adequately served by traditional financial institutions. CDFIs provide a range of financial products and services, including mortgage financing for first-time homebuyers, financing for community facilities, commercial loans and investments to start or expand small businesses, loans to rehabilitate rental housing, and financial services needed by low-income households and local businesses. CDFIs also provide services that help ensure that credit is used effectively, such as technical assistance to small businesses and credit counseling to consumers. CDFIs vary by organization type and include community development banks, credit unions, loan funds, venture capital funds and microenterprise loan funds.

The Northeast Entrepreneur Fund is a CDFI created in 1989 to provide loans and guidance to start-up and existing small businesses in northeastern Minnesota. It provides training, technical assistance and financing to microenterprises and small business owners. The Fund serves a predominantly rural region that spans seven counties covering over 20,000 square miles, and has a population of 310,000.

Economic restructuring and permanent job loss during the early 1980s had a devastating effect on the regional economy, which was based on natural resources—primarily iron mining—and tourism. The Northeast Entrepreneur Fund was part of a regional effort to support homegrown companies and diversify the economy of northeastern Minnesota. Its founders recognized that many



Tina and Adam Makela

jobs would not return to the region even when the iron mining industry recovered. So, individuals needed to start their own businesses and become self-reliant. By nurturing small businesses with loans and technical assistance, the Fund hopes to encourage entrepreneurial thinking and create local prosperity and job opportunities.

Customers of the Northeast Entrepreneur Fund are typically unemployed or under employed individuals who lack access to traditional business development resources, but have the desire to start or expand businesses to provide for them and their families. The Fund offers loans to existing and prospective small business owners using a flexible array of loan products. It also provides business-development services such as one-to-one consulting, technical assistance and training programs.

Products and services of the Northeast Entrepreneur Fund are not restricted to low-income individuals, but the Fund has succeeded in attracting low-income individuals through its marketing activities and income-based fee schedules. Individuals without access to traditional sources of credit due to poor credit history, lack of business experience, or insufficient equity or collateral are also eligible for funding. For businesses that require funding exceeding microloan amounts (average size: $7,785), the Northeast Entrepreneur Fund has expanded its lending limits to $100,000 and partnered with other lenders to address these unmet credit needs.

Adam Makela and his wife, Tina, are one of the many couples in northeastern Minnesota who have attained economic self-sufficiency because of the support and services offered by the Northeast Entrepreneur Fund. Adam started and ran their adult foster care business from a rental home in 1996. The Northeast Entrepreneur Fund, in conjunction with a bank, funded the couple's mortgage to build a new home in 1997. Adam describes how the Northeast Entrepreneur Fund counseled them and helped their business survive:

"My wife, Tina, and I saw a great opportunity to be self-employed by providing a relatively new and necessary service to our community. With a thousand dollar credit card we rented a large home and started our adult foster care business. We lived in the new home with our two children and operated the business in the same site. Our business took off almost immediately.

"We soon found out that without a two-year track record, we did not qualify for the necessary financing to keep our business going. I went to the Northeast Entrepreneur Fund. A year later with a lot of hard work, some 'creative financing,' and a loan from NEF, we built a home to meet the demands of our business. Our business was a success after one year.

"Our second year was a different story. Business did not do as well as expected, and with our heavy debt load (partly due to a few bad decisions on my part), it was a struggle to survive. The stress of the business, among other things, put a heavy strain on our personal and family life. We felt our only option for dealing with our financial issues was to file for bankruptcy. We went to consumer credit counseling and talked to a bankruptcy attorney... no one seemed to offer other choices. I called the Northeast Entrepreneur Fund to let them know that we would be filing bankruptcy. They suggested I come in to talk about the alternatives and to explore all the possible options. I thought they were crazy.

"The Fund helped me identify my choices..."

"The Fund helped me identify my choices. I never dreamed that keeping the business would not only be possible, but would be the wisest option. I worked with my creditors and developed a debt service plan. I redesigned how the business would operate and how cash would flow. I got another small loan from the Entrepreneur Fund for some needed home finishing work. Not only did we save the business from bankruptcy, cash flow and profitability were greatly improved.

"After four years the business is doing very well, and our family life is once again stable and healthy. I hired my mom as a full-time employee. We did not file bankruptcy. I am still in business, am operating it effectively and am able to pay all of the bills. The business is not and will not be a dramatic statistic—it is not going to show up anywhere as a failure."

Results

As of December 1999, the Northeast Entrepreneur Fund has:

- trained or provided technical assistance to over 3,200 individuals;
- loaned over $1.8 million to 145 businesses;
- made 80 percent of its loans to low- and moderate-income individuals;
- helped to create or retain 906 jobs through 458 businesses that it has assisted with starting, expanding or stabilizing; and
- recorded a two-year overall business survival rate of 85 percent.

Key Players

The Community Development Financial Institutions Fund is unique among the federal government agencies that provide financial assistance to microenterprises. It interacts directly with the organizations that it supports, and does not use intermediaries such as banks, or state or local governments.

The CDFI Fund has increased its financial support to the Northeast Entrepreneur Fund over time. In 1997, the Northeast Entrepreneur Fund was awarded $285,000 in grants, allowing it to make loans up to $100,000 to small businesses. In 1999, it was awarded additional grants of $368,000, enabling it to provide more flexible loan products to microenterprises and small businesses. Each grant included a technical assistance component increasing its capacity to serve its customers.

The Northeast Entrepreneur Fund also works in partnership with banks and economic development and community organizations to foster entrepreneurial development and business growth in northeastern Minnesota.

Funding Sources and Uses		Special Considerations
Loan Fund Capital	**Technical Assistance and Support**	
• United States Department of the Treasury, Community Development Financial Institutions Fund • United States Small Business Administration • Calvert Foundation • Calvert Social Investment Fund • National Community Capital Association • US Bank • C S Mott Foundation • Northland Foundation	• United States Department of the Treasury, Community Development Financial Institutions Fund • United States Department of Agriculture, Rural Business Enterprise Grant • United States Small Business Administration • Minnesota Department of Trade and Economic Development • Community Development Block Grants through St. Louis County and the City of Duluth • F.B. Heron Foundation • Ford Foundation • Northland Foundation • US West Foundation	1998 Recipient of the Presidential Award for Excellence in Microenterprise Development, Developing Entrepreneurial Skills category, awarded by the CDFI Fund. Participant, Minnesota Self-Employment Investment Demonstration program, which assists welfare recipients — through training and financing — to consider self-employment as a means of achieving self-sufficiency and access to business-income waivers.

Case Study:

Enterprise Development Corporation

Featuring:
Enterprise Development Corporation
9638 Hocking Hills Drive
The Plains, Ohio 45780-1209
Telephone:
740-797-9646
Fax:
740-797-9659
Web:
none at the moment

Enterprise Development Corporation is a private, nonprofit economic development corporation serving small businesses in Appalachian Southeastern Ohio. The corporation provides business development information to small and microbusinesses, and administers several small business revolving loan funds.

Background and Overview

The United States Small Business Administration (SBA) Microloan Program was approved as a demonstration in October 1991. Through the program, SBA was originally authorized to provide loan and grant funding to up to 35 intermediary lenders. The SBA also funded two grants to training and technical assistance providers to support microentrepreneurs as they worked toward obtaining private-sector financing for their businesses. The original 37 program participants were announced on June 10, 1992. Since then, the Microloan Program has grown to encompass 160 intermediaries and non-lending technical assistance providers. The Microloan Program became permanent in December 1997.

The SBA's Microloan Program was established to assist women, low-income, veteran and minority entrepreneurs, business owners and other individuals with the capability to operate successful business concerns, and to assist small businesses in areas suffering from a lack of credit due to an economic downturn.

Under the program, SBA makes loans to qualified intermediaries which, in turn, provide small-scale loans, typically those averaging $7,500 or less, to start-up, newly established or growing small business concerns for working capital, materials, supplies or equipment. SBA also provides grants to intermediary lenders and other nonprofit organizations for technical assistance to microborrowers, potential microborrowers and low-income individuals seeking loans under $25,000 from private-sector sources.

A small business in need of a microloan must apply directly to the intermediary lender serving its geographic location. It can apply for a microloan if, at time of application, it is a for-profit business that meets SBA business, size and eligibility standards. The maximum term for a microloan is six years. Intermediaries may charge interest based on the microloan's size and the cost of funds from the SBA.

One nonprofit organization participating as an intermediary lender in the SBA Microloan Program is Enterprise Development Corporation (EDC) in The Plains, Ohio. EDC is a multi-faceted financial technical assistance and economic development organization serving the Appalachian region of Ohio. SBA provides funds to EDC in the form of direct and guaranteed loans to establish and maintain the microloan revolving funds. SBA also provides grants for technical assistance.

Since 1992, EDC has provided 122 microloans, totaling $5 million, in the rural Appalachian region of Ohio. The average microloan amount is $8,800. Women have received over 51 percent of EDC's loans. Nearly 65 percent of the microloans have been made to start-up businesses. The majority of microloan borrowers are categorized as low- to moderate-income.

Jeanne Tyson is one of many who have benefited from the SBA's Microloan Program through EDC. In the early 1990s, Jeanne, a single mother on welfare assistance, was encouraged by her father to pursue a career in home health care. With support from her two young daughters, Jeanne went back to school and earned a business degree. Shortly thereafter, she approached EDC. Using the technical assistance provided by EDC and her newly acquired business skills, Jeanne established Royalty Home Health Care in 1994 with financing from her first SBA microloan. Royalty Home Health Care's core business is quality in-home health care. As the business grew, Jeanne was able to take her family off of the welfare roles and began hiring employees, many of whom had also been on welfare.

Throughout her relationship with EDC, Jeanne has received business-based technical assistance. She worked closely with the organization before receiving her first loan and, in time, received a second loan. Not only did she become a self-supporting microentrepreneur, she became a homeowner as well.



Jeanne Tyson (right) and Gin Anderson review some new forms for program care.

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While her client list remained healthy and her capacity as an employer continued, unforeseen events—such as changes in the health care industry—began to put stress on the business. The nationally publicized effort to control rising medical costs led to a change in the formula that public insurance systems use to pay health-care providers. These changes negatively affected Jeanne's accounts receivable, causing her debt burden to increase. Smaller revenues impacted her ability to repay her business start-up loans. But, with EDC's help, Jeanne has continued in business. A renewed plan of follow-up technical assistance is helping Royalty Home Health Care stay on track. A "significant cash flow crunch" continues, but EDC staff believes the company still has "the potential to be quite successful." Post-loan technical assistance will help the business learn how to adjust to changing market conditions. It will also help this microbusiness owner develop a money-management system that will provide for down times in the corporate revenue cycle.

Because of her experiences, initiative and drive, Jeanne was named the 1998 Welfare to Work Small Business Person of the Year.

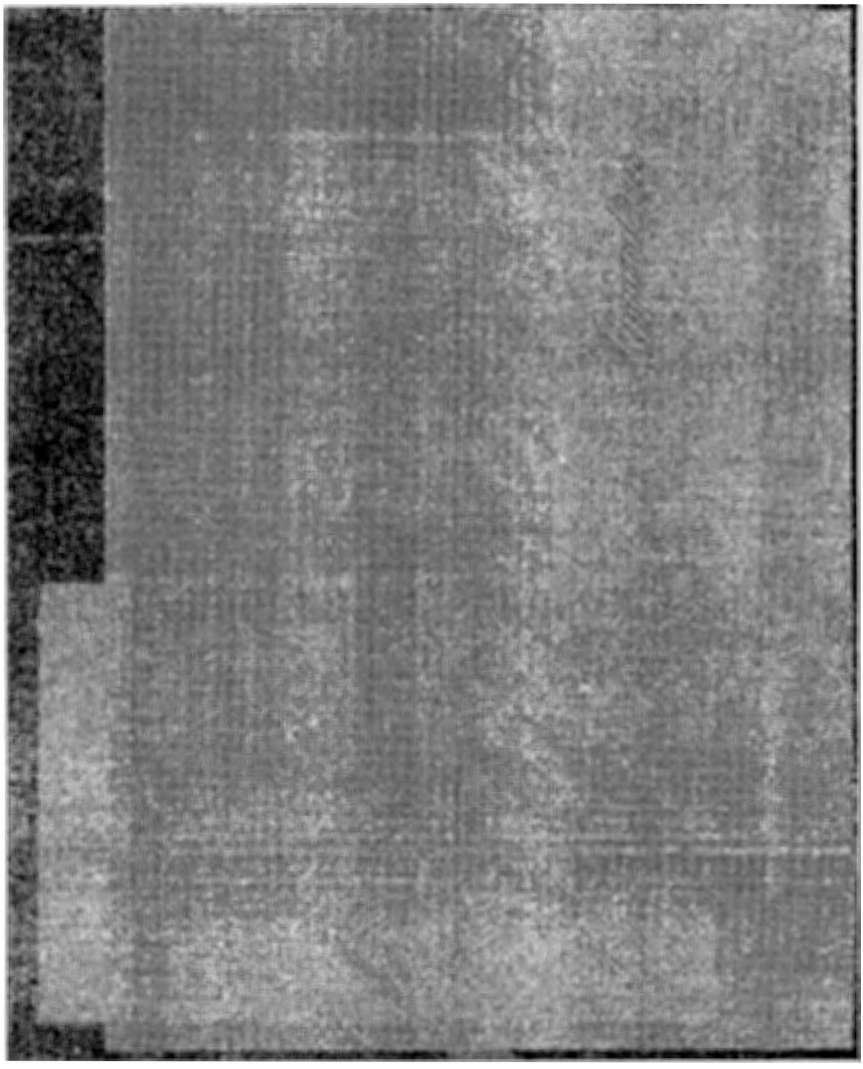
Results

The SBA's Microloan Program has provided over 9,700 loans of $25,000 or less, and loaned more than $80 million to start-up, newly established and developing small businesses.

According to Enterprise Development Corporation, organizations like EDC "can play a key role in the success of first time small business owners." Microlending intermediaries must have strong in-house systems, coupled with patience and understanding. These qualities are the keys to success for emerging small businesses as they work through revenue crises, market changes and management issues.

Dan Dusterberg, former EDC Executive Director who worked extensively with Ms. Tyson, noted: "Careful, thoughtful and mandatory reporting of corporate fiscal condition are the keys to long term survivability of micro-borrowers. Most are first time borrowers, first time business owners and frequently reluctant to communicate their issues and concerns. Loan officers must be willing to pry, act intuitively and then take decisive action if businesses are to be successful." He added, "Royalty Home Health Care's story is, sadly, not unique. This is what entrepreneurs face every day in the management of their business. Providing the tools for success will help them get through these challenges."

Key Players and Their Contributions	Funding: Sources and Uses		Special Considerations
Enterprise Development Corporation Enterprise Development Corporation is a community-based, nonprofit organization whose mission is to assist small businesses with technical assistance and capital needs in a rural, mountainous and economically isolated region. Through its emphasis on microenterprises, EDC contributes to the local economy by lending money and providing technical assistance to microentrepreneurs.	Enterprise Development Corporation receives funding from federal and state governmental agencies as well as contributions from various private entities. The SBA provides funds for the Microloan revolving loan fund, as well as direct grants administered by EDC for counseling and technical assistance for microentrepreneurs. EDC also offers other SBA lending programs, including 504, 7(a) and Prequalification loans. In addition, EDC administers revolving loan funds through the United States Department of Agriculture (targeted at intermediaries in the microlending arena) and Community Development Block Grant funds from the United States Department of Health and Human Services (targeted for local economic development, lending and day-care providers).	The state of Ohio, through the Ohio Department of Development, provides grants for technical assistance and follow-up counseling. EDC also loans funds on behalf of the state of Ohio through the Ohio 166/Pioneer program. EDC receives private-sector funds from the Shahaty Foundation earmarked for a revolving loan fund for small businesses in Columbiana County, Ohio. Finally, EDC partners with Bank One and National City Bank to foster the economic development and small business lending in Southeastern Ohio.	To contact Enterprise Development Corporation, call 1-800-822-6096 or 740-797-9646 in Ohio. EDC has business lending programs in the 30 counties of Appalachian Ohio. Eligible entrepreneurs may receive loans from $200 to $1 million at low to competitive rates. To find out if the SBA funds an intermediary lender in your area, contact the local SBA office. The lender can provide the details on completing the loan application or receiving technical assistance. SBA offices are located in all 50 states, the District of Columbia, Puerto Rico, the United States Virgin Islands and Guam. For more information, call the Answer Desk at 1-800-U-ASK-SBA (1-800-827-5722).



Microenterprise has a language and terminology all its own. This appendix gives newcomers to the microenterprise world a quick frame of reference to help them understand and evaluate the programs that best suit their circumstances.

The definitions below are stated in broad terms for the sake of simplicity. The reader should be aware that there are variations in microenterprise programs from agency to agency. For this reason, some terms may have slightly different meanings, depending on the nature and focus of each microenterprise program. For example, a "microloan" generally refers to a small amount of credit. However, a microloan may have a cap of $15,000 in one agency's program, but a $25,000 cap in another program.

Community Development Block Grant

A flexible federal aid that is intended for use by cities and towns to promote neighborhood revitalization, economic development and improved community facilities and services. Specific uses of the funds are left to the discretion of local governments. Funds are administered by either state or city offices of economic development depending on the size of the city or town (see Entitlement Community).

Community Development Corporation

A community-based organization that is owned and controlled by community residents and is engaged in affordable housing, business and/or commercial development. Community development corporations specialize in development and rehabilitation of real estate, investment in business ventures and related activities specifically designed to address the housing, commercial redevelopment, employment and community facilities needs of low- and moderate-income persons and areas. Although they vary in size and scope, the vast majority are nonprofit, tax-exempt organizations. All community development corporations have a board of directors composed of local residents, public officials, funders, bankers, relevant professionals and/or community leaders.

Community Development Loan Fund

A private nonprofit organization that channels private investment capital to community-based organizations and projects. It may operate independently or as part of a community-based organization. Lenders to the fund may have some control over the use of their funds and the rate of interest on their loans, which are generally more flexible than conventional financing. Community development loan funds can also provide borrowers with technical assistance to reduce the chance of losses on higher risk loans. Since community development loan funds are not chartered or licensed, they have flexibility in their organizational structure, although they may be subject to state laws and regulations. In most cases, they are incorporated as 501(c)(3) nonprofit corporation.

Disadvantaged Entrepreneur

A microentrepreneur who is low-income, lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged.

Dislocated Workers

Individuals who:

- have been terminated or laid off, or have received a notice of termination or layoff from employment; are eligible for or have exhausted their entitlement to unemployment compensation; and are likely to return to their previous industry or occupation;
- have been terminated or received a notice of termination of employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility or enterprise;
- are long-term unemployed and have limited opportunities for employment or reemployment in the same or similar occupation in the area in which they reside;
- were self-employed (including ranchers and farmers) and are unemployed as a result of general economic conditions in their community or because of natural disasters.

Economically Disadvantaged Entrepreneur

Individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.

Enterprise Zone

An economically depressed area that has been targeted for revitalization by a city or state through tax and other incentives given to companies that locate or expand their operations within the zone.

Entitlement Community

A city or urban community with a population of 50,000 or more, and certain central cities of a metropolitan area as defined by the Office of Management and Budget, that because of its size, receives Community Development Block Grant funds directly from the federal government. Nonentitlement communities receive Community Block Grant funds through the state office of economic development.

Entrepreneur

An individual who organizes, manages and assumes the risks of a business.

Intermediary

An entity that makes and services loans to eligible entrepreneurs, including microentrepreneurs, and to small businesses and provides marketing, management and technical assistance to its borrowers. An intermediary may receive loan or grant funds to establish a revolving loan fund for lending to microentrepreneurs.

Low Income

A certain level of income that is specifically defined by each agency. The criteria and measure of income level required to be designated "low income" vary among the agencies and the programs.

Low-Income Credit Union

A nonprofit credit union that is chartered to serve the members of a lower-income community. The structure is similar to a regular credit union, although as a nonprofit organization it is tax-exempt. Federally chartered low-income credit unions are regulated by the state. Their services vary depending on their level of capitalization. In general, they offer services not provided by mainstream financial institutions such as small loans at below-market rates to individuals who might not otherwise qualify for bank loans. Low-income credit unions rely heavily on banks, foundations and other investors for deposits to support their work.

Median Income

Median income divides the income distribution into two equal parts, one with residents having incomes above the median and the other with residents having incomes below the median. Median family and household incomes are based on the distribution of the total number of units, including those with no income. However, the median income calculation for persons is based on those with income.

Microbusiness

See microenterprise.

Microenterprise

A very small business. Most often, it is a sole proprietorship, partnership, family business, or an incorporated entity that has no more than five employees, including the owner(s), does not have access to conventional loans, equity or other banking services; and requires $25,000 or less for start-up or expansion capital.

Microenterprise Development Organization

A type of intermediary that focuses on microenterprise. An organization - including community development corporations, nonprofit development organizations and social service organizations - that works directly with microentrepreneurs, provides services to aspiring microentrepreneurs and assists them in starting their own business.

Microenterprise Support Organization

An entity that does not work directly with microentrepreneurs as its principal activity, but supports the efforts of microenterprise development organizations through financial assistance, technical assistance, research or other activities.

Microentrepreneur

The owner of a microenterprise or an individual seeking to establish a microenterprise.

Microloan

A small loan, generally less than $25,000, that is made to a microentrepreneur for business purposes.

Microloan Borrower

An individual or a small business that borrows funds from an intermediary or a grantee for the purpose of starting, continuing or enlarging its business.

Moderate Income

A certain level of income that is specifically defined by each agency. The criteria and measure of income level required to be designated "moderate income" vary among the agencies and the programs.

Revolving Loan Fund

In general, a fund structured so that repayments are used to make more loans. The term revolving loan fund is sometimes used interchangeably with community development loan fund. The term is also used specifically to describe a nonprofit loan fund that depends primarily on public money to make housing and small business loans. Terms and rates are typically more favorable than conventional financing. A revolving loan fund can be administered by a nonprofit organization or a public agency and is not overseen by any regulatory agency.

Socially Disadvantaged

Individuals who have been subjected to racial or ethnic prejudice or cultural bias because they are members of a particular group, without regard to their individual qualities.

Women-Owned Business

A business that is at least 51 percent owned by one or more women, and the management and daily operations of which are controlled by one or more women.

United States Department of Agriculture
Rural Development State Offices

Federal Microenterprise Programs vary in their structure and organization. Some are operated exclusively from the agency's Washington, D.C., headquarters. Other federal agency programs have local and regional offices located throughout the United States. Where a local contact is provided, it is generally the best resource to begin transforming a dream of small business ownership into reality. The directory below lists local contacts who will answer questions you may have regarding their programs and assist you in making the most of microenterprise.

Alabama
Sterling Center
Suite 601
4121 Carmichael Road
Montgomery, AL 36106-3683
Telephone: 334-279-3400
Fax: 334-279-3484

Alaska
800 West Evergreen
Suite 201
Palmer, AK 99645-6539
Telephone: 907-761-7700
Fax: 907-761-7783

Arizona
3003 North Central Avenue
Suite 900
Phoenix, AZ 85012-2906
Telephone: 602-280-8700
Fax: 602-280-8770

Arkansas
700 West Capitol Avenue
Room 3416
Little Rock, AR 72201-3225
Telephone: 501-301-3200
Fax: 501-301-3278

California
430 G Street
Agency 4169
Davis, CA 95616-4169
Telephone: 530-792-5600
Fax: 530-792-5837

Connecticut
451 West Street
Amherst, MA 01002
Telephone: 413-253-4300
Fax: 413-253-4347

Colorado
655 Parfet Street
Room E-100
Lakewood, CO 80215
Telephone: 303-236-2601
Fax: 303-236-2854

Delaware
4607 South Dupont Highway
P.O. Box 400
Camden, DE 19934-9998
Telephone: 302-697-4300
Fax: 302-697-4390

Florida
4440 NW 25th Place
P.O. Box 147010
Gainesville, FL 32614-7010
Telephone: 352-338-3400
Fax: 352-338-3450

Georgia
Stephens Federal Building
355 East Hancock Avenue
Athens, GA 30601-2768
Telephone: 706-546-2162
Fax: 706-546-2152

Hawaii
Federal Building
Room 311
154 Waianuenue Avenue
Hilo, HI 96720
Telephone: 808-933-8380
Fax: 808-933-8327

Idaho
9173 West Barnes Drive
Suite A1
Boise, ID 83709
Telephone: 208-378-5600
Fax: 208-378-5643

Illinois
Illini Plaza
Suite 103
1817 South Neil Street
Champaign, IL 61820
Telephone: 217-398-5235
Fax: 217-398-5337

Indiana
5975 Lakeside Boulevard
Indianapolis, IN 46278
Telephone: 317-290-3100
Fax: 317-290-3095

Iowa
Federal Building
Room 873
210 Walnut Street
Des Moines, IA 50309
Telephone: 515-284-4663
Fax: 515-284-4859

Kansas
1200 SW Executive Drive
P.O. Box 4653
Topeka, KS 66615
Telephone: 785-271-2701
Fax: 785-271-2708

Kentucky
771 Corporate Drive
Suite 200
Lexington, KY 40503
Telephone: 606-224-7300
Fax: 606-224-7340

Louisiana
3727 Government Street
Alexandria, LA 71302
Telephone: 318-473-7920
Fax: 318-473-7629

Maine
967 Illinois Avenue
Suite 4
P.O. Box 405
Bangor, ME 04402-0405
Telephone: 207-990-9106
Fax: 207-990-9165

Maryland
4607 South Dupont Highway
P.O. Box 400
Camden, DE 19934-9998
Telephone: 302-697-4300
Fax: 302-697-4390

Massachusetts
451 West Street
Amherst, MA 01002
Telephone: 413-253-4300
Fax: 413-253-4347

Michigan
3001 Coolidge Road
Suite 200
East Lansing, MI 48823
Telephone: 517-324-5100
Fax: 517-324-5225

Minnesota

410 AgriBank Building
375 Jackson Street
St. Paul, MN 55101-1853
Telephone: 651-602-7800
Fax: 651-602-7824

Mississippi

Federal Building
Suite 831
100 West Capitol Street
Jackson, MS 39269
Telephone: 601-965-4316
Fax: 601-965-5384

Missouri

601 Business Loop 70 West
Parkade Center
Suite 235
Columbia, MO 65203
Telephone: 573-876-0976
Fax: 573-876-0977

Montana

Unit 1
Suite B
P.O. Box 850
900 Technology Boulevard
Bozeman, MT 59715
Telephone: 406-585-2580
Fax: 406-585-2565

Nebraska

Federal Building
Room 152
100 Centennial Mall N
Lincoln, NE 68508
Telephone: 402-437-5551
Fax: 402-437-5408

Nevada

1390 South Curry Street
Carson City, NV 89703-9910
Telephone: 775-887-1222
Fax: 775-885-0841

New Jersey

Tarnsfield Plaza
Suite 22
790 Woodlane Road
Mt. Holly, NJ 08060
Telephone: 609-265-3600
Fax: 609-265-3651

New Hampshire

City Center
3rd Floor
89 Main Street
Montpelier, VT 05602
Telephone: 802-828-6000
Fax: 802-828-6018

New Mexico

6200 Jefferson Street NE
Room 255
Albuquerque, NM 87109
Telephone: 505-761-4950
Fax: 505-761-4976

New York

The Galleries of Syracuse
441 South Salina Street
Suite 357
Syracuse, NY 13202-2541
Telephone: 315-477-6400
Fax: 315-477-6438

North Carolina

4405 Bland Road
Suite 260
Raleigh, NC 27609
Telephone: 919-873-2000
Fax: 919-873-2075

North Dakota

Federal Building
Room 208
220 East Rosser
P.O. Box 1737
Bismarck, ND 58502-1737
Telephone: 701-530-2037
Fax: 701-530-2108

Ohio

Federal Building
Room 507
200 North High Street
Columbus, OH 43215-2477
Telephone: 614-255-2500
Fax: 614-255-2559

Oklahoma

100 USDA
Suite 108
Stillwater, OK 74074-2654
Telephone: 405-742-1000
Fax: 405-742-1005

Oregon

101 SW Main Street
Suite 1410
Portland, OR 97204-3222
Telephone: 503-414-3300
Fax: 503-414-3392

Pennsylvania

One Credit Union Place
Suite 330
Harrisburg, PA 17110-2996
Telephone: 717-237-2299
Fax: 717-237-2191

Puerto Rico

New San Juan Office Building
Room 501
159 Carlos East Chardon Street
Hato Rey, PR 00918-5481
Telephone: 787-766-5095
Fax: 787-766-5844

Rhode Island

451 West Street
Amherst, MA 01002
Telephone: 413-253-4300
Fax: 413-253-4347

South Carolina

Strom Thurmond Federal Bldg
1835 Assembly Street
Room 1007
Columbia, SC 29201
Telephone: 803-765-5163
Fax: 803-765-5633

South Dakota

Federal Building
Room 210
200 4th Street SW
Huron, SD 57350
Telephone: 605-352-1100
Fax: 605-352-1146

Tennessee

3322 West End Avenue
Suite 300
Nashville, TN 37203-1084
Telephone: 615-783-1300
Fax: 615-783-1301

Texas

Federal Building
Suite 102
101 South Main
Temple, TX 76501
Telephone: 254-742-9700
Fax: 254-742-9709

Utah

Wallace F. Bennett Federal Bldg.
125 South State Street
Room 4311
P.O. Box 11350
Salt Lake City, UT 84147-0350
Telephone: 801-524-4320
Fax: 801-524-4405

Vermont

City Center
3rd Floor
89 Main Street
Montpelier, VT 05602
Telephone: 802-828-6000
Fax: 802-828-6018

Virgin Islands

4440 NW 25th Place
P.O. Box 147010
Gainesville, FL 32614-7010
Telephone: 352-338-3400
Fax: 352-338-3480

USDA (continued)

Virginia

Culpeper Building
Suite 238
1606 Santa Rosa Road
Richmond, VA 23229
Telephone: 804-287-1550
Fax: 804-287-1721

Washington

1835 Blackleke Boulevard, SW
Suite B
Olympia, WA 98512-5715
Telephone: 360-704-7740
Fax: 360-704-7742

West Virginia

75 High Street
Room 320
Morgantown, WV 26505-7500
Telephone: 304-291-4791
Fax: 304-291-4032

Wisconsin

4349 Kiesling Court
Stevens Point, WI 54481
Telephone: 715-345-7600
Fax: 715-345-7669

Wyoming

100 East B, Federal Building
Room 1005
P.O. Box 820
Casper, WY 82602
Telephone: 307-261-6300
Fax: 307-261-6327

United States Department of Commerce
Minority Business Development Agency
Regional Offices

Atlanta Regional Office

401 West Peachtree Street NW
Suite 1715
Atlanta, GA 30308
Telephone: 404-730-3300
Fax: 404-730-3313
Serving: Alabama, Florida, Georgia, Kentucky, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands

Chicago Regional Office

55 East Monroe Street
Suite 1046
Chicago, IL 60603
Telephone: 312-353-0182
Fax: 312-353-0191
Serving: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Oklahoma, Wisconsin

Dallas Regional Office

1100 Commerce Street
Room 7B-23
Dallas, TX 75242
Telephone: 214-767-8001
Fax: 214-767-0613
Serving: Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming

New York Regional Office

26 Federal Plaza
Room 3720
New York, NY 10278
Telephone: 212-264-3262
Fax: 212-264-0725
Serving: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, D.C., West Virginia

San Francisco Regional Office

221 Main Street
Room 1280
San Francisco, CA 94105
Telephone: 415-744-3001
Fax: 415-744-3061
Serving: Alaska, American Samoa, Arizona, Hawaii, Idaho, Nebraska, Oregon, Washington

United States Department of Commerce
United States Commercial Service
Export Assistance Center Directory

Alabama

Birmingham
950 22nd Street North
Room 707
Birmingham, AL 35203
Telephone: 205-731-1331
Fax: 205-731-0076

Alaska

Anchorage
550 West 7th Avenue
Suite 1770
Anchorage, AK 99501
Telephone: 907-271-6237
Fax: 907- 271-6242

Arizona

Phoenix
2901 North Central Avenue
Suite 970
Phoenix, AZ 85012
Telephone: 602-640-2513
Fax: 602-640-2518

Tucson
166 West Alameda
Tucson, AZ 85701
Telephone: 520-670-5540
Fax: 520-791-5413

Arkansas

West Memphis
425 West Capitol Avenue
Suite 700
West Memphis, AR 72201
Serving: Little Rock
Phone: 501-324-5794
Fax: 501-324-7380

California

Fresno
390-B Fir Avenue
Fresno, CA 93611
Telephone: 559-325-1619
Fax: 559-325-1647

Ontario
2940 Inland Empire Boulevard
Suite 121
Ontario, CA 91764
serving Inland Empire
Telephone: 909-466-4134
Fax: 909-466-4140

Long Beach
One World Trade Center
Suite 1670
Long Beach, CA 90831
Telephone: 562-980-4550
Fax: 562 980-4561

Downtown Los Angeles
350 South Figueroa Street
Suite 172
Los Angeles, CA 90071
Telephone: 213-894-4022
Fax: 213-894-8789

West Los Angeles
11150 Olympic Boulevard
Suite 975
Los Angeles, CA 90064
Telephone: 310-235-7104
Fax: 310-235-7220

Monterey
c/o Monterey Institute
of International Studies
411 Pacific Street
Suite 320
Monterey, CA 93940
Telephone: 831 641-9850
Fax: 831-641-9859

Novato
930 Ignacio Boulevard
Suite 132
Novato, CA 94949
Telephone: 415-883-1966
Fax: 415-883-2711

Oakland
530 Water Street
Suite 740
Oakland, CA 94607
Telephone: 510-273-7350
Fax: 510-251-7352

Newport Beach
3300 Irvine Avenue
No. 305
Newport Beach, 92660
Telephone: 949-660-1688
Fax: 949-660-8039

Ventura
5700 Ralston Street
Suite 310
Ventura, CA 93003
Telephone: 805-676-1573
Fax: 805-676-1692

Sacramento
917 7th Street
2nd Floor
Sacramento, CA 95814
Telephone: 916-498-5155
Fax: 916-498-5923

San Diego
6363 Greenwich Drive
Suite 230
San Diego, CA 92122
Telephone: 619-557-5395
Fax: 619-557-6176

San Francisco
250 Montgomery Street
14th Floor
San Francisco, CA 94104
Telephone: 415-705-2300
Fax: 415-705-2297

San Jose
101 Park Center Plaza
Suite 1001
San Jose, CA 95113
Telephone: 408-271-7300
Fax: 408-271-7307

Santa Clara
5201 Great America Parkway
No. 456
Santa Clara, CA 95054
Telephone: 408-970-4610
Fax: 408-970-4618

Colorado

Denver
World Trade Center
1625 Broadway
Suite 680
Denver, CO 80202
Telephone: 303-844-6623
Fax: 303- 844-6851

Connecticut

Middletown
213 Court Street
Suite 903
Middletown, CT 06457-3346
Telephone: 860 638-6950
Fax: 860-638-6970

Delaware
Served by the Philadelphia Export Assistance Center

District of Columbia
Served by the Northern Virginia Export Assistance Center

Florida

Clearwater*
1130 Cleveland Street
Clearwater, FL 33755
Telephone: 727-453-7730
Fax: 727-449-2088

Ft. Lauderdale
200 East Las Olas Boulevard
Suite 1890
Ft. Lauderdale, FL 33301
Telephone: 954 356-6640
Fax: 954-356-6644

Orlando
200 East Robinson Street
Suite 1270
Orlando, FL 32801
Telephone: 407-648-6235
Fax: 407-648-6756

Tallahassee*
325 John Knox Road
Suite 201
Tallahassee, FL 32303
Telephone: 850-942-8635
Fax: 850-922-9595

Georgia

Atlanta
285 Peachtree Center Avenue, NE
No. 200
Atlanta, GA 30303-1229
Telephone: 404-657-1900
Fax: 404-657-1970

Savannah*
6001 Chatham Center Drive
Suite 100
Savannah, GA 31405
Telephone: 912 652-4204
Fax: 912-652-4241

Hawaii/Pacific Islands

Honolulu
1001 Bishop Street
Pacific Tower, Suite 1140
Honolulu, HI 96813
Telephone: 808-522-8040
Fax: 808-522-8045

Idaho

Boise
700 West State Street
2nd Floor
Boise, ID 83720
Telephone: 208-334-3857
Fax: 208-334-2783

Illinois

Chicago
55 West Monroe Street
Suite 2440
Chicago, IL 60603
Telephone: 312-353-8045
Fax: 312-353 8120

Highland Park
619 Central Avenue
Suite 150
Highland Park, IL 60035
Telephone: 847-681-8010
Fax: 847-681-8012

Peoria
922 North Glenwood Avenue
Jobst Hall, Room 141
Peoria, IL 61606
Telephone: 309-671-7815
Fax: 309-671-7818

Rockford
515 North Court Street
Rockford, IL 61103
Telephone: 815-987-8123
Fax: 815-963-7940

Indiana

Carmel
serving Indianapolis
11405 North Pennsylvania Street
Suite 106
Carmel, IN 46032
Telephone: 317-582-2300
Fax: 317-582-2301

Iowa

Des Moines
200 Locust Street
Suite 100
Des Moines, IA 50309
Telephone: 515-288-8614
Fax: 515- 288-1437

Kansas

Wichita
209 East William
Suite 300
Wichita, KS 67202-4012
Telephone: 316-263-8087
Fax: 316- 263-3176

Kentucky

Louisville
601 West Broadway
Room 634B
Louisville, KY 40202
Telephone: 502-582-5066
Fax: 502-582-6573

* Rural Export Assistance Center

Somerset*
2292 South Highway 27
Suite 240
Somerset, KY 42501
Telephone: 606-677-6160
Fax: 606-677-6161

Lexington
4th Floor
Lexington Central Library
140 East Main Street
Lexington, KY 40507
Telephone: 606-225-7001
Fax: 606-225-8501

Louisiana

New Orleans
365 Canal Street
No. 1170
New Orleans, LA 70130
Telephone: 504-589-6546
Fax: 504-589-2337

Shreveport
7100 West Park Drive
Shreveport, LA 71129
Telephone: 318-676-3064
Fax: 318-676-3063

Maine

Portland*
c/o Maine International Trade Ctr.
511 Congress Street
Portland, ME 04101
Telephone: 207-541-7400
Fax: 207-541-7420

Maryland

Baltimore
401 East Pratt Street
Suite 2432
Baltimore, MD 21202
Telephone: 410-962-4539
Fax: 410-962-4529

Massachusetts

Boston
World Trade Center
Suite 307
Boston, MA 02210
Telephone: 617-424-5990
Fax: 617-424-5992

Michigan

Detroit
211 West Fort Street
Suite 2220
Detroit, MI 48226
Telephone: 313-226-3650
Fax: 313-226-3657

Ann Arbor
425 South Main Street
Suite 103
Ann Arbor, MI 48104
Telephone: 734-741-2430
Fax: 734-741-2432

Grand Rapids
301 West Fulton Street
Suite 718-S
Grand Rapids, MI 49504
Telephone: 616-458-3564
Fax: 616-458-3872

Pontiac
250 Elizabeth Lake Road
Suite 1300 West
Pontiac, MI 48341
Telephone: 248-975-9600
Fax: 248-975-9606

Minnesota

Minneapolis
45 South 7th Street
Suite 2240
Minneapolis, MN 55402
Telephone: 612-348-1638
Fax: 612-348-1650

Mississippi

Raymond
704 East Main Street
Raymond, MS 39154
Telephone: 601-857-0128
Fax: 601-857-0026

Missouri

St. Louis
8182 Maryland Avenue
Suite 303
St. Louis, MO 63105
Telephone: 314-425-3302
Fax: 314-425-3381

Kansas City
2345 Grand Boulevard
Suite 650
Kansas City, MO 64108
Telephone: 816-410-9201
Fax: 816-410-9208

Montana

Missoula*
Gallagher Business Building
Suite 257
Missoula, MT 59812
Telephone: 406-243-6098
Fax: 406-243-6249

Nebraska

Omaha
11135 'O' Street
Omaha, NE 68137
Telephone: 402-221-3664
Fax: 402-221-3668

Nevada

Reno
1755 East Plumb Lane
Suite 152
Reno, NV 89502
Telephone: 775-784-5203
Fax: 775-784-5343

New Hampshire

Portsmouth*
17 New Hamoshire Avenue
Portsmouth, NH 03801-2838
Telephone: 603-334-6074
Fax: 603-334-6110

New Jersey

Trenton
3131 Princeton Pike
Building 4
Suite 105
Trenton, NJ 08648-2319
Telephone: 609-989-2100
Fax: 609-989-2395

Newark
One Gateway Center
9th Floor
Newark, NJ 07102
Telephone: 973-645-6682
Fax: 973-645-4783

New Mexico

Santa Fe
1100 St. Francis Drive
Santa Fe, NM 87503
Telephone: 505-827-0350
Fax: 505-827-0263

New York

Buffalo
111 West Huron Street
Room 1304
Buffalo, NY 14202
Telephone: 716-551-4191
Fax: 716-551-5290

Mineola
serving Long Island
1550 Franklin Avenue
Room 207
Mineola, NY 11501
Telephone: 516-739-1765
Fax: 516-739-3310

New York City
6 World Trade Center
Room 635
New York, NY 10048
Telephone: 212-466-5222
Fax: 212-264-1356

New York City
serving Harlem
163 West 125th Street
Suite 904
New York, NY 10027
Telephone: 212-860-6200
Fax: 212-860-6203

Westchester
707 Westchester Avenue
Suite 209
Westchester, NY 10604
Telephone: 914-682-6712
Fax: 914-682-6698

North Carolina

Charlotte
521 East Morehead Street
Suite 435
Charlotte, NC 28202
Telephone: 704-333-4886
Fax: 704-332-2681

Greensboro
400 West Market Street
Suite 102
Greensboro, NC 27401
Telephone: 336-333-6346
Fax: 336-333-5158

Raleigh
333 Fayetteville Street Mall
Suite 1150
Raleigh, NC 27601
Telephone: 919-715-7373
Fax: 919-715-7777

North Dakota

Served by the Minneapolis Export Assistance Center

Ohio

Cincinnati
36 East 7th Street
Suite 2650
Cincinnati, OH 45202
Telephone: 513-684-2944
Fax: 513-684-3227

Cleveland
600 Superior Avenue East
Suite 700
Cleveland, OH 44114
Telephone: 216-522-4750
Fax: 216-522-2235

Columbus
Two Nationwide Plaza
Suite 1400
Columbus, OH 43215
Telephone: 614-365-9510
Fax: 614-365-9598

Toledo
300 Madison Avenue
Toledo, OH 43604
Telephone: 419-241-0683
Fax: 419-241-0684

Oklahoma

Oklahoma City
301 Northwest 63rd Street
Suite 330
Oklahoma City, OK 73116
Telephone: 405-608-5302
Fax: 405-608-4211

Tulsa
700 North Greenwood Avenue
Suite 1400
Tulsa, OK 74106
Telephone: 918-581-7650
Fax: 918-581-6263

Oregon

Eugene*
1401 Willamette Street
Suite 13
Eugene, OR 97440-1107
Telephone: 541-484-1314
Fax: 541-465-6704

Portland
One World Trade Center
121 SW Salmon Street
Suite 242
Portland, OR 97204
Telephone: 503-326-3001
Fax: 503-326-6351

Pennsylvania

Harrisburg*
228 Walnut Street
No. 850
P.O. Box 11998
Harrisburg, PA 17108-1998
Telephone: 717-221-4510
Fax: 717-221-4505

Philadelphia
The Curtis Center
Suite 580
West Independence Square
Philadelphia, PA 19106
Telephone: 215-597-6101
Fax: 215-597-6123

Pittsburgh
2002 Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222
Telephone: 412-395-5050
Fax: 412-395-4875

Puerto Rico

San Juan
525 F.D. Roosevelt Avenue
Suite 905
San Juan, PR 00918
Telephone: 787-766-5555
Fax: 787-766-5692

Rhode Island

Providence
One West Exchange Street
Providence, RI 02903
Telephone: 401-528-5104
Fax: 401-528-5067

South Carolina

North Charleston*
5300 International Boulevard
Suite 201-C
North Charleston, SC 29418
Telephone: 843-760-3794
Fax: 843-760-3798

Columbia*
1835 Assembly Street
Suite 172
Columbia, SC 29201
Telephone: 803-765-5345
Fax: 803-253-3614

Greenville*
555 North Pleasantburg Drive
Building 1
Suite 109
Greenville, SC 29607
Telephone: 864-271-1976
Fax: 864-271-4171

South Dakota

Sioux Falls*
Augustana College
2001 South Summit Avenue
Madsen Center
Room 152
Sioux Falls, SD 57197
Telephone: 605-330-4264
Fax: 605-330-4266

Tennessee

Knoxville
601 West Summit Hill Drive
Suite 300
Knoxville, TN 37902-2011
Telephone: 865-545-4637
Fax: 865-545-4435

Memphis
650 East Parkway South
Suite 348
Memphis, TN 38104
Telephone: 901-323-1543
Fax: 901-320-9128

Nashville
211 Commerce Street
3rd Floor, Suite 100
Nashville, TN 37201
Telephone: 615-736-5161/
5162 or 7771
Fax: 615-736-2454

Texas

Austin
1700 Congress
2nd floor
Austin, TX 78701
Telephone: 512-916-5939
Fax: 512-916-5940

Dallas
2050 North Stemmons Freeway
Suite 170
Dallas, TX 75207
Telephone: 214-767-0542
Fax: 214-767-8240

Fort Worth
711 Houston Street
Fort Worth, TX 76102
Telephone: 817-212-2673
Fax: 817-978-0178

Houston
500 Dallas
Suite 1160
Houston, TX 77002
Telephone: 713-718-3062
Fax: 713-718-3050

San Antonio
203 South St. Mary Street
Suite 360
San Antonio, TX 78205
Telephone: 210-228-9878
Fax: 210-228-9874

Utah

Salt Lake City
324 S. State Street
Suite 221
Salt Lake City, UT 84111
Telephone: 801-524-5116
Fax: 801-524-5886

* Rural Export Assistance Center

United States Department of Commerce (continued)
United States Commercial Service
Export Assistance Center Directory

Vermont

Montpelier*
National Life Building
6th Floor
Montpelier, VT 05620-0501
Telephone: 802-828-4508
Fax: 802-828-3258

Virginia

Arlington
1911 North Fort Myer Drive
Suite 601
Arlington, VA 22209
Telephone: 703-524-2885
Fax: 703-524-2649

Richmond
400 North 8th Street
No. 540
Richmond, VA 23240-0026
Telephone: 804-771-2246
Fax: 804-771-2390

Washington

Seattle
2001 6th Avenue
Suite 650
Seattle, WA 98121
Telephone: 206-553-5615
Fax: 206-553-7253

Spokane
801 West Riverside Avenue
Suite 400
Spokane, WA 99201
Telephone: 509-353-2625
Fax: 509-353-2449

Tacoma
950 Pacific Avenue
Suite 410
Tacoma, WA 98402
Telephone: 253-593-6736
Fax: 253-383-4676

West Virginia

Charleston*
405 Capitol Street
Suite 807
Charleston, WV 25301
Telephone: 304-347-5123
Fax: 304-347-5408

Wheeling*
Wheeling Jesuit University
316 Washington Avenue
Wheeling, WV 26003
Telephone: 304-243-5493
Fax: 304-243-5494

Wisconsin

Milwaukee
517 East Wisconsin Avenue
Room 596
Milwaukee, WI 53202
Telephone: 414-297-3473
Fax: 414-297-3470

Wyoming

Served by the Denver
Export Assistance Center

* Rural Export Assistance Center

United States Small Business Administration
Microloan Program
Intermediary Lenders

Alabama

Birmingham
Birmingham Business
Resource Center
110 12th Street North
Birmingham, AL 35203
Telephone: 205-250-8380
Fax: 205-250-8384
Serving: Jefferson County

Pensecola
Community Equity
Investments, Inc.
302 North Barcelona Street
Pensacola, AL 32501
Telephone: 850-595-6234
Fax: 850-595-6284
Serving: Bay, Calhoun, Escambia, Gadsden, Gulf, Jackson, Holmes, Liberty, Leon, Franklin, Wakulla, Walton, Wasington, Okaloosa, Santa Rosa Counties in the state of Alabama and Baldwin, Mobile, Washington, Clarke, Monroe, Escambia, Conecuh, Covington, Geneva, Coffee, Dale, Henry, Houston Counties in the state of Florida

Arizona

Phoenix
Chicanos Por La Causa, Inc.
1112 East Buckeye Road
Phoenix, AZ 85034-4043
Telephone: 602-252-0483
Fax: 602-252-0484
Serving: Maricopa, Pima, Graham, Gila, Coconino,Mohave, Yavapai, and La Paz Counties, including Point of Pines Reservation, South-western area of Fort Apache Reservation, the Kaibab, Havasupai, and Hualapai Reservations and western portions of the Navajo and Hopi Reservations

Tucson
Portable Practical Education
Preparation (PPEP)
Housing Development Corp.
1100 East Alo Way
Suite 209
Tucson, AZ 85719
Telephone: 520-806-9513
Fax: 520-806-9515
Serving: Cochise, Santa Cruz, Pinal, Yuma, rural Pima, rural Maricopa counties including the Fort McDowell, Gila River, Maricopa, Papago, Salt River and San Xavier Indian Reservations

Arkansas

Pine Bluff
Arkansas Enterprise Group
2304 West 29th Street
Pine Bluff, AR 71603
Telephone: 870-246-9739
Fax: 870-246-2182
Serving: Arkansas, Ashley, Bradley, Calhoun, Chicot, Clark, Clay, Cleveland, Columbia, Craighead, Dallas, Desha, Drew, Garland, Grant, Greene, Hempstead, Hot Springs, Howard, Jefferson, Lafayette, Lawrence, Lincoln, Little River, Lonoke, Miller, Mississippi, Montgomery, Nevada, Ouachita, Phillips, Pike, Poinsett, Polk, Prairie, Pulaski, Randolph, Saline, Sevier and Union Counties

Forrest City
Delta Community
Development Corp.
335 Broadway
P.O. Box 852
Forrest City, AR 72336
Telephone: 870-633-9112
Fax: 870-633-9191
Serving: Cross, Crittenden, Monroe, Lee, St. Francis Counties

Batesville
White River Planning and
Development District, Inc.
P.O.Box 2396
1652 White Drive
Batesville, AR 72501
Telephone: 870-793-5233
Fax: 870-793-4035
Serving: Cleburne, Fulton, Independence, Izard, Jackson, Sharp, Stone, Van Buren, White, Woodruff Counties

Huntsville
Financing Ozarks Rural Growth
Economy (FORGE)
208 East Main
P.O. Box 1139
Huntsville, AR 72740
Telephone: 501-738-1585
Fax: 501-738-6288
Serving: Crawford, Baxter, Yell, Perry, Conway, Boone, Madison, Marion, Carroll, Franklin, Pope, Benton, Washington, Searcy, Newton

California

Arcata
Arcata Economic Development
Corporation
100 Ericson Court
Suite 100
Arcata, CA 95521
Telephone: 707-822-4616
Fax: 707-822-8982
Serving: Del Norte, Humboldt, Lake, Mendocino, Siskiyou, Trinity Counties

Salinas
California Coastal Rural Development Corporation
221 Main Street
Suite 300
P.O Box 479
Salinas, CA 93906
Telephone: 831-424-1099
Fax: 831-424-1094
Serving: Santa Clara, Santa Cruz, Monterey, San Benito, San Luis Obispo, Santa Barbara, Ventura Counties

San Francisco
Southeast Asian Community Ctr.
875 O'Farrell Street
San Francisco, CA 94109
Telephone: 415-885-2743
Fax: 415-885-3263
Serving: Alameda, Contra Costa, Marin, Merced, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Stanislaus Counties

Van Nuys
Valley Economic Development Corporation
4717 Van Nuys Boulevard
2nd Floor
Van Nuys, CA 91403
Telephone: 818-907-9977
Fax: 818-907-9720
Serving: Los Angeles and Orange County

Fresno
Valley Small Business Development Corporation
3417 West Shaw
Suite 100
Fresno, CA 93711
Telephone: 559-271-9030
Fax: 559-271-9078
Serving: Fresno, Kings, Kern, Stanislaus, Mariera, Mariposa, Merced, Tuolomne, Tulare Counties

Oakland
Oakland Business Development Corp.
519 17th Street
Suite 100
Oakland, CA 94612
Telephone: 510-763-4297
Fax: 510-763-1273
Serving: Alameda and Contra Costa Counties

Auburn
Sierra Economic Development
560 Wall Street
Suite F
Auburn, CA 95603
Telephone: 530-823-4703
Fax: 530-823-4142
Serving: Modoc, El Dorado, Lassen, Nevada, Plumas, Sierra, Placer Counties

Colorado

Denver
Colorado Enterprise Fund
1888 Sherman Street
Suite 530
Denver, CO 80203
Telephone: 303-860-0242
Fax: 303-860-0165
Serving: Adams, Albert, Arapahoe, Boulder, Denver, Douglas, El Paso, Jefferson, Larimer and Weld Counties and the city of Denver

Montrose
Region 10 LEAP for Economic Development
P.O. Box 849
Montrose, CO 81402
Telephone: 970-249-2436
Fax: 970-249-2488
Serving: Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel Counties

Connecticut

New Haven
Connecticut Community Investment Corporation
100 Crown Street
New Haven, CT 06510
Telephone: 203-776-6172
Fax: 203-776-8837
Serving: The state of Connecticut

Delaware

Wilmington
Wilmington Economic Development Corporation
100 West 10th Street
Suite 706
Wilmington, DE 19801
Telephone: 302-571-9088
Fax: 302-652-5679
Serving: New Castle County and the cities of Wilmington, Newark, New Castle, Middletown, Odessa, Townsend

District of Columbia

Washington, DC
ARCH Development Corporation
1227 Good Hope Road, SE
Washington, DC 20020
Telephone: 202-889-5023
Fax: 202-889-5035
Serving: portions of the District of Columbia commonly referred to as Adams Morgan, Mount Pleasant, Anacostia, Congress Heights, Columbia Heights, and the 14th Street Corridor

East of the River Community Development Corporation
3101 Martin Luther King, Jr. Ave. SE
Washington, DC 20032
Telephone: 202-561-4974
Fax: 202-561-4978
Serving: Portions of Southeast Washington, DC commonly known as Ward 8

H Street Community Development Corporation
501 H Street, NE
Washington, DC 20002
Telephone: 202-544-9353
Fax: 202-544-3051
Serving: The majority of the District with the exception of Adams Morgan, Mount Pleasant, Anacostia, Congress Heights, Columbia Heights, 14th Street Corridor and Ward 8

Florida

Pensacola
Community Equity Investments, Inc.
302 North Barcelona Street
Pensacola, FL 32501
Telephone: 850-595-9234
Fax: 850-595-9264
Serving: Bay, Calhoun, Escambia, Gadsden, Gulf, Jackson, Holmes, Liberty, Leon, Franklin, Wakulla, Walton, Washington, Okaloosa, Santa Rosa Counties in the state of Alabama and Baldwin, Mobile, Washington, Clarke, Monroe, Escambia, Conecuh, Covington, Geneva, Coffee, Dale, Henry, Houston Counties in the state of Florida

Clearwater
Clearwater Neighborhood Housing Services, Inc.
608 North Garden Avenue
Clearwater, FL 33755
Telephone: 727-442-4155
Fax: 727-446-4911
Serving: Pinellas County and the city of Clearwater

United States Small Business Administration (continued)
Microloan Program
Intermediary Lenders

Orlando
Minority/Women Business Enterprise Alliance, Inc.
3700 43rd Street
Suite 100
Orlando, FL 32805
Telephone: 407-428-5660
Fax: 407-428-5669
Serving: Orange, Osceola, Lake, Seminole, Polk, Hillsborough, Sumter, Brevard, Volusia and Marion Counties

West Palm Beach
The Business Loan Fund of the Palm Beaches, Inc.
324 Datura Street
Suite 201
West Palm Beach, FL 33401
Telephone: 561-838-9027
Fax: 561-838-9029
Serving: Palm Beach County, Hendry, Indian River, Martin, Palm Beach County Development Regions, St. Lucie

Gainesville
United Gainesville Community Development Corporation, Inc.
505 NW 2nd Avenue
P.O. Box 2918
Gainesville, FL 32602
Telephone: 352-376-8891
Fax: 352-376-3389
Serving: Alachua and Marion Counties

Miami
3000 Biscayne Boulevard
Suite 101
Miami, FL 33137
Telephone: 305-438-1407
Fax: 305-438-1411
Serving: Dade, Broward, Palm and Pinellas Counties

Georgia

Atlanta
Fulton County Development Corp/ GRASP Enterprises
55 Marietta Street, NW
Suite 2000
Atlanta, GA 30303
Telephone: 404-659-5955
Fax: 404-860-9561
Serving: Fulton, Dekalb, Cobb, Gwinnett, Fayette, Clayton, Henry, Douglas and Rockdale Counties

Savannah
Small Business Assistance Corp.
111 East Liberty Street
Suite 100
P.O. Box 10516
Savannah, GA 31412-0716
Telephone: 912-232-4700
Fax: 912-232-0385
Serving: Chatham, Effingham, Bryan, Bulloch, Liberty Counties

Hawaii

Honolulu
Pacific Gateway Center
720 North King Street
Honolulu, HI 96817
Telephone: 808-845-3818
Fax: 808-842-1962
Serving: The state of Hawaii

Idaho

Boise
Ida-Ore Planning and Development Association
10624 West Executive Drive
Boise, ID 83713
Telephone: 208-322-7033
Fax: 208-322-3569
Serving: Payette, Washington, Adams, Valley, Gem, Boise, Elmore, Ada, Canyon, Owhyee Counties

Hayden
Panhandle Area Council
11100 Airport Drive
Hayden, ID 83835-9743
Telephone: 208-772-0584
Fax: 208-772-6196
Serving: Benewah, Bonner, Boundary, Kotenai, and Shoshone Counties

Illinois

Sterling
Greater Sterling Development Corporation
1741 Industrial Drive
Sterling, IL 61081
Telephone: 815-625-5255
Fax: 815-625-5094
Serving: Whiteside, Lee Counties

Chicago
Illinois Development Finance Auth.
233 South Wacker Drive
Sears Tower
Suite 4000
Chicago, IL 60606
Telephone: 312-627-1434
Fax: 312-496-0578
Serving: Statewide except Peoria, Tazwell, Woodford, Whiteside, Lee Counties, the city of Sterling, and those portions of Chicago currently served by the Women's Self Employment Project

Chicago
Neighborhood Inst./Women's Self Employment Project
20 North Clark Street
Suite 400
Chicago, IL 60602
Telephone: 312-606-8255
Fax: 312-606-9215
Serving: Portions of city of Chicago

Peoria
The Economic Development Council for the Peoria Area
124 SW Adams Street
Suite 300
Peoria, IL 61602
Telephone: 309-676-7500
Fax: 309-676-6638
Serving: Peoria, Tazwell and Woodford Counties

Indiana

Evansville
Metro Small Business Assistance Corporation
306 Civic Center Complex
1 NW Martin Luther King, Jr. Blvd
Evansville, IN 47708-1869
Telephone: 812-426-5857
Fax: 812-436-7809
Serving: Vanderburgh, Posey, Gibson and Warrick Counties

Bloomington
Bloomington Area Microenterprise Initiative
216 West Allen Street
Suite 124
Bloomington, IN 47403
Telephone: 812-339-4276
Fax: 812-333-6966
Serving: Morgan, Owen, Greene, Lawrence, Monroe, Brown and Jackson Counties

Iowa

Sioux City
Siouxland Economic Development Corporation
428 Insurance Center
507 7th Street
P.O. Box 447
Sioux City, IA 51102
Telephone: 712-279-6286
Fax: 712-279-6920
Serving: Cherokee, Ida, Monona, Plymouth, Sioux, Woodbury, and Counties

Kansas

Wichita
South Central Kansas Economic Development District, Inc.
151 North Volutsia
Wichita, KS 67214
Telephone: 316-262-7035
Fax: 316-262-7062
Serving: Butler, Chautauqua, Cowley, Elk, Greenwood, Harper, Harvey, Kingman, Marion, McPherson, Reno, Rice, Sedgwick and Sumner Counties

Kansas City
Center for Business Innovations, Inc.
4747 Troost Avenue
Kansas City, KS 64110
Telephone: 816-561-8567
Fax: 816-756-1630
Serving: Wyandotte, Johnson, Douglas, Leavenworth

Kentucky

Lexington
Community Ventures Corporation
1450 North Broadway
Lexington, KY 40505
Telephone: 606-231-0054
Fax: 606-231-0261
Serving: Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jessamine, Lincoln, Madison, Mercer, Nicholas, Powell, Scott and Woodford Counties

London
Kentucky Highlands Investment Corporation
362 Old Whitley Road
P.O. Box 1738
London, KY 40743-1738
Telephone: 606-864-5175
Fax: 606-864-5194
Serving: Bell, Clay, Clinton, Harlan, Jackson, McCreary, Rockcastle, Wayne and Whitley Counties

Louisville
Louisville Central Development Corporation / Business Plus
1015 West Chestnut Street
Louisville, KY 40203
Telephone: 502-933-8821
Fax: 502-583-8824
Serving: Jefferson County

Mayfield
Purchase Area Development Dist.
1002 Medical Drive
P.O. Box 588
Mayfield, KY 42066
Telephone: 270-247-7171
Fax: 270-251-5110
Serving: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, McCracken and Marshall Counties

Maine

Wiscasset
Coastal Enterprises, Inc.
P.O. Box 268 or
36 Water Street
Wiscasset, ME 04578
Telephone: 207-882-7552
Fax: 207-882-7308
Serving: Statewide excluding Aroostook, Piscataquis, Washington, Oxford, Penobscot and Hancock Counties

Caribou
Northern Maine Development Commission
302 South Main Street
P.O. Box 779
Caribou, ME 04736
Serving: Aroostook County

Bangor
Eastern Maine Development Corp.
One Cumberland Place
Suite 300
Bangor, ME 04401
Telephone: 207-942-6389
Fax: 207-942-3548
Serving: Hancock, Penobscot, Piscataquis and Washington County

South Paris
Community Concepts, Inc.
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Telephone: 804-233-2014
Fax: 804-233-2158
Serving: The counties of Henrico, Chesterfield, Goochland, Hanover, Powatan, Petersburg and Hopewell, and the city of Richmond not served by Richmond Economic Development Corporation

Roanoke
Total Agency Against Poverty (TAP) This Valley Works
145 Campbell Avenue, SW
P.O. Box 2868
Roanoke, VA 24001-2868
Telephone: 540-982-3859 x4391
Fax: 540-343-6544
Serving: Alleghany, Bath, Botetourt, Craig and Roanoke Counties

Washington

Everett
Snohomish County Private Industry Council
728 134th Street SW
Suite A-10, Everett
Everett, WA 98204
Telephone: 425-743-9669
Fax: 425-742-1177
Serving: Adams, Chelan, Douglas, Grant, King, Kitsap, Kittitas, Klickitat, Okanogan, Pierce, Skagit, Snohomish, Whatcom, Yakima Counties, and San Juan Island

Richland
Tri-Cities Enterprise Association
2000 Logston Boulevard
Richland, WA 99352
Telephone: 509-375-3268
Fax: 509-375-4838
Serving: Benton and Franklin Counties

Yakima
Washington Association for Minority Entrepreneurs
24 South 3rd Avenue
Yakima, WA 98902
Telephone: 509-453-5133
Fax: 509-453-5165
Serving: Mattawa and Othello cities in Grant County; Moses Lake and Royal City in Adams County; Walla Walla County and Pasco in Franklin County and Yakima City in Yakima County

United States Small Business Administration
Microloan Program
Technical Assistance Grant Providers

West Virginia

Wheeling
Ohio Valley Industrial and Business Development Corporation
P.O. Box 1029
1140 Chapline Street
Wheeling, WV 26003
Telephone: 304-232-7722
Fax: 304-232-7727
Serving: Marshall, Ohio, Wetzel, Brooke, Hancock and Tyler Counties

Washington, PA
The Washington County Council on Economic Development
703 Courthouse Square
Washington, PA 15301
Telephone: 412-228-6816
Fax: 412-250-6502
Serving: Preston and Monongalia Counties, West Virginia

Sutton
Mountain CAP
of West Virginia, Inc.
105 Jerry Burton Drive
Sutton, WV 26601
Telephone: 304-765-7739
Fax: 304-765-7308
Serving: Barbour, Braxton, Clay, Fayette, Gilmer, Lewis, Nicholas, Randolph, Roane, Upshur and Webster Counties

Wisconsin

Fond du Lac
Advocap, Inc.
19 West 1st Street
P.O. Box 1108
Fond du Lac, WI 54935
Telephone: 920-922-7760
Fax: 920-922-7214
Serving: Fond du Lac, Green Lake and Winnebago Counties

Almena
Impact Seven, Inc.
126 Sno Avenue East
Almena, WI 54805-9900
Telephone: 715-357-3334
Fax: 715-357-6233
Serving: statewide with the exceptions of Fond du Lac, Green Lake, Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Waukesha, Washington and Winnebago Counties and inner-city Milwaukee

Milwaukee
Wisconsin Women's Business Initiative Corporation
2745 North Dr. Martin Luther King Jr. Drive
Milwaukee, WI 53212
Telephone: 414-263-5450
Fax: 414-263-5456
Serving: Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha Counties

Alaska

Juneau
Juneau Economic Development Council
612 West Willoughby
Suite A
Juneau, AK 99801-1732
Phone: 907-463-3662
Fax: 907-463-3929
Serving: Alaska Panhandle through SBDCs*

California

San Francisco
Women's Initiative
for Self Employment
1390 Market Street
Suite 113
San Francisco, CA 94102
Phone: 415-247-9473
Fax: 415-247-9471
Serving: Defined sectors of San Francisco Bay Area

Connecticut

Stamford
Women's Business Development Center
400 Main Street
Suite 500
Stamford, CT 06902
Phone: 203-353-1750
Fax: 203-353-1084
Serving: Ansonia, Beacon Falls, Bethel, Bridgeport, Bridgewater, Brookfield, Danbury, Darien, Derby, Easton, Fairfield, Greenwich, Milford, Monroe, New Canaan, New Fairfield, New Milford, Newtown, Norwalk, Oxford, Redding, Ridgefield, Seymour, Shelton, Sherman, Stamford, Stratford, Trumbull, Weston, Westport and Wilton Counties

Florida

Fort Myers
Lee County Employment and Economic Development Corp.
2774 First Street
Fort Myers, FL 33916
Phone: 941-337-2300
Fax: 941-337-4558
Serving: Community Redevelopment Areas of Lee County including Charleston Park, Dunbar, Harlem Heights, North Fort Myers and State Road 80

Illinois

Chicago
Women's Business Development Center
8 South Michigan Avenue
Suite 400
Chicago, IL 60603
Phone: 312-853-3477
Fax: 312-853-0145
Serving: Boone, Cook, DeKalb, DuPage, Kane, Kankakee, Kendall, Lake, McHenry, Will and Winnebago Counties

Indiana

Jeffersonville
Community Action
of Southern Indiana
1613 East 8th Street
P.O. Box 843
Jeffersonville, IN 47130
Phone: 812-288-6451, x112
Fax: 812-284-8314
Serving: Clark, Crawford, Floyd, Harrison, Orange, Scott and Washington Counties

Iowa

Iowa City
Institute for Social
and Economic Development
1901 Broadway
Suite 313
Iowa City, IA 52240
Phone: 319-338-2331
Fax: 319-338-5824
Serving: The state of Iowa

Kansas

Dodge City
Great Plains Development, Inc.
100 Military Plaza
Suite 128
P.O. Box 1116
Dodge City, KS 67801
Phone: 316-227-6406
Fax: 316-225-5051
Serving: The state of Kansas

Michigan

Benton Harbor
Cornerstone Alliance
38 West Wall Street
P.O. Box 428
Benton Harbor, MI 49023-0428
Phone: 616-925-6100
Fax: 616-925-4471
Serving: Berrien County and the city of Benton Harbor

Minnesota

St. Paul
Neighborhood Development Center, Inc.
651 1/2 University Avenue
St. Paul, MN 55104
Phone: 651-291-2480
Fax: 651-291-2597
Serving: Districts 3,5,6,8,9 and 16 of the city of St. Paul

United States Small Business Administration (continued)

Microloan Program
Intermediary Lenders

Missouri

Kansas City
Community Development Corporation of Kansas City
2420 East Linwood Boulevard
Suite 110
Kansas City, MO 64109
Phone: 816-924-5800
Fax: 816-921-3350
Serving: Cass, Clay, Platte, Ray and Jackson Counties

Montana

Helena
Montana Department of Commerce - SBDC* Division
1424 9th Avenue
P.O. Box 200505
Helena, MT 59620-0505
Phone: 406-444-4325
Fax: 406-444-1872
Serving: (through SBDCs*) Cascade, Chouteau, Fergus, Glacier, Golden Valley, Judity Basin, Musselshell, Petroleum, Pondera, Teton, Toole and Wheatland Counties, and the Blackfeet, Flathead, and Fort Peck Reservations, and the Crow, Fort Belknap, Northern Cheyenne and Rocky Boys Reservations and their Trust Lands

New Mexico

Albuquerque
New Mexico Community Development Loan Fund
P.O. Box 705
700 4th Street, SW
Albuquerque, NM 87102-0705
Phone: 505-243-3196
Fax: 505-243-8803
Serving: The state of New Mexico

New York

Brooklyn
Brooklyn Economic Development Corporation
175 Remsen Street
Suite 350
Brooklyn, NY 11201
Phone: 718-522-4600
Fax: 718-797-9286
Serving: The five boroughs of New York City

North Carolina

Raleigh
North Carolina Rural Economic Development Center, Inc.
4021 Carya Drive
Raleigh, NC 27610
Phone: 919-250-4314
Fax: 919-250-4325
Serving: The state of North Carolina

Pennsylvania

Philadelphia
Women's Opportunities Resource Center
1930 Chestnut Street
Suite 1600
Philadelphia, PA 19103
Phone: 215-564-5500
Fax: 215-564-0333
Serving: Bucks, Montgomery, Philadelphia, Chester and Delaware Counties

Texas

Corpus Christi
Corpus Christi Chamber of Commerce
1201 North Shoreline
P.O. Box 640
Corpus Christi, TX 78403
Phone: 361-881-1888
Fax: 361-882-4266
Serving: Nueces and San Patricio Counties

Vermont

Burlington
Champlain Valley Office of Economic Opportunity, Inc.
95 North Avenue
Burlington, VT 05401
or P.O. Box 1603
Burlington, VT 05402
Phone: 802-860-1417
Fax: 802-860-1387
Serving: The state of Vermont

Virginia

Radford
Virginia Small Business Development Center Business Assistance Network
P.O. Box 6963
Radford, VA 24142
Phone: 804-371-8200
Fax: 804-371-8111
Serving: The state of Virginia through the SBDCs*

* Small Business Development Center

United States Small Business Administration

Women's Business Centers

Alabama

Mobile
Women's Business Assistance Center
1301 Azalea Road
Suite 201A
Mobile, AL 36693
Telephone: 334-660-2725

Alaska

Anchorage
WomenS Fund tA Program of the YWCA of Anchoraget
245 West Fifth Avenue
P.O. Box 102059
Anchorage, AK 99510-2059
Telephone: 907-274-1524

American Samoa

Pago, Pago
American Samoa's Women's Business Center
P.O. Box 5849
Pago, Pago, AS 96799
Telephone: 684-699-6580

Arkansas

Pine Bluff
Good Faith Fund
Arkansas Enterprise Group
2304 W. 29th
Pine Bluff, AR 71603
Telephone: 870-535-6233

Arizona

Phoenix
Self-Employment Loan Fund, Inc.
201 N. Central Avenue
Suite CC10
Phoenix, AZ 85073-1000
Telephone: 602-340-8834

Tucson
Arizona Council for Economic Conversion
P.O. Box 42168
Tucson, AZ 85733
Telephone: 520-620-1241

California

Fort Bragg
WEST Company -Fort Bragg Cntr.
306 East Redwood Avenue
Suite 2
Fort Bragg, CA 95437
Telephone: 707-964-7671

Ukiah
WEST Company - Ukiah Office Center
367 North State Street
Suite 201
Ukiah, CA 95482
Telephone: 707-468-3553

San Francisco
Women's Initiative for Self Employment - Spanish Center
1398 Valencia Street
San Francisco, CA 94110
Telephone: 415-826-5090

San Francisco
Renaissance Entrepreneurship Center
275 Fifth Street
San Francisco, CA 94103-4120
Telephone: 415-541-8580

El Monte
Women's Enterprise Development Corporation
10505 Valley Boulevard
No. 900
El Monte, CA 91731
Telephone: 626-401-1150

San Francisco
Women's Initiative
for Self Employment
450 Mission Street
Suite 402
San Francisco, CA 94105
Telephone: 415-247-9473

Oakland
Women's Initiative
for Self Employment
11611 Telegraph Avenue
Suite 702
Oakland, CA 94612
Telephone: 510-451-3416

Long Beach
Women's Enterprise
Development Corporation
235 East Broadway
Suite 506
Long Beach, CA 90802
Telephone: 562-983-3747

Colorado

Colorado Springs
MiCasa Career Resource Center
for Women, Inc.
31 North Farragut Avenue
Colorado Springs, CO 80909
Telephone: 719-327-2039

Denver
MiCasa Career Resource Center
for Women, Inc.
700 Knox Court
Denver, CO 80204
Telephone: 303-573-1333

Connecticut

Stanford
Women's Business
Development Center
400 Main Street, Suite 500
Stanford, CT 06901
Telephone: 203-353-1750

Hartford
The Entrepreneurial Center of
Hartford's College for Women
50 Elizabeth Street
Hartford, CT 06105
Telephone: 860-768-5618

District of Columbia

Washington
Women's Business Center
of the Capital Area
1001 Connecticut Avenue NW
Suite 312
Washington, DC 20036
Telephone: 202-785-4WBC

Delaware

Wilmington
YWCA of New Castle County
233 King Street
Wilmington, DE 19801
Telephone: 302-658-7161

Florida

Pensacola
Women's Business Assistance
Center of Northwest Florida
6235 North Davis Highway
No.111B
Pensacola, FL 32504
Telephone: 850-484-2765

Georgia

Atlanta
Women's Economic
Development Agency
675 Ponce de Leon Avenue
Atlanta, GA 30308
Telephone: 404-853-7680

Greater Atlanta
Small Business Project
55 Marietta Street, NW
Suite 2000
Atlanta, GA 30303
Telephone: 404-659-5055

Hawaii

Honolulu
The Women's Financial
Resource Center
1111 Bishop Street
No.204
Honolulu, HI 96813
Telephone: 808-941-8253

Iowa

Iowa City
Institute for Social
and Economic Development
1901 Broadway
Suite 313
Iowa City, IO 52240
Telephone: 800-838-4733

Idaho

Boise
Women's Entrepreneurial
Mentoring Systems, Inc.
P.O. Box 190893
Boise, ID 83719-0893
Telephone: 208-334-1696

Illinois

Chicago
Women's Business
Development Center
8 South Michigan Avenue
Suite 400
Chicago, IL 60603
Telephone: 312-853-3477

Indiana

Fort Wayne
Women's Bureau Inc.
Women's Enterprise
3821 Lake Avenue
Suite 1
Fort Wayne, IN 46805-5533
Telephone: 219-424-7977

Kansas

Lenexa
Enterprise Center
of Johnson County
9875 Widmer Road
Lenexa, KS 66215
Telephone: 913-438-2282

Kentucky

Midway
Women's Enterprise Institute
512 East Stephens Street
Midway, KY 40347-120
Telephone: 606 846 6900

Louisiana

New Orleans
Women Entrepreneurs for
Economic Development Inc.
1693 North Claiborne Avenue
Suite 101
New Orleans, LA 70116
Telephone: 504-947-8622

Massachusetts

Boston
Center for Women
and Enterprise Inc.
1135 Tremont Street
Suite 480
Boston, MA 02120
Telephone: 617-536-0700

Taneytown
Women's Business Institute, Inc.
222 East Baltimore Street
Taneytown, MD 21787
Telephone: 410-756-2334

Maryland

Baltimore
Women's Entrepreneurs
of Baltimore, Inc.
1118 Light Street
Suite 202
Baltimore, MD 21230
Telephone: 410-727-4921

Maine

Wiscasset
Coastal Enterprises Inc.
P.O. Box 268
Wiscasset, ME 04578
Telephone: 207-882-7552

Michigan

Ann Arbor
Center for Empowerment
and Economic Development
2002 Hogback Road
Suite 12
Ann Arbor, MI 48105
Telephone: 734-677-1400

Grand Rapids
Grand Rapids Opportunities
for Women
25 Sheldon Street SE
Suite 210
Grand Rapids, MI 49503
Telephone: 616-458-3404

Detroit
Detroit Entreprenuership
Institute, Inc.
455 W. Fort Street
Detroit, MI 48226
Telephone: 313-961-8426

United States Small Business Administration (continued)
Women's Business Centers

Minnesota

Fosston
The People's Connection
Minnesota Women's
Business Center
226 East First Street
Fosston, MN 56542
Telephone 218-435-2134

St. Paul
Women Venture
2324 University Avenue West
St. Paul, MN 55114
Telephone: 651-646-3808

Missouri

St. Louis
National Association
of Women's Business Owners
7165 Delmar Street
Suite 204
St. Louis, MO 63130
Telephone: 314-863-0046

Grace Hill Neighborhood Services
2600 Hadley Street
St. Louis, MO 63108
Telephone: 314-539-9606

Kansas City
Center for Business
Innovation, Inc.
4747 Troost Avenue
Kansas City, MO 64110-1727
Telephone: 816-960-7403

Mississippi

Greenville
Mississippi Action
for Community Education
119 South Theobald Street
Greenville, MS 38701
Telephone: 601-335-3523

Montana

Missoula
Montana Community
Development Corporation
103 East Main
Missoula, MT 59802
Telephone: 406-728-9234

Helena
Business Resource Center
at Career Training Institute
347 North Last Chance Gulch
Helena, MT 59601
Telephone: 406-443-0800

New Hampshire

Portsmouth
Women's Business Center
150 Greenleaf Avenue
Unit 8 Center
Portsmouth, NH 03801
Telephone: 603-430-2892

New Jersey

Bound Brook
New Jersey Association
of Women Business Owners
225 Hamilton Street
Bound Brook, NJ 08805-2042
Telephone: 732-560-9752

New Mexico

Las Cruces
Women's Economic Self-
Sufficiency Team Corp.
P.O. Box 444
301 North Solano
Suite 2
Las Cruces, NM 88004-0444
Telephone: 505-541-1583

Farmington
Women's Economic Self-
Sufficiency Team Corp.
1909 East 20th Street
Suite 6
Farmington, NM 87401
Telephone: 505-325-0678

Santa Fe
Women's Economic Self-
Sufficiency Team Corp.
P.O. Box 32804
Santa Fe, NM 87594-2084
Telephone: 505-988-5030

Taos
Women's Economic Self-
Sufficiency Team Corp.
Box 5007 NDCBU
Taos, NM 87571
Telephone: 1-800-GO-WESST

Roswell
Women's Economic Self-
Sufficiency Team Corp.
200 West First Street
Suite 202
Roswell, NM 88201
Telephone: 1-800-GO-WESST

Albuquerque
Women's Economic Self-
Sufficiency Team Corp.
414 Silver Southwest Street
Albuquerque, NM 87102
Telephone: 505-241-4758

Nevada

Las Vegas
Southern Nevada Certified
Development Company
2770 S. Maryland Parkway
Suite 212
Las Vegas, NV 89109
Telephone: 702-732-3998

New York

Manhattan
Women's Venture Fund, Inc.
240 West 35th Street
Suite 201
Manhattan, NY 10001
Telephone: 212-732-7500

Brooklyn
The Local Development
Corporation of East New York
80 Jamaica Avenue
Brooklyn, NY 11207
Telephone: 718-385-6700

North Carolina

Fayetteville
North Carolina Center
for Women Business Owners
230 Hay Street
Fayetteville, NC 28301
Telephone: 910-323-3377

Durham
North Carolina Institute of
Minority Economic Development
114 S. Parrish Street
6th Floor
Durham, NC 27701
Telephone: 919-956-8889

North Dakota

Bismarck
Women and Technology Partnership
P.O. Box 2536
Bismark, ND 58502
Telephone: 701-328-5886

Fargo
Women's Business Institute
320 North Fifth Street
Suite 203
Fargo ND 58107-2043
Telephone: 701-235-6488

Ohio

Canton
Pyramid Career Services
(Micro-Business Assistance)
2400 Cleveland Avenue North
Canton, OH 44709
Telephone: 330-453-3757

Athens
Women's Business Resource
Program of Southeast Ohio
20 East Circle Drive
Suite 174
Athens, OH 45701
Telephone: 614-593-1797

Cleveland
Glenville Development Corporation
Micro-Enterprise Program
10640 St. Clair Avenue
Cleveland, OH 44108
Telephone: 216-851-8724

Columbus
Ohio Women's Business
Development Council, Inc.
462 West Broad Street
Columbus, OH 43215
Telephone: 614-238-6081

Elyria
Women's Development Center
Lorain City Community College
JA Spitzer Center
1005 Abbe Road
Elyria, OH 44035
Telephone: 440-366-4188

Maumee
Women's Entrepreneurial
Network
1605 Holland Road
Suite A3
Maumee, OH 43614
Telephone: 330-379-2772

Akron
Women's Organization for Mentoring, Entrepreneurship and Networking
526 South Main Street
Suite 235
Akron, OH 44311-4403
Telephone: 330-379-9280

Columbus
Ohio Women's Business Resource Network
77 South High Street
28th Floor
Columbus, OH 43215-6108
Telephone: 614-466-2682

Columbus
Central Ohio Women's Business Development Center
37 North High Street
Columbus, OH 43215
Telephone: 614-621-0581

Oregon

Medford
Southern Oregon Women's Access to Credit
33 North Central
Suite 209
Medford, OR 97501
Telephone: 541-779-3992

Tigard
ONABEN - A Native American Business Network
11825 SW Greenburg Road
Suite B3
Tigard, OR 97223
Telephone: 503-968-1500

Pennsylvania

Philadelphia
Women's Business Development Center
1315 Walnut Street
Suite 1116
Philadelphia, PA 19107-4711
Telephone: 215-790-9232

Pittsburgh
Allegheny West Civic Council, Inc.
Women's Enterprise Center
901 Western Avenue
Pittsburgh, PA 15233
Telephone: 412-321-5660

Puerto Rico
Women's Business Institute
The University of the Sacred Heart
P.O. Box 12383
San Juan, PR 00914-0383
Telephone: 787-726-7045

Rhode Island
Center for Women and Enterprise, Inc.
380 Westminster Street
Suite 511
Providence, RI 02903
Telephone: 401-528-4595

South Carolina

Columbia
Center for Women Entrepreneurs
Columbia College of South Carolina
1301 Columbia College Drive
Columbia, SC 29203
Telephone: 803-786-3108

Tennessee

Nashville
The Women's Resource Center
Nashville NAWCBO Chapter
1112 8th Avenue South
Nashville, TN 37203
Telephone: 615-248-3474

Texas

Temple
Texas Center for Women's Business Enterprise
P.O. Box 1992
Temple, TX 76503
Telephone: 254-773-4815

Fort Worth
Fort Worth Business Assistance Center
100 East 25th Street
Suite 400
Fort Worth, TX 76102
Telephone: 817-871-6069

Edinburg
Rio Grande Valley Empowerment Zone Corporation
2412 Closner Street
Edinburg, TX 78539
Telephone: 956-316-2610

Dallas
Online Women's Business Center
1420 Mockingbird Lane
Suite 270
Dallas, TX 75247
Telephone: 214-678-9964

Austin
Texas Center for Women's Business Enterprise
Two Commodore Plaza
13th Floor
Austin, TX 78701
Telephone: 512-472-8522

United States Virgin Islands

St. Croix
St. Croix Foundation for Community Development, Inc.
202 Chandler's Wharf
Gallows Bay
St. Croix, VI 00802
Telephone: 340-773-4986

Utah

Salt Lake City
Women's Business Center
Salt Lake City Area Chamber of Commerce
175 East 400 South
Suite 600
Salt Lake City, UT 84111
Telephone: 801-328-5051

Virginia

Alexandria
South Fairfax Regional Business Partnership, Inc.
6911 Richmond Highway
Suite 290
Alexandria, VA 22306
Telephone: 703-277-7700

Vermont

Burlington
Trinity College of Vermont
Women's Small Business Program
208 Colchester Avenue
Burlington, VT 05401
Telephone: 802-846-7164

Washington

Seattle
Women's Business Center at Community Capital Development
1437 South Jackson Street
Suite 302
Seattle, WA 98122-0283
Telephone: 206-324-4330

Wisconsin

Milwaukee
Wisconsin Women's Business Initiative Corporation
2745 North Dr. Martin Luther King Jr. Dr.
Milwaukee, WI 53212
Telephone: 414-263-5450

Madison
Wisconsin Women's Business Initiative Corporation
217 South Hamilton Street
Suite 201
Madison, WI 53703
Telephone: 608-257-7409

Independence
Western Dairyland Women's Business Center
P.O. Box 45
23122 Whitehall Road
Independence, WI 54747
Telephone: 1-800-782-1063

Wyoming

Laramie
Wyoming Women's Business Ctr.
P.O. Box 3661
Laramie, WY 82071
Telephone: 1-888-524-1947

Board of Governors of the Federal Reserve System

Federal Reserve Banks
Community Affairs Office

Atlanta

104 Marietta Street, NW
Atlanta, GA 30303-2713
Telephone: 401-599-7267
Fax: 401-599-7342
Serving: Alabama, Georgia, Louisiana, Southern Mississippi, Eastern Tennessee

Boston

P.O. Box 2076
Boston, MA 02106
Telephone: 617-973-3469
Fax: 617-973-3511
Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Chicago

P.O. Box 834
Chicago, IL 60690
Telephone: 312-322-5232
Fax: 312-913-2626
Serving: Northern Illinois, Northern Indiana, Iowa, Michigan, Southeastern Wisconsin

Cleveland

P.O. Box 6387
Cleveland, OH 44101-1387
Telephone: 216-579-2848
Fax: 216-579-2122
Serving: Eastern Kentucky, Ohio, Western Pennsylvania, Northern West Virginia

Dallas

2200 North Pearl Street
P.O. Box 655906
Dallas, TX 75201-2272
Telephone: 214-922-5377
Fax: 214-922-5268
Serving: Northern Louisiana, Southern New Mexico, Texas

Kansas City

925 Grand Boulevard
Kansas City, MO 64198
Telephone: 816-881-2687
Fax: 816-881-2135
Serving: Colorado, Kansas, Northern New Mexico, Western Missouri, Nebraska, Oklahoma, Wyoming

Minneapolis

90 East Hennepin Avenue
P.O. Box 291
Minneapolis, MN 55480-0291
Telephone: 612-204-5179
Fax: 612-204-5163
Serving: Minnesota, Montana, North Dakota, South Dakota, Northwestern Wisconsin

New York

33 Liberty Street
New York, NY 10045
Telephone: 212-720-5215
Fax: 212-720-7841
Serving: Northern New Jersey, New York, Puerto Rico

Philadelphia

Ten Independence Mall
Philadelphia, PA 19106
Telephone: 215-574-6466
Fax: 215-574-2512
Serving: Delaware, New Jersey, Eastern Pennsylvania

Richmond

P.O. Box 27622
Richmond, VA 23261
Telephone: 804-697-8447
Fax: 804-697-8473
Serving: District of Columbia, Maryland, North Carolina, South Carolina, Virginia, West Virginia

San Francisco

101 Market Street
Mail Stop 620
San Francisco, CA 94105
Telephone: 415-974-2079
Fax: 415-393-1920/ 415-393-1921
Serving: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, Washington

St. Louis

P.O. Box 442
St. Louis, MO 63166
Telephone: 314-444-8646
Fax: 314-444-8503
Serving: Arkansas, Southern Illinois, Southern Indiana, Western Kentucky, Northern Mississippi, Eastern Missouri

Federal Deposit Insurance Corporation

Regional Community Affairs Offices

Atlanta Region

1201 West Peachtree Street, NE
Suite 1900
Atlanta, GA 30309-3415
Telephone: 404-817-2515
Fax: 404-817-8806
Serving: Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia

Boston Region

15 Braintree Hill Office Park
Suite 100
Braintree, MA 02184
Telephone: 781-794-5632
Fax: 781-794-5633
Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Chicago Region

500 West Monroe
Suite 3300
Chicago, IL 60661
Telephone: 312-382-7506
Fax: 312-382-6935
Serving: Illinois, Indiana, Michigan, Ohio, Wisconsin

Dallas Region

1910 Pacific Avenue
Suite 2000
Dallas, TX 75201
Telephone: 972-761-8010
Fax: 972-761-8019
Serving: Colorado, New Mexico, Oklahoma, Texas

Kansas City Region

2345 Grand Avenue
Suite 1200
Kansas City, MO 64108
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WEDNESDAY, APRIL 17, 2002.

SECURITIES AND EXCHANGE COMMISSION

WITNESS

HARVEY L. PITT, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

INTRODUCTION

Mr. WOLF. The subcommittee will come to order.

We want to thank you, Chairman Pitt, for appearing before the subcommittee this morning to discuss the Securities and Exchange Commission's fiscal year 2003 budget request. The Administration's budget request for the SEC is quite troubling. The fiscal year 2003 budget request is 466.9 million. This is a 29 million or 6.6 percent increase over fiscal year 2002. The fiscal year 2003 request does not include any funding for pay parity implementation.

As you know, I sent a letter to the President requesting that he submit a fiscal year 2003 budget amendment to fully fund your pay parity needs and to provide additional oversight staff. We are pleased that the Administration's latest supplemental request includes funding for 100 additional SEC staff. However, I am disappointed that no funding has been requested to fund pay parity in fiscal year 2003, which I understand will cost approximately 76 million. We are interested—and there will be a number of questions in hearing whether you feel an additional 100 positions is an adequate increase in light of the recent Enron and Global Crossings bankruptcies.

Your mission to protect investors and maintain the integrity of the securities market has become increasingly difficult as business transactions and financial markets have become more complex. The need for effective regulation of the securities and accounting industry has become increasingly apparent in light of the failure of companies such as Enron and Global Crossings. These bankruptcies have left investments and employee retirement plans, in some respects worthless, while some corporate executives have become multimillionaires. The future success of the markets is dependent upon investor confidence that companies are accurately disclosing financial information, that auditors are independently auditing financial statements, and that investment advisors are not inappropriately influenced by their company's investment activities.

The SEC must do all it can, obviously as you agree, as I have been reading your statements in the press, to prevent future Enrons and Global Crossings from occurring, and to ensure that investors have confidence in the security industry.

With that, I would recognize my colleague, Mr. Serrano, for any comments, and then your full statement will appear in the record, and you can proceed any way that you see fit.

Mr. Serrano.

Mr. SERRANO. I just want to welcome Mr. Pitt here today, and just take this opportunity to tell you that your folks really did a great job in getting up and running again after September 11th.

When all is said and done and a full study of intent is put forth by our government, I am sure that part of what those folks wanted to do was disrupt our financial institutions as much as possible. And you really did a good job.

And as a fellow New Yorker, in terms of where you are situated and where the financial capital of the world is, I am very proud of the fact that we all came together under your leadership, and in that sense the administration did a great job.

It also should not go unnoticed that you have seltzer water on the table there, which is a sign of a true New Yorker, and——

[Laughter.]

Mr. SERRANO. I almost expected a knish and a potato pancake also, and I would get into celery soda, but the chairman wouldn't understand that.

But I am very glad to see you here, and again, very proud of the work that you have all done to get us back where we should be.

Thank you, Mr. Chairman.

Mr. WOLF. Thank you very much.

OPENING REMARKS

Mr. PITT. Chairman Wolf and Congressman Serrano, Congressman Miller, I appreciate this opportunity to testify on our fiscal year 2003 appropriations. This is my first appearance before this subcommittee since I became chairman of the SEC 8 months ago, and I want to express my sincere gratitude and that of the entire commission for the bipartisan support this subcommittee, under the leadership of Chairman Wolf and its staff, have given over the years. And I look forward to continuing this strong and positive working relationship.

The President's fiscal 2003 budget sought an appropriation of $466.9 million for us. Since that budget was formulated pay parity legislation passed and we have confronted three major crises. Those events require us to seek additional funds, first to enable us to phase in what I would characterize as a modest pay parity plan for fiscal 2003, estimated at an additional $76 million. And second, to add, as the Chairman noted, 100 new staff members to address pressing immediate needs, estimated at approximately 20 million for the full fiscal year.

A staffing increase of 100 positions would help us meet our immediate enforcement needs, as well as address initiatives we are undertaking to improve financial reporting and disclosure.

In the coming months I will be closely examining our need for resources throughout the agency for the fiscal 2004 budget, identifying efficiencies we can employ, and also additional resources we may require. Given current events, we likely will need to come back asking for resources beyond what I have requested today.

I really appreciate this opportunity to testify, Mr. Chairman, and your personal support. I ask that my formal testimony be a part of the record, and I am happy to try to respond to any questions the subcommittee may have.

[The statement of Mr. Pitt follows:]



TESTIMONY OF

HARVEY L. PITT, CHAIRMAN
U.S. SECURITIES AND EXCHANGE COMMISSION

CONCERNING APPROPRIATIONS FOR FISCAL 2003

BEFORE THE SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, AND THE JUDICIARY COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

April 17, 2002

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

TESTIMONY OF
HARVEY L. PITT, CHAIRMAN
U.S. SECURITIES AND EXCHANGE COMMISSION

CONCERNING APPROPRIATIONS FOR FISCAL 2003

BEFORE THE SUBCOMMITTEE ON
COMMERCE, JUSTICE, STATE, AND THE JUDICIARY
COMMITTEE ON APPROPRIATIONS

UNITED STATES
HOUSE OF REPRESENTATIVES
April 17, 2002

Chairman Wolf, Ranking Member Serrano, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today on behalf of the Securities and Exchange Commission regarding the President's fiscal 2003 budget request. This is the first time I have appeared before this Subcommittee, and I want to begin by expressing my gratitude, and that of the entire SEC, for the tremendous bipartisan support this Subcommittee and its staff have given the Commission over the years. I look forward to continuing this strong and positive working relationship.

The past eight months have tested the mettle and resiliency of our country, our markets, and the investing public's confidence. With the events of September 11th, the bankruptcy of Enron and, just last month, the indictment of Arthur Andersen, we have witnessed how critical our appropriately vaunted capital markets are to the strength, security and spirit of our Country and our economy. As the complexity of our financial markets continues to grow unabated, and the number of Americans who participate in them steadily increases, the Commission must ensure that its traditional high standards are not compromised. Given this backdrop, it is critical that the SEC have the resources it needs to fulfill its multiple missions. We need those resources if we are to restore the public's full confidence in our capital markets.

When I returned to the SEC last fall, I had hoped to have the opportunity to perform an in-depth review of the Commission's operations, effectiveness, and resource needs in time for the fiscal 2003 budget process. The events of the past eight months, including the destruction of our Northeast Regional Office, made any comprehensive review of our resource needs impossible at that time. On March 20th, I announced the commencement of a four-month internal special study to examine our resource allocations and needs. The results of this effort will be included in our fiscal 2004 budget request.

Proposed Funding Level

The President's budget for fiscal 2003 requested an appropriation of $466.9 million for the Commission, an appropriation that I supported when it was first formulated. But, since the time that appropriation was formulated, pay parity legislation has passed, and the Commission has had to respond to three major crises. As a result of those recent events, we critically need additional funds to enable us to phase-in a modest pay parity plan for fiscal 2003. We also need to add new staff to address pressing immediate needs.

The proposed funding level of $466.9 million for fiscal 2003 — which excludes $13 million that would be provided to the SEC to fund the Administration's retirement accrual proposal, if enacted — is approximately 6.6 percent more than our fiscal 2002 budget of $437.9 million.[1] This proposed funding level provides the SEC with a "zero-growth" budget in that it provides no new staff and only modest amounts for the SEC's e-government and information technology initiatives, telecommunications systems, and security enhancements. The Commission has not received a staffing increase in the last two years, despite the additional responsibilities we have received as a result of enactment of the Commodity Futures Modernization Act and the Gramm-Leach-Bliley financial services modernization act. If the SEC remains at its current staffing level, the agency will be required to continue to divert resources from other program areas to meet our enforcement needs and to address the additional initiatives we are undertaking to improve financial reporting and disclosure.

Pay Parity

The Commission has been subject to extremely high attrition, in part because our employees earn substantially less than their counterparts in the other financial service regulatory agencies. The "Investor and Capital Markets Fee Relief Act" (P.L. 107-123), enacted this January, authorized pay parity, but the Administration's proposed fiscal 2003 SEC budget provides no new money to implement this vitally important program. Now that pay parity is law, however, the failure to provide funding would be a crushing disappointment to our most valued employees. We estimate that an *additional* $76 million is needed to provide pay parity for the agency in fiscal 2003.[2] At this critical time for the Nation's financial markets, the SEC must be able to keep our most experienced, talented, valuable and productive employees. The only way I believe we can do that is to

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[1] In fiscal 2002, the Commission also received a supplemental appropriation of $20.7 million to cover some of the costs associated with rebuilding our Northeast Regional Office and increasing security agency-wide.

[2] In fiscal 2001, the Commission received approval and funding to implement "special pay" to help begin addressing our recruitment and attrition problems. In fiscal 2002, we also received funding to continue special pay. The appropriation proposal for fiscal 2003 provides $19 million to fund special pay. We estimate that an additional $76 million is needed to fund pay parity for fiscal 2003.

provide staff with pay at levels comparable to those with whom they regularly work at the other federal financial regulatory agencies.

Pay parity has been and remains my highest budget priority. In making this funding request, I am grateful to have bipartisan backing from this Committee, and the SEC's House oversight body, the Financial Services Committee. I am especially grateful to you, Chairman Wolf and Ranking Member Serrano, for recently approving the reprogramming of funds necessary to implement partial pay parity in fiscal 2002. The Office of Management and Budget has now apportioned the use of those funds, and we are awaiting the commencement of negotiations with the National Treasury Employees Union regarding certain aspects of the pay parity system for bargaining unit staff. I also want to thank you, Mr. Chairman, for writing the Administration to express your support for full funding of pay parity in fiscal 2003. This is a crucial time in the development and strategic future direction of our capital markets. The SEC cannot afford to continue suffering the staffing crisis it has endured for the past decade. With your assistance, pay parity will provide the benefits we truly need to meet the increasing regulatory challenges we face.

I can assure you that the SEC intends to make responsible increases in staff salaries and benefits and to ensure the appropriate use of merit and performance-based principles. We have described our plan to implement pay parity in our Pay Parity Implementation Report which we submitted on March 6, 2002 to Congress and the Office of Personnel Management as we were required to do under the Investor and Capital Markets Fee Relief Act. Our $76 million cost estimate represents a conservative approach that is lower than the amount that we believe would be required to match what several of the banking agencies currently provide. A fully implemented system identical to the FDIC model, for example, could easily cost more than $100 million. In addition, we do not intend to provide large-scale, across-the-board increases. Instead, we intend to base our system on the intent of Congress and begin a modest, considered approach to pay parity that we can assess responsibly before including additional benefits. Merit will be an integral component of any program we put in place.

Failure to continue funding pay parity beyond fiscal 2002 would only exacerbate the problems that the legislation passed by Congress last December was intended to cure. By temporarily raising salaries and expectations of finally achieving lasting pay parity relief, I believe we will face even greater employee losses and suffer irreparable harm to morale if pay parity is not funded in fiscal 2003 and thereafter. The threat of either terminating our pay parity program in fiscal 2003 or terminating approximately 700 employees — the number we estimate would have to be cut from the agency to continue pay parity — would cripple many of the projects we have underway, which are important for the protection of investors and Americans whose retirement accounts are invested in the securities of public companies.

So, if there is one message I can leave with you today, it is: Please, please fully fund pay parity for the SEC in fiscal 2003.

Additional Staffing Needs

Because of recent events, we need to restore full confidence in our capital markets, and I believe we need additional personnel to be sure we achieve our goals. Accordingly, when I testified on the SEC's budget before the Senate last month, I requested that our fiscal 2003 staffing level be increased by 100 positions to meet our immediate resource needs. Since that hearing, the Administration has submitted its supplemental budget request to Congress and included in it $20 million to fund these positions. We are very grateful for the Administration's support. They have been extremely receptive to our request and willing to work with us to meet our resource needs. These 100 positions would allow us to add:

- 35 accountants and lawyers in the Division of Enforcement to deal with the increasing workload from financial fraud and reporting cases. To give you a sense of scale of this increasing workload, consider that over the first two months of this year, the Division of Enforcement opened 49 cases investigating financial fraud and reporting, compared to 18 cases opened over the same time period last year.

- 30 professional staff, including accountants and lawyers, in the Division of Corporation Finance to expand, improve and expedite our review of periodic filings. Our Division of Corporation Finance has undertaken to monitor the annual reports submitted by all Fortune 500 companies that file periodic reports with the Commission in 2002. This new initiative, which we announced in December, significantly expands the Division's review of financial and non-financial disclosures made by public companies.

- 35 accountants, lawyers, and other professionals in the other divisions – including the Office of Chief Accountant – to deal with new programmatic needs and policy.

These 100 positions are the minimum staffing levels I believe we require to deal with our *immediate* post-Enron needs.

I ask for your support to fund these additional positions to enhance our accounting oversight, disclosure and enforcement programs. The Administration's decision to include $20 million in the supplemental budget request responded to our request for $15 million to fund these positions beginning in fiscal 2003. It is my understanding that these $20 million in funds were included in the supplemental budget request to cover the fiscal 2002 and 2003 costs associated with 100 new positions. We are extremely grateful to the Administration for recognizing and addressing our immediate needs. If we are able to fill these new staff positions by summer, we estimate we will spend approximately $5.5 to $6.5 million of the total $20 million in fiscal 2002, which could result in a shortfall for fiscal 2003. I have spoken with the Office of Management and Budget, and they agree that a shortfall was not intended and have said they will work with us to ensure our staffing needs are satisfied.

Special Study

As I mentioned at the beginning of my testimony, we have just begun a special four-month study to examine the Commission's operations, efficiency, productivity, and resource needs in preparation for our upcoming fiscal 2004 budget submission. This special study is intended, in part, to identify efficiencies that we can employ and to examine closely our need for additional resources throughout the agency. The study also addresses some recent recommendations of the General Accounting Office in its study of the Commission's human capital, strategic planning activities, and resource needs. We may need additional resources, for example in our examination program to meet our goals for timely and frequent on-site exams of investment companies and advisers, broker-dealers, and the exchanges. I anticipate completing this study by the end of July and will ensure that this Committee is kept fully apprised of our progress and recommendations. I expect the results of the special study to be consistent with the President's Management Agenda.

The remainder of my testimony addresses other ongoing initiatives we are undertaking in the areas of enforcement, corporate disclosure and accounting, investor education and technology.

Real-time Enforcement

One of our major new initiatives – "real-time" enforcement – is an important component of our fiscal 2003 budget. Our goal is to provide quicker, and more effective, protection for investors, and better oversight of the markets with our limited enforcement resources. As recent experience has reinforced, the SEC must resolve cases and investigations *before* investors' funds vanish forever; that means we must act more quickly, both in identifying violations and taking prompt corrective action to protect investors. Faster enforcement can help prevent continued fleecing of public investors and dissipation of assets, and will promote investor confidence in the integrity of our markets. As a result, you will see us moving faster to obtain temporary restraining orders, freezes of assets, and appointment of court monitors to oversee enterprises that commit securities fraud. As of April 10, 2002, just about halfway through our fiscal year, our Division of Enforcement has sought 29 temporary restraining orders, compared to 42 over the entire fiscal 2001; suspended trading in 7 securities, compared to 2 in all of fiscal 2001, and brought 14 subpoena enforcement actions, compared to 13 in all of fiscal 2001. The surest way to protect investors is with an enforcement program that is focused on the needs of investors. These statistics show we are committed to that goal. These efforts necessarily require resources, the most important of which is appropriate staffing. An immediate staffing increase of 35 accountants and lawyers in our Division of Enforcement, which I have already outlined, would strengthen our real-time enforcement program, especially in the area of financial fraud and reporting cases, which involve complex and time-consuming investigations.

Disclosure and Accounting

Recent events also have underscored the need for public companies to have a strong commitment to full disclosure, accounting and compliance with all regulatory regimes to which their companies are subject. In his State of the Union Address, the President appropriately demanded "stricter accounting standards and tougher disclosure requirements." He also stated that he wants corporate America to "be made more accountable to employees and shareholders and held to the highest standard of conduct." On March 7, the President outlined a substantive, serious, and thoughtful program to move toward implementation of these goals. The SEC has embraced the President's program, and we are firmly committed to making it a reality.

Last week, we proposed changes in corporate disclosure rules as the first in a series of steps designed to improve our financial reporting and disclosure system. The proposed rules would require companies to report transactions by company insiders on a current basis and in a complete manner. They also would expedite the filing of existing periodic reports. Shortly, we anticipate proposing rules that would require companies to report additional critical information on a current basis and in a complete manner, such as critical accounting policies and changes in rating agency decisions.

While these proposed rules are only a first step, if enacted they would provide the most dramatic and significant improvements in our disclosure system in at least two decades, and they could be implemented quickly while other, more sweeping proposals are considered. During the remainder of 2002, we anticipate proposing further comprehensive reform proposals covering financial reporting and disclosure requirements, accounting standard setting, regulation of the auditing process and profession and corporate governance. These initiatives include the following:

- *A "current" disclosure system.* Investors need current information, not just periodic disclosures. We want investors to have an accurate and current view of the posture of their company, as seen through the eyes of management. Public companies should be required to make affirmative disclosures of unquestionably material information in real time, including providing updates to prior disclosures.

- *Public company disclosure of significant current "trend" and "evaluative" data.* Providing current trend and evaluative data would enable investors to assess a company's evolving financial posture. This information, upon which corporate executives and bankers already base critical decisions, can be presented without confusing or misleading investors, prejudicing legitimate corporate interests or exposing companies to unfair assertions of liability.

- *Clear and informative financial statements.* Investors, and employees concerned with preserving and increasing their savings and retirement funds, deserve comprehensive financial reports they can easily and quickly interpret and understand.

- *Conscientious identification and assessment of critical accounting principles.* Public companies should be required to identify the most critical accounting principles upon which a company's financial status depends, and which involve the most complex, subjective, or ambiguous assessments. Investors should be told, concisely and clearly, how these principles are applied, and should be informed about a range of possible effects in differing applications of these principles.

- *More meaningful investor protection by audit committees.* Audit committees must be proactive, not merely reactive, to ensure the quality and integrity of corporate financial reports. Especially critical is the need to improve interaction between audit committee members and senior management and outside auditors. Audit committees must understand why critical accounting principles were chosen, how they were applied, and have a basis to believe the end result fairly presents the company's actual status.

- *Effective oversight of those who audit public companies.* We are firmly committed to taking a lead role in assuring that the accounting profession functions properly, expeditiously and in the public interest. To that end, we are addressing how best to restructure the regulatory system that governs the accounting profession. We envision a regulatory body that will assume responsibility for auditor and accountant discipline and quality control. A substantial majority of its members would be unaffiliated with the accounting profession, and the oversight body would be funded not by the accounting profession but from the private sector.

- *Ensuring those entrusted with the important public responsibility of auditing public companies are single-minded in their devotion to the public interest, and not subject to conflicts that might confuse or divert them.* Those who perform audits must be truly independent and in particular must not be subject to the conflict of increasing their own compensation at the risk of ensuring the public's protection. Their fidelity to the cause of full, fair and understandable financial reporting must be ironclad and unequivocal.

These are just some of the initiatives that we are working on, both on our own and together with Congress, the President's Working Group, investor groups and other SEC constituents to improve corporate disclosure and accounting. These initiatives, if done properly and responsibly, will require additional resources to plan and implement, if we are to keep up with our existing, on-going responsibilities at the same time. Regrettably, at this time, I cannot give you even an estimate of those costs. We are studying this currently. But, in light of the events of the past eight months, I think it is foreseeable that the SEC will require additional funding to implement improvements to our corporate disclosure and accounting systems.

Investor Education

Even with our shift toward real-time enforcement and our current efforts to improve financial disclosure, the first line of defense against fraud is always an educated investor. The Commission works with numerous public and private organizations to foster investor educational programs. Our staff gives presentations to countless schools, religious organizations, and investor clubs, explaining basic investing concepts and answering questions. We also host "Investor Town Meetings" across the United States, that bring together industry, federal, and local government officials to educate investors on basic financial concepts.

Over the past several months, we have been seeking input broadly on both corporate disclosure and auditor regulation. To that end, we held Roundtables, on March 4 in New York City, March 6 in Washington, D.C. and April 4 in Chicago, with distinguished business executives, lawyers, accountants, academics, regulators, and public interest representatives, who discussed various proposals and helped advance our understanding and insight into these issues. On May 10, we will host our first "Investor Summit" in Washington DC to discuss with investors policies and proposals that impact them. We want to give all Americans an opportunity and an avenue to weigh in on the broad policy objectives that ultimately could impact their ability to send their children to college or retire comfortably. We plan to use the Internet to broadcast the summit so that anyone can participate. We also are asking people to write us and call us so that we can hear the broadest possible range of viewpoints. We want to hear the concerns and aspirations of America's investors.

Information Technology

Like the rest of the government, our needs in the area of information technology continue to increase. Given the critical and increasing role of technology in the financial markets, the President's budget requests $4.0 million to fund the SEC's e-government initiatives. This is an area where the Commission needs to improve, both internally and externally. Technology is constantly altering the landscape of our markets, and SEC staff must have the necessary tools at their disposal to successfully meet the increasing demands that we face. In particular, funds proposed for fiscal 2003 will allow the SEC to get better and more timely enforcement information from the markets, enhance our intrusion detection capabilities, and meet the President's security requirements for information technology. These initiatives are a small, but important, first step toward meeting the Commission's technology needs.

With the advent of alternative trading systems that have grown from only a handful to over 60 today, and as a result of the Internet, the SEC also must consider what effect our regulatory actions and decisions have on the industry's use of technology. Toward that end, I would like to thank you for recently approving the creation of a Chief Technology Officer position to provide us with the technical expertise and advice necessary to improve our oversight of the markets. Generally, this office will be responsible for ensuring that the SEC's regulatory, disclosure, examination, and law

enforcement programs are implemented with the benefit of a state-of-the-art understanding of technology. Through this process, the agency can be confident that what we implement or approve is technologically sound and cost effective to the private sector.

Funding Structure

Last, I want to thank you again for your support in helping enact the recent fee reduction/pay parity legislation that I discussed earlier in my testimony. This new law is extremely important to the SEC and the securities industry, which has consistently supported both fee reduction and pay parity. The new legislation not only reduces potential excess fees paid by investors and provides authority for pay parity for the Commission's staff, but also provides the SEC with a stable, long-term funding structure, which is consistent with the original fee structure implemented to fund the SEC.

Under the fee reduction/pay parity legislation, the Commission is slated to collect a total of $1.33 billion in offsetting collections in fiscal 2003, $180 million more than this year's estimate. Even after funding pay parity and the additional positions described above, the Commission will still collect more than $750 million in fees than its fiscal 2003 budget request.

The fee reduction/pay parity legislation requires the Commission to adjust fee rates on a periodic basis after consulting with the Congressional Budget Office and the Office of Management and Budget. While the fee rates are going to be higher than anticipated in the short term, due to changes in the economy and declines in market indices since CBO developed its original dollar volume estimates over a year ago, we firmly believe that over the longer term the fee reduction legislation will provide the investing public with the benefits and security it was designed to provide, in addition to benefiting the Commission and this Subcommittee by providing a stable, long-term funding source.

Conclusion

The SEC regulates industries and markets that have grown enormously in both size and complexity. The Commission currently oversees an estimated 8,000 brokerage firms employing nearly 700,000 brokers; 7,500 investment advisers with approximately $20 trillion in assets under management; 34,000 investment company portfolios; and over 17,000 reporting companies. The Commission also has oversight responsibilities for nine registered securities exchanges, the National Association of Securities Dealers, the National Futures Association, 13 registered clearing agencies, and the Municipal Securities Rulemaking Board.

The SEC currently oversees these industries and markets with modest staff and limited resources, operating in conjunction with the states and self-regulatory organizations. This cooperative structure enables the Commission to leverage its resources to fulfill its missions, but leverage can only go so far. Without knowing

exactly where and how many, I can say with certainty that the SEC needs more staff; that is why I have recommended an immediate fiscal 2003 increase of 100 key professional staff and will be making a more thorough, agency-wide assessment over the next several months.

I take quite seriously my stewardship responsibilities and the Oath of Office I took regarding the Commission and its resource needs. I am confident that we can work together to ensure that the SEC has sufficient resources to ensure that our markets remain the envy of the world and are as fair and transparent to all investors as we can possibly make them. Thank you for the opportunity to testify today. I am pleased to respond to any questions the Subcommittee may have.

Mr. WOLF. Sure. Your full statement will appear in the record.

ATTRITION OF STAFF

For the past several years we have been hearing about excessive attrition rates at the SEC, primarily accountants, attorneys and examiners. We understand that over the past three years, one-third of your staff, 1,000 employees' have left the agency. Is that an accurate number?

Mr. PITT. Yes, sir, it is accurate.

Mr. WOLF. Could you tell us what the exact number is? Is it 1,000? Do you have that exact number?

Mr. PITT. Yes.

Mr. WOLF. If you can submit it for the record.

Mr. PITT. Yes, I will.

PAY PARITY

Mr. WOLF. In order to address this problem Congress passed the Investor and Capital Markets Fee Relief Act which authorized SEC staff to be paid at levels comparable to other Federal banking regulators. In March, the subcommittee approved a reprogramming of prior year balances to bring implementation of the SEC's pay parity plan this fiscal year. When will the plan be implemented and how is it expected to resolve your employee attrition problems?

Mr. PITT. Well, let me say that we are in the process of starting to implement pay parity for the remainder of fiscal 2002, thanks to the efforts of this subcommittee and the Senate subcommittee and OMB's approval. We have $25 million with which to fund the start of a pay parity program for about 4 months in fiscal 2002. It is our goal to implement that as quickly as possible. About 3 weeks ago we advised the National Treasury's Employee's Union that we were ready to start discussions with them, and they have told us that they think they will be ready to commence serious negotiations next week.

Our problem is not with fiscal 2002, therefore, our problem is with fiscal 2003. At the present time, I have not been successful in persuading OMB to fund an additional $76 million. That is over and above $19 million that would be in the 2003 budget for special pay which we will apply to pay parity compensation. The program we have is a very modest one. It is an effort to start along the process of providing parity between the SEC and other financial service regulators.

Mr. WOLF. For the record, tell us what other ones. Now, if you can tell us?

Mr. PITT. I am sorry?

Mr. WOLF. What other agencies are you seeking to have pay parity with?

Mr. PITT. Well, you have the Federal Deposit Insurance Commission. You have the Federal Reserve Board, and you have, I believe, the Office of Thrift Supervision, and the Office of the Controller of the Currency. All have a higher and a different pay level from the SEC, significantly higher and different.

Mr. WOLF. Will other banking regulation's pay plans still be higher after you implement your pay parity plan?

Mr. PITT. Yes. In many cases it will still be higher. What we have attempted to do is find a middle ground, and in addition, I strongly believe that the government should operate on the notion of performance, rewarding performance. So there is a substantial merit-based component that we intend to include in our pay parity program. I don't want simply to give everyone and across-the-board pay raise for all of the money. There will be some across-the-board pay raises because I think all of our employees are deserving. And then they will have the opportunity to earn more based on their performance, which hopefully will give the public good service.

Mr. WOLF. How much of a salary increase would each employee receive, using the across-the-board, not the bonus, but just across the board?

Mr. PITT. The numbers vary because some offices have geographic allotments.

Mr. WOLF. Are you talking locality pay, there is a higher cost of living in New York City versus——

Mr. PITT. New York City, for example, our employees—Congressman Serrano, you will be happy to hear—will get a higher allowance for the cost of living there. But the numbers of sort of an absolute pay scale raise would range from between 6 to 15 percent. I think New York has the highest level. There are some areas where the cost of living is actually quite favorable, and in those situations, those staff people will be at the lower end of the scale. But that is just the first layer of raises.

APPLYING PAY PARITY TO HIGH TURNOVER AREAS

Mr. WOLF. Will the specialized employees with the highest attrition rates be compensated at a higher rate? How will you target it then? Of these 1,000 that left, are there certain areas or certain categories, and will those areas be addressed. If Department A has had a higher attrition than Department B, will you put greater emphasis on A or will you do it on A and B?

Mr. PITT. There are two responses to that. First, it is our belief that all of our employees need to receive increases, but with respect to the more specialized individuals we have basically provided for higher increases for attorneys, accountants and other expert individuals.

Mr. WOLF. Where are your people going? Have you done an exit survey to see where they went this past year?

Mr. PITT. We have done some, and the places vary. Some have gone to other agencies, other financial services agencies. Some have gone to self-regulatory organizations that we oversee but of course can pay much more than the government pays, and some have gone directly into the private sector, law firms, accounting firms and the like.

Mr. WOLF. What percentage of the people that left are lawyers?

Mr. PITT. I don't have that number off the top of my head, but I would be happy to supply it for you.

Mr. WOLF. Do you have exit interviews though, to find out why they have left?

Mr. PITT. We attempt to—our personnel group attempts to ascertain why people leave and to conduct exit interviews. I cannot tell

you that in every case we have managed to succeed in that, but it is our effort to find out why people are leaving.

Mr. WOLF. And is pay mainly the reasons?

Mr. PITT. Pay and pay parity have been at the top of the list. We have repeatedly been told that our staff would like to stay. The work that we are doing now is challenging, stimulating, exciting, and I believe we could hold people for modest additional amounts of money, but pay has been the major reason for people leaving.

Mr. WOLF. It will be interesting to see next year how many employees leave, assuming pay parity is implemented as we would hope it would. You recall the statement President Kennedy, made "ask not". Government service is much more rewarding than sitting in a big 300-person law firm downtown can be sometimes, where you may not even know the partner of the firm if they sat next to you on the bus or on the subway or in the shuttle. To make a difference, and know you did make a difference in life.

My sense is that particularly in this time, the SEC is not an agency of boredom and not an agency of irrelevancy. There may have been a dry period as every agency goes through dry periods at certain times, but this is a period of a lot of activity and a lot of interest in the securities markets. If you are out for the dollar, obviously you have got to go where it goes, or if you have a particular problem, but the sense of working in public service, and for the SEC certainly meets that test at this time. As you know, I am a strong supporter of pay parity. There are a lot of lawyers that leave law practices and open up bed and breakfasts in Maine because they are absolutely bored with what they were doing. And so you are probably not bored at the SEC, and I would hope that that would be made clear to people, that people recognize this is an opportunity to really make a difference.

Mr. PITT. I have said on other occasions, but I will reiterate, I completely agree with the Chairman's comments, and say I know for me serving the public, serving public investors are the best clients I could have, and this is the most rewarding job I could imagine, and I think that a lot of the people that work at the Commission are there because they feel exactly the same commitment to the investing public. We want to use that commitment and not lose that commitment.

FUNDING FOR PAY PARITY IN FY 2003

Mr. WOLF. We understand that the pay parity is anticipated to cost $76 million in fiscal year 2003. However, as you said, the Administration has not provided any funding for its continuation in fiscal year 2003. Can you explain why OMB would support, your reprogramming request to begin pay parity implementation in fiscal year 2002 without providing a source in fiscal year 2003?

Mr. PITT. Well, let me say one thing. I have felt that we have enjoyed very good relations with the personnel at OMB. I have made it my business to make sure that OMB knows what we are doing, why we are asking for certain things. That does not mean that we do not have disagreements, and on pay parity we have a significant disagreement. I cannot tell you why OMB has not yet funded it or seen fit to agree to fund it. But one of the things that I have said at my confirmation hearings and that I have reiterated

is I believe the SEC has to be a part of one government, and we expect to work with both Congress and the Administration to make sure that our needs fit within national priorities. I place a very high priority on pay parity, and I think OMB, which is preoccupied with some very serious issues, puts that a little bit lower on their priority list.

Mr. WOLF. Well, the bill passed 440–22, which meant it had the overwhelming support. Secondly, I am sympathetic to the Administration's concerns on the deficit. And I think President Bush is accurate in warning the Congress not to go back to the days of "porking everything up." I am sympathetic to what he said. On this issue though, I think it is a little bit different. I encourage you, and if the committee could be of any help, to set up a meeting with OMB and us, because I think this issue has to be dealt with or else you are going to be faced with a continuing problem that may actually get worse, particularly as the economy is improving.

Mr. PITT. We would welcome any assistance that the subcommittee would want to give us.

ALLOCATION OF 100 NEW POSITIONS

Mr. WOLF. Okay. I am going to have one more, and then I will recognize Mr. Serrano.

With regard to the staffing, we understand that since the Enron and Global Crossing bankruptcies, the SEC's workload has dramatically increased, including additional enforcement actions, financial reporting inquiries, companies seeking disclosure advice, and companies wanting to restate earnings statements. In order to address your workload, your fiscal year 2002 supplemental request provides for 100 additional staff. How will you allocate these additional staff between enforcement, disclosure activities and accounting activities?

Mr. PITT. We basically have allocated it with 35 lawyers and accountants for the enforcement division. We need both, obviously. We have roughly allocated 30 additional personnel to our corporation finance with the expectation that the large bulk of those people will be reviewing files. The Commission, I think, has to improve its selective review process, and we have made efforts to do that.

One of the things Enron taught us, I might add, is that you cannot ignore the Fortune 500. You can't make assumptions about the size of the company in terms of where you provide selective review.

And the third would be another 35 people that would be spread—mostly again attorneys and accountants—to assist and help implement. We also have our Office of Chief Accountant, that would get more accountants so that it could do a better job of overseeing accounting principle developments and the like, and that is how we see the broad allocation of the 100 people.

Mr. WOLF. And is that enough, is 100 enough?

Mr. PITT. Is that?

Mr. WOLF. 100 is enough?

Mr. PITT. Let me say that 100 seems to be the minimum. I cannot say whether it is enough. By the same token, I also feel an obligation to see whether we can introduce efficiencies into the way we are performing, and we have undertaken a major four-month study, which is the first I think in the Commission's history, a top

to bottom review of how we are using our resources, because if we can save personnel and resources and reapply them elsewhere, I feel we have an obligation to do that. My guess is that the 100 are not going to prove sufficient, but again, numbers alone won't do the trick. We have to make sure that we can get first-rate people and then we can integrate them into the Commission's existing programs.

Mr. WOLF. How long will it take you to hire them?

Mr. PITT. It varies, although——

Mr. WOLF. Have you started? I mean are you interviewing and have people getting ready to come on?

Mr. PITT. We have a constant flow of applications, resumes of professionals that come into the Commission, and we have a good source of people who we would be prepared to hire and hire quickly if we have the slots. So I believe that we can move quite rapidly. The only thing I would say is we are not going to hire 100 people overnight. We really have to make certain that we maintain the level of quality, that we do the appropriate checks, and then that we give them the proper training, but I believe that we could get the 100 on board in a very minimal amount of time.

Mr. WOLF. Mr. Serrano.

VENEZUELAN STOCK MARKET

Mr. SERRANO. Thank you, Mr. Chairman.

I have some questions I want to ask you, but before I do, I heard something on the radio this morning on one of the Spanish radio stations in New York, which comes out of left field here, but I just want to know if you have any information as to how this could have happened. The report is that during the 24 or 48 or 72 hour period that the problem existed in Venezuela, Venezuela-related stocks—whatever that means—went up. And then the minute that the presidency was restored, they went down. Same situation with oil prices. Now, usually, supposedly when there is a sign of instability, stocks go down, and when stability returns, stocks go up. This was totally opposite.

First of all, do you know anything about that? Have you heard anything about that, because I hadn't heard it anywhere else? And if so, did those guys know something that we didn't know here?

Mr. PITT. I had not heard that report, and it surprises me for exactly the reasons that you have indicated. I must say, a very long time ago I learned that my ability to predict which way the markets would go was really quite minimal, and that is why I became a lawyer.

[Laughter.]

Mr. SERRANO. Okay. If there is any chance that you could sort of, when you go back to the office, have someone just check to see if this was just a made-up report, which wouldn't be the first time I heard something from somebody's imagination, but that is what was coming over some of the Spanish stations in New York.

Mr. PITT. I will look into it, and if we have information we can pass along, I will be happy to get that to you.

Mr. SERRANO. Sure. On September 11th, more than 300 of your employees were working in the New York Regional Office in Building 7 of the World Trade Center. They all evacuated before Building 7 collapsed, and SEC was one of the first tenants to relocate downtown, within blocks. I believe you lease space at the Woolworth Building.

Mr. PITT. Yes.

Mr. SERRANO. A building we all know. In fact, in one of my other lives I was a banker for Manufacturer's Hanover Trust. They refused to give me a $5 raise, and I left and went into politics.

[Laughter.]

Mr. SERRANO. Really, some day I should go back and give them a plaque or something, but it is a true story.

Mr. PITT. Clearly their loss.

Mr. SERRANO. Thank you. And I took all my banking courses at the Woolworth Building, at AIB, the American Institute of Banking.

Now, my understanding is that you need to do some renovations in that building. But also my understanding is that some of the dollars you had asked to be included in this budget were rejected by OMB. Is that correct? And how do you intend to deal with that? Please stay at that building. That is a permanent site for you at this moment, right?

Mr. PITT. It is a permanent site. We, of course, wanted our employees in New York to have a major say in where they would relocate. I was quite pleased that they chose to relocate in the financial district, and to me I thought it was a very important, both symbolic and realistic judgment. That is where the SEC should be in New York.

We have about $18 million or so, between $18 and $19 million to finish up the renovation and the movement into new space and security in New York. We have not been given that authorization yet by OMB, and the way I propose to deal with that is the way I deal with all of these issues. We meet with OMB. We talk to them constantly. And being an eternal optimist, I believe eventually either I will be able to persuade them or I might wear them down.

I think I have to say on our supplemental, the figure I gave you of $18 million was for the entire supplement. The New York Regional Office recovery is $9.3 million, so I sort of conflated the two figures, but for the New York Office it is $9.3 million.

Mr. SERRANO. So you intend to try and wear OMB down on this particular issue?

Mr. PITT. Well, I said that somewhat facetiously, but——

Mr. SERRANO. No, but I respect that and I applaud you for it. I am not for creating havoc within the administration, but it is interesting to note that the former chairman of this subcommittee, Chairman Rogers, would open up every hearing by asking the person in front of him if they had gotten from Clinton's OMB the money they wanted. And everybody would skirt around the issue. And so it is very refreshing to hear you say, "Yeah, I think we

should have more money," and there is nothing un-American or un-Bush administration about saying that.

Mr. PITT. I appreciate your saying that. As I have said, I think that we have an excellent working relationship with OMB. Frankly, I would think it would be somewhat better if we got all the money that we would like.

[Laughter.]

Mr. PITT. But I believe I owe it both to the country and to the agency to make sure that I am completely candid in my expression of views to OMB, and that they know why I think I need something. We have had, as I say, very good discussions, and when we told them we needed 100 more people, in less than the blink of an eye, they agreed to support that, which was very gratifying.

STAFF DIVERSITY

Mr. SERRANO. Well, let me for the record say that I love Congress, but if they don't give New York City all the money promised, I will love it a little less, so I understand that.

Let me also go on record, Mr. Chairman, in supporting you in the issue of pay parity. I think that is such an important issue. It is one that I strongly believe in from top to bottom. And I claim that we have lost throughout the years some very good people here in this body because there were less stressful better offers outside. And I know that in the judiciary and in other places throughout our government, we just will never get the people we should get because we don't pay and we don't compete. So even within government agencies I think it is important to do this.

Which brings me to a question. And that is, we are always asking folks who come before us to do more to hire minorities, to hire African-Americans, to hire Hispanics, hire more women and so on. Do you find that the pay issue is a problem? You know, in your line of work there are not that many, it seems at times, minorities graduating from college, and that is the bad news. The good news for some of them is that corporate America, trying to catch up to where it should be, sometimes offers the kind of deals that you can't even go near. Have you noticed any of that? Is that still a problem?

Mr. PITT. Let me say a few things about that. Diversity is a very strong principle in which I believe. And I guess I would also say that if we cannot achieve it in the government, I don't know where we can achieve it, so I believe government has to be a leader.

In my administration, I have tried to emphasize to the maximum extent possible, that I want to see us recruiting so that we get the benefit of a diverse set of experiences, viewpoints and the like.

Our diversity is a strength. I do not believe that the issues, in terms of finances, are any different for minority lawyers, minority accountants, in a sense. I think what is an issue is that there is a pool of very qualified minority professionals, and the competition is extremely stiff among very smart-thinking people, and that puts us at a disadvantage when we do not have pay parity.

So I believe it would help, but I think that, again, the major issue is I think twofold: first, to persuade people that the work is of important public interest, which I believe we can do and that in some ways, tragically, but in some ways fortunately, we are now

even better able to do; and then the second is to believe that people will be fairly compensated. Professionals coming out of professional school usually have very large debts, and if the Government cannot provide an attractive pay scale, we lose the opportunity for diversity, and we lose the opportunity to get some of the most qualified people coming out of our schools. I think, at the end of the day, that hurts the country because it means we are missing out on some very qualified people who will not come to the SEC.

Mr. SERRANO. One of the things I have noticed, Mr. Chairman, and I think I mentioned it in another hearing, is that since September 11th there is a desire by a lot of people, certainly in my community in the Bronx, to work for the Government. You do not know how many people, for instance, come to my office now from something as important and as basic as, for one reason or another, I have had trouble joining the Army, can you help me?

I used to get people saying, "You know, I got in, and that is a mistake. Can you get me out?"

[Laughter.]

Mr. SERRANO. And people who want to be FBI agents. I mean, I come from a community where there was always a lot of suspicion about the FBI, for many reasons, and now people are wanting to join. So I am sure it runs across the whole line of Government service, and this would be a great opportunity to bring some people in.

Mr. PITT. I completely agree with you, and I have said I could not be happier to be in Government at this time. We have some dramatic and difficult issues, but I really value the opportunity to be part of the solution, to be working for what I think are the best interests of this country. I agree with you, this time, perhaps more than at any other time in recent years, Government service should be attractive to all Americans. It is a wonderful opportunity.

RELOCATION OF FINANCIAL INSTITUTIONS FROM NYC

Mr. SERRANO. One last question, Mr. Chairman, before we give my friend, Mr. Miller, an opportunity.

There is always a fear in New York City of the financial institutions moving out. There was always a fear of the Yankees moving out. I do not think that is going to happen now, except if they start losing, then we may want them out, but right now they are not going anywhere.

After September 11th, the relocation question and the old question of is New York viable for us—has that changed in any way or is it, if you will, un-American, at this time, to even suggest moving out of New York City?

Mr. PITT. Before I respond to that, I have to impose on the subcommittee and digress for one second. When I was 11, the Brooklyn Dodgers left New York City, and I still have not gotten over that.

Mr. SERRANO. I remember.

Mr. PITT. So I understand——

Mr. SERRANO. Yes, but do you remember the song? "Keep the Dodgers in Brooklyn. O'Malley, won't you take them away? What would Brooklyn be without Campy, Duke and Gil? Please keep the Dodgers in Brooklyn."

There you go. I am the king of information you do not need. [Laughter.]

BACKUP FOR EXISTING FACILITIES

Mr. PITT. Well, I have pictures of the old Ebbets Field in my office. Old loyalties die hard.

I would say that there is a dual and, in a sense, conflicting set of pressures operating on firms. One of the things we learned from September 11th is the critical need for replication of existing facilities. My concern, as a regulator, is that the securities industry and the securities markets be able, in a nanosecond, to resume trading if the principal trading locations or trading computer systems go down.

I have to say that the securities industry has been quite diligent about that. Some of the firms have relocated processing units outside of New York. I think most of the firms have maintained the same strong commitment to being in the financial center of the world, as they had and, indeed, in some cases, it is even stronger.

The New York Stock Exchange I know has taken the position it will not leave New York City, and we have supported that decision. We have also supported the development of facilities that will enable the stock exchange, which is a floor-based market, to replicate that market in the hopefully unlikely event that something were to happen to its floor.

So I think people feel a commitment to the city. I know we do, and a commitment also to making sure that investors do not skip a beat in the event of any tragedy of the kind we saw on September 11th.

Mr. SERRANO. Thank you.

Mr. WOLF. Mr. Miller?

ENRON BANKRUPTCY

Mr. MILLER. Good morning.

Let me ask some questions relating to Enron, such as, and I am not a lawyer or a finance person, but—and I know this is an appropriations committee, not an authorizing committee, and there are a lot of committees involved in this issue, and I know we maybe even have a bill on the floor to change some laws, but with the existing laws, I am trying to figure out what went wrong with the regulatory system in our country that Enron, and Global Crossing, and Arthur Andersen were allowed to get to the stage that affects so many people so personally that our Government was not able to keep something from happening, at least the scale that it did.

Mr. PITT. Well, I think that is the right question, and I am not foolhardy enough to tell you I have the pat answer. I can tell you that there are a number of factors that I believe created this situation.

First, the Enron investigation is still going on, and I cannot comment specifically on any of that. I am not involved in that investigation, but until it is completed, it is not appropriate for me to comment on it.

From things I have read in the paper and from documents that have been published, it appears that there were two types of problems; one, were problems that were individual to that company, people who misbehaved, violated existing rules and obligations, but it also seems to me, and this is the part of Enron that I believe

we must deal with now, it seems to me that there are systemic problems, and that is where I take your question.

I think the problems arise in a number of areas, and I caution one thing when I outline them. There are many people who are looking for quick and uncomplicated answers, but the problems that gave rise to Enron are incredibly complex and complicated, and they do not allow for simple solutions, but I would, in a number of ways, say, systemically, the following problems:

First, I think that our system of promulgating accounting standards became much too cumbersome, much too slow, much too detailed and allowed people to adopt a check-the-box mentality, when what you want is people thinking what is in the public interest? What are we trying to achieve here, instead of saying, how can I get by with something? So I think that was a major problem.

FEDERAL REGULATION OF ACCOUNTING STANDARDS

Mr. MILLER. What role did the Federal Government have in that, I mean, regulatory agency? What Federal regulatory agency, on accounting standards and such?

Mr. PITT. Well, accounting standards are set in the private sector subject to SEC oversight, and that gets to the second element of this.

I think that the Commission needed to revise its oversight of the setting of accounting standards for a number of years, and that had not been done. I think, in addition, the promulgation of better standards needed to be a principal issue. That had not been done. I think that the disciplinary mechanism, the oversight of the accounting profession was theoretically interesting and potentially valuable, but in reality it did not work.

We had a private-sector body, the Public Oversight Board, that was unable to do any discipline itself, was funded on a voluntary basis by the accounting profession itself. There is nothing wrong with being funded by the accounting profession, as long as it is involuntary, not voluntary. They had no disciplinary powers, and they relied on other accounting firms to do peer review. So we had no discipline, no quality control of any major involvement, and the SEC was not aggressive and active, in my view, in overseeing that.

I would say there are two other areas. One is the disclosure system we have. Part of my concern—and this existed before Enron. I testified about this at my confirmation hearings, which predated Enron—is that disclosure had become an effort to avoid liability, not to inform. Disclosure's purpose is to tell people information they need. That did not exist. The disclosure system and the financial reporting system need significant improvement. We have the best system in the world, but that does not mean that it is not in need of significant improvement, and that is one of the things that was on my agenda even before Enron, but Enron has sped it up.

The final issue is corporate governance. To me, the goal always has to be that corporate directors and management have to have, as their principal goal, identical interests to the people who invest in the company. The minute you allow a divergence of interests, you wind up with public investors coming out, if you will, on the short end of the stick.

One of the things that we are now pushing for is an improvement in the methodology of corporate governance, a realignment of the views of corporate managers, so that there is no question that their interests are identical with the interests of public investors. Those will not mean that there will never be another Enron. I wish I could tell you there will never be another one, but long, long ago, even before consulting by accountants and the public oversight board, we had other Enrons.

The system will always, I think, attract a hopefully very small number of people who want to take advantage of others and of the system. But I think if we improve this system, the confidence that investors have had in our markets and justifiably had, will be able to be improved and strengthened because the opportunities for mischief will be minimized.

REACTION OF SEC TO ENRON

Mr. MILLER. Are you, I gather, shaking up the system? As you point out, so many of the failings of the past, that it was not aggressive, and it was too passive, I assume by that that you are doing a major shake-up on the role and the challenges that the SEC faces in correcting and trying to avoid those problems?

Mr. PITT. The answer is most assuredly yes. Sometimes when a tragedy occurs, some people look to find someone to place the blame on. My view is I would rather place the responsibility squarely on our shoulders. We have the ability to solve these problems, and I believe now we have the will. So I am not looking for scapegoats. I am looking to shake the system up, as you say, in a way that improves it.

What is good about our system should not be tinkered with, but we are not afraid, either, to use enforcement powers or regulatory powers to make sure that everybody looks at our system and says this continues to be the best in the world. We will do that.

Mr. MILLER. Thank you.

Thank you, Mr. Chairman.

INTERNAL STUDY OF THE SEC

Mr. WOLF. In March, you announced the commencement of a four-month internal study to examine the Commission's operations, efficiency, productivity and resources. Who is conducting the study?

Mr. PITT. I am sorry. Who is conducting the study?

Mr. WOLF. Yes.

Mr. PITT. The study is being conducted under the auspices of Jim McConnell, who is our Executive Director, and Jack Katz, who is the Agency Secretary and is the repository of much stored knowledge.

We have secunded a working group of very bright younger people who have worked in more than a single division, and we have hired a consultant, a management specialist consultant, to make certain that we do not overlook any issues.

Mr. WOLF. Can you tell us who the consultant is?

Mr. PITT. It is McKenzie & Company.

Mr. WOLF. When will it be completed?

Mr. PITT. Well, we are working on a continual basis, and I am getting, in a sense, some feedback and factual input on a weekly

basis, but the ultimate study is expected to be concluded in about four months, which would put it probably around the end of July.

Mr. WOLF. And will it have recommendations?

Mr. PITT. It will, and it will form the basis for our submission to OMB of our 2004 budget request. Its purpose is to see how we are doing our job and try to figure out whether we can do it better. We may be able to do it better if we do it differently, and we may be able to do it better if we have more people. We are looking at everything, but the major point is that there is nothing that is sacrosanct or sacred. Everything is open for discussion and review.

SEC'S STRATEGIC PLAN

Mr. WOLF. A recently completed GAO study of the SEC recommends that the SEC broaden its strategic planning process to determine its regulatory priorities and the resources needed to fulfill its missions. What are you doing with regard to that recommendation?

Mr. PITT. Well, we agreed with that recommendation by GAO, and we have sought to implement it. In the first instance, I think, doing the strategic review of our systems, and our capabilities, and our functions is the first step to that.

In addition, one of the things that I would like to do is to create a risk management group at the SEC. I believe that sometimes the rote fashion that we make some decisions; for example, which of the 20,000 public companies we will selectively review in terms of their filings, can be done on a much better basis if we have the competence of risk managers who can tell us where the emerging trends are in our society and where the next problems are likely to come from. That is only one place where we can use that.

Plus, we are working on a strategic plan so that the agenda items we have will be thought about, formulated and then published so people will understand where we are headed and the types of things we want to accomplish.

PURPOSE OF ADDITIONAL $9.3 MILLION FOR NY RENOVATIONS

Mr. WOLF. On the New York issue that Mr. Serrano mentioned, is there a funding shortfall with regard to the New York office? It was 9-point-something million dollars.

Mr. PITT. It is $9.3 million for the build-out. I think we have six floors. We have been able to build out two of them thus far. We have security needs and upgrades that we are looking for, and that is a shortage that we are working to persuade OMB we would like to replace.

Mr. WOLF. If you can keep the committee informed with regard to that, we would appreciate it.

Mr. PITT. I would be happy to do that.

BUSH ADMINISTRATION'S 10-POINT PLAN

Mr. WOLF. In March, the President outlined a 10-point plan to improve corporate responsibility and help protect American shareholders. The President's plan is intended to provide better information to investors and make corporate officers more accountable and

develop a stronger and more independent audit system. What has the SEC done to implement the President's plan?

Mr. PITT. We have indicated that the Commission fully supports the President's 10-point plan, and we have taken a number of steps to implement the various phases of the plan. These include an overhaul of the system of regulation and discipline of the accounting profession. We are in the process of creating a private-sector regulatory body, which will be a fearsome overseer of both discipline and quality control within the accounting profession.

Mr. WOLF. Give us an example. What do you mean by that?

Mr. PITT. We believe that the world, in terms of accounting oversight and regulation, needs to be modified so that there is a private-sector group fully funded that has the power to discipline accountants for incompetence or unethical behavior that has the capacity to do quality control review so that, even if a firm is within the law and is within accounting principles, but it is not at the highest standards, there will be the ability to discipline the firm and take clients away from the firm. We will set that up on a regulatory basis——

Mr. WOLF. Who will head that? Who will be in charge?

Mr. PITT. We would appoint, in the first——

Mr. WOLF. Personnel is policy.

Mr. PITT. These would be private individuals the predominant majority of whom, would be outside and unaffiliated with the accounting profession. In my view, having one or two people who have current knowledge of accounting and the accounting profession will enhance the ability of this entity to operate, as long as they cannot control the discipline decisions, and we have worked for a vehicle to provide that in our proposed rulemaking. We expect to have rules out in the not-too-distant future that would propose the creation of this private-sector regulatory body.

In addition, we have tasked the New York Stock Exchange and NASDAQ to revisit their listing agreements and to come up with more stringent requirements for corporate governance, they are in the process of doing that and we are very gratified by the willingness that they have taken to try and upgrade the standards of corporate governance for American companies.

We have also put out for consideration a number of rule proposals that would get investors more timely and more relevant information under a new system that differs from the existing system, including such things as insider trading.

Another area that the President identified, with which we agree quite strongly, is the notion of holding CEOs and senior management responsible for the disclosures and the financial accuracy of the reporting of public companies. We have already commenced actions in which we are seeking to have corporate officers disgourge bonuses and salaries that they received for economic performance that they never delivered.

So we have a very full program underway.

LEGISLATION REQUIRED FOR 10-POINT PLAN

Mr. WOLF. Can you do all of this without legislation?

Mr. PITT. I believe all of this we can do without legislation. The one piece of legislation that we do believe we need is to have the

authority administratively to bar people who engage in serious misconduct from ever being able to serve as officers or directors of public companies again.

Mr. WOLF. Is that in the bill that was reported out of committee yesterday?

Mr. PITT. It is. It is in Chairman Oxley's bill that was reported out. That would give us that authority. We can go to court to get that, but the courts have adopted a much narrower approach to our entitlement to that relief than we believe is appropriate, particularly in light of current events.

TIMING OF SEC INITIATIVES

Mr. WOLF. When will all of the rulemaking proposals be in place?

Mr. PITT. My hope is that the major initiatives that we have undertaken, in response to both the President's 10-point program and the so-called Enron situation, will be in place before the end of the year. We have, on our agenda, a number of additional items. We want to reform the capital-raising system. We want to move to a current disclosure system, instead of the periodic disclosure system. Those will take a little longer, but we still would hope to have proposals out to the public by, hopefully, the end of the year.

Mr. WOLF. And has this been well received by industry?

Mr. PITT. I think that it has been well received. There are obviously people who have their own ideas and some who have their own agendas, so I cannot tell you that we have achieved universal support. But I think if you look at all of the proposals that are now around, all of the legislative proposals and the like, everyone is basically working off, in my view, the model that we were the first to set forth, which is the way I think it should be. The Commission should lead, and then it should be informed by public reaction, and we are paying very close attention to what people say and the criticisms that they bring to our attention.

REVIEW OF FORTUNE 500 FINANCIAL STATEMENTS

Mr. WOLF. We understand the SEC is in the process of reviewing the financial statements of all Fortune 500 companies. How is the review proceeding, and should we be concerned that there are other companies out there, like Enron and Global Crossings, that are about to fail?

Mr. PITT. Well, my strong hope is that there are no Enron's and Global Crossings out there, but I am unable to give you a guarantee on that.

What I can tell you is that we believe we have to be more diligent and more intelligent in our selective review process, and we are effectively making certain that the types of warning signs that could have alerted folks to an Enron or a Global Crossing are things that we are looking for now, and that is why, after Enron, I directed that our staff do a review for 2002 filings of all Fortune 500 company filings.

INCREASE IN ENFORCEMENT CASE WORKLOAD

Mr. WOLF. I have one more question for this round, and then I am going to recognize Mr. Serrano, and then I will come back to these.

In the first 2 months of this year, your Enforcement Division opened 49 cases. We have been told this is more than twice the number of cases opened over the same time last year. What is the cause of so many new cases, and is this issue more whistleblowers coming forward or more reporting? Is it accurate that there are 49 new cases?

Mr. PITT. In the first 2 months, I think the number was 49, and these are financial fraud cases.

Mr. WOLF. Is that more than twice the number opened the same time last year?

Mr. PITT. In the first 2 months of last year, I think the number was 18, which was a record for last year.

Mr. WOLF. A record. So what do you attribute this to?

Mr. PITT. I think there are a couple of things. First of all, I think people's attention to the issues have become heightened. It is rare, if you look at the country's history, for typically dull and boring accounting issues to be on the front pages of our newspapers day after day, but suddenly everybody now is aware of the issues. That, in some sense, is a big help to us.

In addition, one of the things that we have done is to encourage public companies to bring their issues to us, to work with us, so that we can help protect investors. We are getting good cooperation now from companies that are self-reporting. We are finding more whistleblowers. We are also looking more closely at accounting changes that companies announce and the like, and we are making certain that we try to act instantly when we learn of something that may be of concern.

One of the demands on us, which is why we have asked for 100 new people, is we have moved to an enforcement program of real-time enforcement, where the Commission is now in court quite rapidly in the hope of protecting assets and monies that investors have been defrauded out of so that we can actually return monies to investors and do some real good for our principal constituency.

ADEQUATE STAFFING FOR SEC

Mr. WOLF. Well, I am going to recognize Mr. Serrano for a couple of questions. But it does seem to me, just listening, and I made a couple of comments and I will get back to them later, just listening to the increased new activities that you have, 100 employees is almost a minimum, it would seem. I mean, these are complicated issues. This is not like cutting grass, I am not demeaning the issue of cutting grass because this is one of the more difficult things that I have to do, but this is just not cutting grass. This is doing very complex work. I made some comments while reading your testimony. Your budget is so small. I am a fiscal conservative. I am a conservative Republican member. I was one of the members who was elected in 1980 with President Reagan who came here to do things, and I think we were successful. I agree with President Bush on most of the issues, on almost all of the issues and do not

want to see us overspend. I think we should get a handle on spending. I would like to see us have a balanced budget in the years 2004–2005 as far as we can.

I think this area, though, is one of those exceptions, in light of the fact that so many people have lost. There has been so much pain and suffering in those who were stockholders in Enron and those who were stockholders in Global Crossing, and to establish the credibility and the confidence in the markets is so important. I mean, sometimes reading the Business page is like reading the Style section lately.

I think a 100 additional staff may not be enough. As you look at this study that you are preparing, you may very well find that 100 really is not enough, and in order to protect the teachers, and policemen, and firemen, and bookkeepers, and doctors, and lawyers, and everyone who sets aside that money with regard to the future, I think you really may have to ask for more, and I would hope the committee would be open to that. We are not talking about another military base in somebody's district or another.

I think this is analogous on the civilian side. We cannot ask the men and women in the military to go to Afghanistan and to be in Yemen, and the Philippines, and places without giving them the necessary resources because this is not a battle that we can afford to lose. And I believe under the leadership of President Bush we will not lose it. We will win it.

And I think the same thing holds true here because of the nature of the circumstances of being the number one world power economically. Your job is very important and to make sure that you have the resources to maintain—I do not use the word "restore"—but to maintain the confidence in the market systems, and in capitalism. So I would hope because the end result, and I am going to recognize Mr. Serrano, when this is all over, my sense is that you, rightly or wrongly, will be given the blame or the credit as to how this thing goes over the next couple of years.

I wrote some other comments down as you were speaking. With your background, some people were very suspicious when you were appointed. I was in that category. We had a conversation. But Lyndon Johnson was not a civil rights Senator when he served in the United States Senate, and yet when you look at the record of Lyndon Johnson, he goes down in history as a President, who was very committed to civil rights.

My sense is, with your background and understanding of the system, you may be in a better position because, unfortunately, in this environment we sometimes go out of our way to find people who know nothing about anything to come in to oversee what is very complex and very difficult. The jury is still out, obviously, because you are at the beginning of your term, but you may be in a better position to do what has to be done to maintain the confidence for the stockholders, coming from your background and understanding. My sense is it will be very difficult for someone to pull the wool over your eyes.

My sense is that you are not committed to go back out and practice law, and make a lot of money, and doing all of these things. You are coming in here in the spirit of public service.

The committee does not want to put you in the difficult position of differing with OMB, but let us know what the study recommends. We can work with you and work with the good people of OMB. They have got a difficult problem, too, to make sure we can get to the budget balanced. But OMB needs to know the level of resources you need to do the necessary work to ensure that people can invest and feel confident. Every dollar is important that we spend for the taxpayer, but this is such a small segment, even of this committee's budget, let alone over the overall spending.

Mr. PITT. First of all——

Mr. WOLF. And you know a lot about this.

ROLE OF THE SEC CHAIRMAN

Mr. PITT. First of all, let me say how grateful I am for your support, and the committee's support and for your very kind comments. As I have told you privately, for me, this is the only job that I have really ever coveted. It is a wonderful opportunity, and you are right, I will, I am certain, be blamed if our solutions are not good enough. I am used to that. In our family, the rule always is if anything goes wrong, it is my fault.

[Laughter.]

So I am prepared to accept that responsibility. But I have no intention of going back and practicing law, so I do not have an interest in currying favor with potential clients and so on. There are obviously many cynical people and people with other agendas who want to cast aspersions, but without seeming immodest, I would say to you I appreciate your statement.

I believe that I do have the knowledge and the determination to help solve these problems. I do not believe I have all of the answers, and I do not always believe that my answers are right. It has been proven far too often that my initial responses can be improved, and I am open to that, but I would like this committee to know that I have absolute determination, and I believe the Agency does, to work on these very complicated issues and to solve them. I want the American public to feel that the future of our capital markets is rosie and that the regulation of our capital markets is in very firm and knowledgeable hands, not afraid to take whatever steps need to be taken.

On the economic basis, I share your philosophy. I do not always believe that the solution to every problem is to throw more money or more people or more regulations at the issue. On the other hand, I believe that one cannot be afraid to seek more people, more money and more rules when they can do good for the public, and I am committed to doing that and doing that not only vigorously, but efficiently.

I believe that you are right, that the 100 people we have designated are a minimum. I deliberately did not want to ask for a much larger number until I was satisfied that we could do our internal review, and I could make sure that we are using every device that we can to maximize public protection and minimize public cost. That's why, for example, I support a private sector disciplinary body for the accounting profession that is subject to rigorous oversight. We could not afford as a government to do the vigorous job I think we want to do, but we can afford to oversee it.

And the last point I would make is the Commission, even with the fee reduction part of the bill that accompanied pay parity, generates multiples of dollars beyond what it spends, and I think in fiscal 2003 we will generate about $1.3 billion in fees, and we are talking about a budget at the moment of $466.9 million. My view is that we have to accommodate ourselves to other national interests, but we also should avoid being pennywise and dollar foolish. A few extra dollars can go an amazingly long way, I believe, in our hands to provide maximum protection for investors. I will continue to work with OMB and continue to work with this subcommittee to make certain that I am always telling you what I think we need and why and that you have the opportunity to test whether we are doing enough, too much or whatever. We welcome that.

Mr. WOLF. Thank you.

Mr. Serrano?

SEC AUTHORIZATION MARKUP

Mr. SERRANO. Thank you, Mr. Chairman.

You are familiar with the markup that the House Financial Services Committee just completed?

Mr. PITT. I am.

Mr. SERRANO. What can you tell us about what came out of there? There are some members who are not happy with the result, and around here we find out that when members are not happy with the results of an authorizing committee, that means they try to get it done on an appropriations bill. So, in anticipation of that issue, what can you tell us about the results out of that markup?

Mr. PITT. Well, I think that the legislation that came out of the House Financial Services Committee has a very sound approach to problems, and it is intended to provide a very meaningful legislative improvement to the current system of laws without writing things in stone. There are two philosophical views that are diametrically opposite one another. There are some people who think that the only way that you can fix a problem is to write it into legislation in stone, and then nobody can wheedle out of the requirements, and I understand that concern, but I don't agree with it.

There are others who believe that Congress should state what its objectives are. It should give direction and it should give content to how problems should be solved, but then it ought to trust to an expert administrative agency like the SEC to implement its will, and if we do not do a good job of it, to call us up here on the carpet and make sure that we do do the job that you want. To the extent that those different approaches exist, the bill that was passed by the House Financial Services Committee adopts the latter approach. It tells us what they want to achieve, and it gives us the tools to achieve it, but it does not write things in stone, and I give you one example of that.

In 1933, it was thought that there ought to be a separation of commercial banking from investment banking, and the Glass-Steagall Act was passed. Pretty much after about 1945, Congress spent 50 years laboring to undo writing that separation in stone. That is not to say that that separation did not serve very valuable purposes when it was enacted, but when it became time to try and move away from that, there was no flexibility left in the system,

and so finally Congress was able to pass the Gramm-Leach-Bliley Act. In my view, writing things into stone is not the best use of legislative time and effort. I think writing principles in stone and then allowing an agency to implement them is the more effective way.

The bill is now out and will go on the floor. We have testified about it and commented on it. As with any piece of legislation, there are always things that any nonparticipant thinks he or she could modify, but our general reaction is——

Mr. SERRANO. Such as? Do you have any——

Mr. PITT. I am sorry?

Mr. SERRANO. Do you have any specific concerns about that bill?

Mr. PITT. I think there are things in the legislation that we hope will be reviewed and worked out, but I guess my view is that if there is to be legislation, I am very supportive of the efforts of the House Financial Services Committee. I believe it is a bipartisan effort, and I believe that it was done in a very thoughtful way. As I have said previously, with the exception of Officer and Director bar abilities for the Commission to do administratively, I believe we can do everything that needs to be done within our existing power. That does not mean that there will not be or should not be legislation, it just means that we do not believe we need legislation to do what needs to be done.

Mr. SERRANO. So part of my question would have been what happened to that which you proposed, either in private conversations or officially, but since you are happy with the result, I guess that which you proposed has been dealt with in the bill to your satisfaction.

Mr. PITT. We are supportive of the direction and the approach of the bill, and if we are asked for assistance, and we have been asked previously for assistance——

Mr. SERRANO. You still will not volunteer what may be wrong with the bill at present time. I mean, you are supportive of the bill.

Mr. PITT. We are supportive of the direction——

Mr. SERRANO. Right. I support bills where I single out some problems with them, and I was interested in noting that you do not like things set in stone. That is what we are telling the other party about the tax cuts this week. We are hoping that they would not be set in stone, but I guess they are going to set them in stone.

But, all right, I am not going to badger you with it, but I think this would be helpful to all of us. You are telling us you support the direction of the bill, but I do not think there is anything wrong with saying, however, there are one or two things that should be straightened out. I think that helps those who support the bill, and it helps those who oppose the bill because they do not see it as a one-sided issue. They see the fact that you have some problems with it. So you should reconsider that.

Mr. PITT. Right.

Mr. SERRANO. Let me ask you a question that I do not know if an answer has been put forth. The World Trade Center, those buildings that we, as typical New Yorkers, took for granted, you know, as we take for granted so many structures in that city. I remember the next day, I was in New York September 11th, that was primary day, and I was playing hookey that day. My son was running for the City Council. In a Chicago-New York-type story, I can

tell you that there it was 10:00-something in the morning or whatever, and all of the police started coming out of the polling sites. And the first thought was not there is something wrong, but who is going to make sure the votes are counted properly? [Laughter.]

LOSS OF SECURITIES DUE TO SEPTEMBER 11TH

Mr. SERRANO. But everybody left us, you know, and then the election was canceled. Someday somebody will write that part of the attempt of these folks was to disrupt so many things, and one they accomplished, you know, they stopped momentarily our electoral process, something that is unheard of in this society.

But, anyway, the next day when I left, I saw that emptiness and the smoke rising, and for the first time I actually looked to see where the towers used to be as I drove on the turnpike, because it was the only way out of New York City that day, driving.

But in those buildings, I imagine or I had read somewhere, that there was gold, actual physical gold, there was currency, I imagine there were stock certificates. All of that was lost or most of it was lost. First of all, how do people account for that, if they do? Since there was stock, some of the people holding the stock had the stocks in those buildings, some of the people that knew you were holding the stock were also in that building. How did that reconcile later? I mean, I cannot go around now claiming that I had, you know, a thousand shares of IBM or Sony, and somebody is going to say, "Okay, you did." What happened to those records? I remember there was that big fear of all of this stuff just falling out on the street, a lot of paper and so on.

And, secondly, do we have any understanding of how much was lost, and the people who had cash, and gold and other things? I know there was a lot of artwork, but you do not deal with that.

Mr. PITT. Not on a Government salary, I do not. But I guess I would say this. In terms of securities, securities are held either in the owner's name or in the street name, and there is a registration, and all of the brokerage firms were required to keep track, and we have records of where there are stock certificates, although we are hopefully moving to a certificateless society, but where there are stock certificates and so on, the certificates are numbered, the owners are recorded, the firms have records, and so while there was a fair amount of dislocation that was caused by this, no one should have been in a position where their assets that may have been held by brokerage firms and others could not be replaced and restored.

I cannot speak for some of the other items that were there. Currency, of course, I think there is nothing that can be done when currency is held, but gold is often earmarked in very similar ways and the like. So that my understanding is that the amount of loss and confusion based on those activities for people who were not in the building but had their assets in the building, the fallout from that has been minimal.

Mr. SERRANO. I see. I see.

Mr. Chairman, I have no further questions. I just want to thank the chairman for his presentation today and join the chairman in continuing to work to make the work you do easier.

I still would encourage you to say at least something bad about that bill that came out——

[Laughter.]

NEW YORK BASEBALL

Mr. SERRANO. So that we can have something on the record to guide us through the difficult weeks.

Let me just, so that you do not leave this place thinking I am a turncoat, I am originally a Dodger fan, but I lived two blocks from Yankee Stadium, right? So, in the 1960s, I said I can only root for the Yankees if I ever see them, as a typical Dodger fan, in last place. [Laughter.]

Mr. SERRANO. As you know, they did that in the 1960s, so now I tolerate them, but do not ask me what I do during a Dodger-Yankee World Series.

Mr. PITT. I have to admit, when I was growing up in New York, the chasm between Dodger fans and Yankee fans was enormous.

Mr. SERRANO. The Yankees were Republicans. The Democrats were——

[Laughter.]

Mr. SERRANO. It is true.

Mr. PITT. There is no doubt that my sports loyalties are not really necessarily consistent with my political loyalties, but I suppose that explains why I am still a rabid Mets' fan.

Mr. SERRANO. Yes, I understand. Well, just in closing, again, I want to thank you, Mr. Chairman. You know that during the Subway Series, they did some poll. They realized, I think to my amazement, most Republicans were rooting for the Yankees and most Democrats were rooting for the Mets. But the Yankees won, you will be happy to remember.

Mr. WOLF. They do wear pinstripes. [Laughter.]

SHADOW GOVERNMENT

Mr. WOLF. Following up on the question Mr. Serrano asked about the losses, were you part of or are you part of the Shadow Government? Is SEC part of that at all?

Mr. PITT. To the extent that you mean that——

Mr. WOLF. I mean that there was a group that——

Mr. PITT. That was moved out.

Mr. WOLF. Yes.

Mr. PITT. No. We were in touch through the President's working group at all times, and I spent a lot of September 11th and the days after that on the phone. Unlike Congressman Serrano, I was not in New York on the 11th, but I was there on the 12th and the 13th, et cetera. But, no, we are not part of that Shadow Government.

IMPACT OF ARTHUR ANDERSEN

Mr. WOLF. Arthur Andersen audits nearly 20 percent of the public companies. What will be the impact on the accounting industry and the securities market if it were to go out of business? I have seen different comments in the paper, and I know that Mr. Volcker has a proposal, and there appears to be a negotiation. What would be the impact if it were to go totally out of business?

Mr. PITT. I think the one thing I want to say is what will happen to Arthur Andersen, what its fate will be in light of some of the things that have occurred is still yet to be learned, and so I do not want to be understood as suggesting that I already believe I know——

Mr. WOLF. It was not meant——

Mr. PITT. No, I know. I just wanted to preface my remarks by saying that.

In my view, the diminution in the number of accounting firms as a general proposition is not in the public interest. More competition is always better. Having expertise spread out is better. On the other hand, there are many, many other accounting firms, and none of the public companies that Andersen audited will be left without access to very competent auditors if something should happen to Andersen.

As I know you're aware, when we became aware of the potential problems with an indictment, we put out rule proposals that gave temporary relief to companies that were audited by Andersen. We made certain to be neutral in the sense that some of those clients of Andersen wanted to stay with Andersen and some of them might not want to stay with Andersen. So we adopted rules that would permit of either alternative and yet ensure that the public would still get a flow of necessary information.

I think that as the process has evolved and as firms are making decisions about whether to stay or leave, that the other firms are showing capacity to take on Andersen clients where those clients seek to leave.

You mentioned the Volcker proposals, and I just want to say I guess two things about that. One is I have enormously high regard for Paul Volcker——

Mr. WOLF. I do, too.

VOLCKER PROPOSALS

Mr. PITT. And I think that he has taken on a very difficult mission, but I think it is wonderful that there are people of Paul Volcker's stature who could be doing many other things with his time—he has certainly earned the right to do many other things—to undertake this kind of effort, and I think that the public owes people like Paul Volcker an enormous debt of gratitude.

Having said that, the proposal to create a stripped-down audit firm has a number of potential problems that we are not at the stage of looking at, but nonetheless create issues. If the only thing that an accounting firm does is audit and it does nothing else, the first concern is that it becomes more dependent on its audit clients, not less.

The second concern is if the firm does not have adequate capacity in certain areas such as tax, then the firm may not be capable of performing the kind of rigorous audit that we demand. So we watch with great interest what Mr. Volcker is coming up with, but as a general proposition, not related to Anderson, I have said publicly, and I reiterate to you, that the notion of an absolute separation of auditing and consulting functions I think is not in the public interest and could lead, over the next several years, to a diminished quality in audits, as opposed to an improved quality of au-

dits, and that is something that is not the most popular view in the world, but I am not going to shirk from making sure that people understand that it is the quality of audits that we have to worry about.

Mr. WOLF. I agree with your comments about Mr. Volcker. Actually, if my memory serves me, there was a Volcker Commission a number of years ago with regard to attracting people to public service.

Mr. PITT. Yes.

WALL STREET INVESTIGATION

Mr. WOLF. He made a number of recommendations, so I wish him well. I think he is a very, very good choice, and I agree with your comments about him.

The New York attorney general is investigating allegations that stock analysts at several Wall Street investment firms misled investors to promote companies that paid fees to their firms' investment banks. Is the SEC involved in this investigation?

Mr. PITT. Let me say a few things.

First, there is an investigation which we have all read about in the press by the New York attorney general, and the notion of having state investigations of entities that are also subject to Federal regulation is not unusual, and it does go on. And so I cannot comment, and I ask your indulgence on——

Mr. WOLF. Sure. Absolutely. We are not trying to put you in an inappropriate position.

Mr. PITT [continuing]. As to what confidentially——

Mr. WOLF. Without question.

Mr. PITT [continuing]. What we may be doing.

But we have been, for quite some time, interested in and concerned about the existing regulatory scheme for analysts. It is why we encourage and facilitated the New York Stock Exchange and the NASD to come up with very comprehensive new regulations which are not yet in effect to deal with some of the very issues that I think have concerned Attorney General Spitzer. We have put those out for comment, and in addition to the comments we get back, we are obviously going to be informed by whatever factual matters come out of any of the ongoing efforts so that when we finally act on the self-regulatory rules, we will be satisfied that they give the public the best protection we are capable of giving them.

FOREIGN CORRUPT PRACTICES ACT OF 1977

Mr. WOLF. We understand that in the 1970s, the SEC implemented a voluntary disclosure program for questionable or illegal foreign payments. Was this program a success? How did it work?

Mr. PITT. It was. Unfortunately, I am old enough to say I was there as part of it.

Mr. WOLF. You were at the SEC, and at the time of that program.

Mr. PITT. I was general counsel of the SEC. The notion was that there were a lot of reports about bribery and political grease payments and the like which raised serious questions about the integrity of accounting books and records.

The Commission provided that if companies would self-report and if they would declare that they were not going to be doing that again in the future, certainly not without board approval and full and fair disclosure, that they would not take action, the Commission would not take action against those firms that reported voluntarily.

The program was an enormous success. It encouraged many, many companies to come forward and to report on what they had done. In a number of cases, the Commission nonetheless brought action, in part, because some of the cases the Commission was already investigating, the company had already become aware of it. As always, if you become aware of conduct that is sufficiently egregious, you cannot negotiate the public interest. You always have to make certain that you do what the public requires.

It ultimately led to the passage of the Foreign Corrupt Practices Act in 1977. It is a device that can work provided that investors are the first priority and that they are thought about when you adopt a moratorium on enforcement actions, but it was a very successful program.

SEC CHIEF TECHNOLOGY OFFICER

Mr. WOLF. In March the subcommittee approved your request to establish an Office of the Chief Technology Officer. Has that person been selected?

Mr. PITT. We are actively now in the process of interviewing candidates, and we hope to fill it very shortly, but it is not yet filled.

INTERNET COMPLAINT CENTER

Mr. WOLF. There are a lot of talented people throughout the country in IT industry. So I would hope you would find someone who is very talented.

The FBI brought in a gentleman for the "Trilogy Program." I think from IBM who has done a pretty good job. So I would hope you would really find the very best person and not be limited by salary. Because if you never ask, you may never know whether or not they would accept.

We were told the SEC got an all-time high of 12,000 e-mail messages at the Internet Complaint Center in March. How does the Office of Internet Enforcement respond to these complaints?

Mr. PITT. How do we respond? Yes. Well, I think we respond in several ways. When we get complaints or questions from investors, our goal is to try and answer all of those. We have an intake group in our Internet Enforcement area that looks at the complaint to decide, first, whether there may be a violation and, second, whether either we or one of the self-regulatory bodies should pursue it, and then we go after what we find.

The Internet has proven to be a very fertile ground for fraudulent activities, unfortunately. It has the advantage of immediacy, cheapness and anonymity in many cases, and I think our program has been very successful, but we are not willing to rest on our laurels. We are pursuing this.

POST SEPTEMBER 11 MANIPULATION OF SECURITIES

Mr. WOLF. Right after 9/11, there were a number of stories that certain groups had used the attack against our government as a way of manipulating stocks. Did any of that pan out? Are you still investigating that?

Mr. PITT. We worked with Treasury and the FBI, and we have done a fair amount of investigation. To my knowledge, the investigation has not been terminated, but as I think we are all aware, the Commission has not brought any actions up to this point, but we have, and we continue to work with the FBI to supply them whatever information we can to assist their review.

Mr. WOLF. There were even some reports that al Qaeda had been involved in some stock purchases. None of that has panned out or is that still being investigating.

Mr. PITT. There are still efforts ongoing, but again I think the most pertinent statement is the one that has not been made, which is that no charges have thus far been brought against person or entity based on that review.

Mr. WOLF. But if you did find, al Qaeda or whatever, you would?

Mr. PITT. With alacrity.

FY 2003 E-GOVERNMENT INITIATIVES

Mr. WOLF. Two last questions, and then I will see if Mr. Serrano has any last thought, and then we will end.

You were requesting $4 million for e-Government initiatives to disseminate information. Do you want to tell us just a little bit about that?

Mr. PITT. I am sorry. I did not——

Mr. WOLF. You have a program increase of $4 million for e-Government initiatives. Tell us how that will work. That is to disseminate information to the public. What do you have in mind there?

Mr. PITT. Well, we have a bunch of things. I want to enhance dissemination of information with respect to our mutual fund series and classes, as well as helping our staff review filings and conduct exams. We want to enhance our website and applications. We want to add new features to our electronic blue sheet system to support our enforcement and market reg programs.

We also need to enhance our intrusion detection capabilities because we find that people try to hack in and provide additional information security. So this is a minimal amount. I digress for one second to say that, as you may have read, our agency initiated a scam in a false website. We actually have about six of them, but we published one of them—the McWortle site. The entire cost of that effort for our agency was $50 to set up the website, and we got, within the first few days, about 1.5 million hits.

Mr. WOLF. Wow.

Mr. PITT. We have gotten over 500 e-mails from investors thanking us for showing them what a fraud would look like.

We believe that the SEC has to be at the forefront of information technology, particularly if we want to move to a system of current disclosure. So these programs which deal with our use of the Internet and technology are quite important to us, but I am very com-

mitted to increasing our ability to use these new technology devices to further our protection of public investors.

FOREIGN CORPORATIONS' EFFECT ON HUMAN RIGHTS ABUSES

Mr. WOLF. An issue that I have spoken to you about and I am very concerned about is foreign corporations that play a direct role in human rights abuses in Sudan offering securities to American investors and, as a result, these investors are unwittingly helping to subsidize the atrocities such as slavery, including 2.1 million Christians and, some Muslims in Sudan. Osama bin Laden lived in Sudan from 1991 to 1996. There are training camps surrounding Khartoum that HAMAS and other terrorist groups actively participate in. HAMAS actively visits Khartoum on almost a daily basis. It sometimes takes over hotels for their training camps there.

And so one of the steps the SEC has taken to require these corporations, because these corporations are giving money that, in essence, keeps the Sudan Government afloat, and enables it to purchase helicopter gunships to kill innocent people, particularly those that live along the pipeline. Where are you in your rulemaking process to implement this mandate?

And, number two, how will electronic filings enhance the information provided to U.S. investors on the activities of foreign companies like this?

Mr. PITT. Well, Mr. Chairman, before I answer the specific question, I do want to say, as a personal matter, I know that you have been a forceful advocate in opposition to these atrocities and other things, and I just want to say both as a citizen, as well as a public official, that I admire and commend your efforts in this regard.

I think what has been taking place in a number of spots is unacceptable and having somebody of your stature speak out against this I think is a real assistance to the American public. So we support you, and we support your initiatives.

One of the first things that I——

Mr. WOLF. I would say, unfortunately, the New York Stock Exchange has really not been that supportive, and so I really think it will take, and I appreciate your comments, I really think it will take your help. I do not want to cut off your answer, but when I think in terms of reading some of the history of some of the companies that were involved with Nazi Germany. I was in Italy this past summer, where I took my wife for our 40th wedding anniversary, and I picked up a newspaper and saw—and I will not mention the company now—had been involved.

I realize that you and all of your people with the SEC, will be looked at by history. We saw the entire Dutch Government fail yesterday because of the Dutch forces that allowed the atrocities, the killing of people in Srebrenica. It took 5 to 7 years. That was 1995. People are going to do it in Rwanda to find out what took place.

When you and I are long gone, hopefully still alive, people are going to come back and do analysis of what took place in Sudan in the year 2001 and 2002, and 2003. And so we really do need your active help.

EDGAR FILINGS FOR FOREIGN COMPANIES

Mr. PITT. Well, one of the first things that I promised you was that I would make good on a commitment that had been made earlier to extend the EDGAR filing system to foreign issuers. One of the benefits of that would be that it would make it easier to search foreign filings for activities and investments in countries that might be of interest.

We proposed a rule. We have gotten back a lot of comments, and it is my expectation that by no later than the middle of May, we will finalize that rule and put it into effect so that we will have made good on my commitment to you on that.

In addition, we have done reviews of filings by foreign companies looking for disclosures or issues where there might be material concerns about doing business in certain countries. I have to say that in light of some of the economic considerations, we have seen a diminution in the number of companies that might even be subject to that, but we continue to look for that.

Mr. WOLF. Have there been any with regard to Sudan?

Mr. PITT. I have not heard of any, although that does not necessarily mean that I would because that is done at the staff level and so on, but I am not aware at the moment of any recent indications of disclosures that have risen to a level of concern or what have you, but I do know that we are looking for those issues, as we told you that we would.

And we continue to make ourselves available, both to you, and to the Congress and to the administration in any way that they think we can be helpful.

Mr. WOLF. I appreciate this. We are going to stay interested in it, and I appreciate your help. It is both a moral issue, and I would maintain that morality plays a very large portion of how all of these things operate on the New York Stock Exchange and other markets. But if you were an individual that cared very deeply about this issue and found out that your retirement fund had purchased stock of a Chinese company that was operating an oil pipeline in Sudan that was resulting in the killing of individuals and the development of slavery, you would be very, very upset.

So this information is important, and I appreciate the sooner you are able to provide it. I think it will discourage people from investing in companies that support these countries. I think particularly with Sudan and with the country of China, but also there are some others that are involved. As you know, there was a Canadian company that was involved in all of this. I think history will go back and look at this and say this was a good thing to do. I think it actually strengthens markets and not weakens markets.

The last question, then, is telecommuting, and you can just briefly comment on how it is going at the SEC. Are your people catching a vision or are many people teleworking now?

SEC'S TELECOMMUTING PROGRAM

Mr. PITT. We have been mindful of the opportunities that are created by telecommuting, and we have dealt with that issue, both programmatically and on an ad hoc basis. This is an issue that we

are on the way to resolving with the NTEU because it is a negotiating issue.

The one thing I will tell you is that we have allowed staff to do telecommuting work. We obviously are mindful of all of the issues, as well as all of the benefits, and we continue to work toward making this available, where it will really do some good, both for individuals who may have a need for that, as well as for the public that we serve.

CONCLUSION

Mr. WOLF. And traffic, and families, and moms and dads to be more available. Someone who is ill, someone who is recovering from a serious health problem, rather than being at home not working can be at home working. This will improve their morale. The tele work and the telecommuting concept is one that almost does not have any downsides if you have a certain type of job. That does not mean you do it 5 days a week, obviously. Unless you were recovering from a stroke, maybe you would for a period of time. It really makes a big difference in productivity.

We have a number of other questions. Some we are just going to submit for the record.

With that, I recognize Mr. Serrano. I just want to thank you for your testimony, and thank you for the hard work of your people. We will try to help the best we possibly can.

Mr. PITT. Thank you for your support.

Mr. WOLF. Mr. Serrano, if you have any questions——

Mr. SERRANO. Just once again to thank you for your testimony today.

Mr. PITT. Thank you, sir.

Mr. WOLF. The hearing is adjourned. Thank you.

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