

**Federal Trade Commission
Office of Inspector General**



**Top Management Challenges Facing the
Federal Trade Commission**

OIG Report No. OIG-20-08 September 28, 2020





Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

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MEMORANDUM

FROM: Andrew Katsaros
Inspector General

TO: Joseph J. Simons, Chairman

SUBJECT: Fiscal Year 2020 OIG Report on the FTC's Top Management Challenges

The *Reports Consolidation Act of 2000* requires that each agency's Inspector General provide an annual summary perspective on the most serious management and performance challenges facing the agency, and a brief assessment of the agency's progress in addressing those challenges. The challenges summarized in this document are based on work conducted by the Office of Inspector General (OIG) along with observations and discussions with senior leaders at the Federal Trade Commission (FTC).

In Section I, the OIG has identified the following issues as the top management challenges currently facing the FTC.

1. Securing Information Systems and Networks from Destruction, Data Loss, or Compromise
2. Maintaining Mission Success During the COVID-19 Pandemic
3. Understanding Fraudulent Identity Theft Complaints
4. Costs of Expert Witnesses

In Section II, the OIG has identified Acquisition Planning and Contract Management as a "watch list" item. The OIG considers a watch list item to be an issue area that does not rise to the level of a serious management and performance challenge, but nonetheless requires management's continued attention.

We provided a draft of this report to FTC management, whose comments on the FTC's progress in each challenge area have been summarized and incorporated into this final version.

We appreciate the FTC's ongoing support for the OIG and we will continue to work to address these and other challenges that the FTC faces in achieving its vital mission.

I. The FTC's Top Management Challenges

1. Securing Information Systems and Networks from Destruction, Data Loss, or Compromise

The FTC's ability to protect its information technology systems remains a complex challenge. As identified in a community-wide report on the top management and performance challenges,¹ the Inspector General community cited (1) the protection of information technology (IT) systems from intrusion or compromise by external or internal entities, and (2) the planning and acquisition for replacing or upgrading IT infrastructure as two of the most frequently reported challenges facing federal agencies. The securing of information systems is similarly recognized as a continuing challenge for the FTC.

As reported in our fiscal year (FY) 2019 Federal Information Security Modernization Act of 2014 (FISMA) evaluation,² the OIG assessed the overall information security program of the FTC at Level 4 (*Managed and Measurable*) out of five levels.^{3 4} The testing of the information security program found no significant controls issues and concluded the FTC's security program controls in place were effective. However, data breaches, ransomware attacks, and various other forms of cyber-intrusion remain an ever-present concern, threatening the FTC's ability to control nonpublic information, authorized access to systems, and network security overall.

The OIG made six recommendations in its FY 2019 FISMA report to assist the FTC in improving its security program in the areas of Risk Management, Configuration Management, Identity and Access Management, and Contingency Planning. Two outstanding recommendations from the FY 2018 FISMA report remain – one in the area of Risk Management and one on Configuration Management. Closing these recommendations and positioning the FTC to detect advanced persistent threats to its systems will help ensure that the FTC's data and information are properly protected.

FTC Progress in Addressing the Challenge

The FTC is confident that it completed many of the initiatives outlined in its Information Resources Management (IRM) Strategic Plan for Fiscal Years 2019 – 2022. With what it considers to be the successful adoption of several new technologies and processes, and the transition of key service contracts, the agency believes it is shifting its focus to continuous improvement.

¹ [Top Management and Performance Challenges Facing Multiple Federal Agencies](#), CIGIE (Council of Inspectors General on Integrity and Efficiency, April 2018).

² [Audit of Federal Trade Commission Information Security Program and Practices](#), at 1, FTC OIG (Feb. 4, 2020).

³ The National Institute of Standards and Technology (NIST) lists five cybersecurity functional areas: Identify, Protect, Detect, Respond, and Recover. CIGIE's FISMA guidance uses the NIST's five functional areas to create a five-level maturity model for IGs to rate their respective agencies. The median rating across the government for all five functions is Level 3 (Consistently Implemented). See [FISMA FY 2018 Annual Report to Congress](#), OMB, at 34 (2018).

⁴ The Department of Homeland Security has established Level 4 (Managed and Measurable) as the effective level for federal program maturity. See [FY 2020 IG FISMA Reporting Metrics](#), at 6, Cybersecurity & Infrastructure Security Agency (CISA), (Apr. 17, 2020).

Further addressing the challenge, in FY 2020, the FTC communicated that it has revised several key security policies and its incident response plan, and started implementing application whitelisting, user behavior analytics, and standard security baselines for operating system endpoints. Further, the FTC has informed our office that it has embedded system-level processes to automatically identify and disable inactive user accounts.

2. Maintaining Mission Success During the COVID-19 Pandemic

The FTC is confident that it has successfully managed the initial challenges of a predominantly remote workplace brought on by the COVID-19 pandemic, and has reinforced this message in both agency-wide communications and Congressional testimony.⁵ The Commission has addressed employee concerns that it has learned about through surveys and frequent question and answer sessions on topics related to telework, employee wellness, facilities guidance, and policy matters. For example, in response to concerns employees expressed in a May 2020 survey about balancing personal and professional demands, FTC leadership responded by extending maximum telework flexibilities.

Like many federal agencies, the FTC will be working to sustain this momentum. The agency must continue executing its mission in a remote environment, including by conducting remote hearings, investigations, and video interviews and depositions, while its employees face challenges at home – including school and caregiver demands – and ensuring that IT services are fully functioning and secure. The FTC and its employees will also be operating in this more challenging setting while consumers experience new sets of data privacy and other consumer protection challenges brought on by the COVID-19 pandemic. The FTC must further balance these concerns within the confines of policies and guidance from multiple federal agencies, including the Office of Management and Budget (OMB),⁶ the Centers for Disease Control & Prevention (CDC),⁷ and the Equal Employment Opportunity Commission (EEOC).⁸

The issues and challenges the FTC and its employees are facing during this time are not unique. Still, the FTC's ability to continue to deliver on its dual missions of protecting consumers and promoting competition will be tested in new and challenging ways throughout the duration of this pandemic.

FTC Progress in Addressing the Challenge

The FTC has demonstrated from early on that it has paid close attention to COVID-19 impacts on agency employees and operations. The agency issued its first communication to all staff about the

⁵ See [Oversight of the Federal Trade Commission: Hearing Before the Senate Commerce, Science and Transportation Committee \(Aug. 5, 2020\) \(Statement of Chairman Joseph Simons\)](#).

⁶ See [OMB Memo M-20-23, Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again](#), OMB (Apr. 20, 2020).

⁷ [Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 \(COVID-19\)](#), CDC (May 2020).

⁸ [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#), EEOC (June 17, 2020).

novel coronavirus on January 24, 2020, and, by February 2020, the Office of the Executive Director's team was discussing its response with senior agency officials. By early March, the FTC had established what would ultimately become its Pandemic Response Team (PRT), which, at some level, continued to meet twice weekly to consider the operational impacts of the pandemic.

In coordination with the PRT, the FTC has regularly communicated to all employees throughout the pandemic through:

- several messages from the FTC Chairman regarding the agency's operating status and employee flexibilities;
- a weekly message from the Executive Director updating staff on operational pandemic-related items;
- a COVID-19 intranet resource pages; and
- a communication to FTC employees on an FTC Return to Normal Operations Decision-Making Framework and Action Plan to guide agency decision-making processes at every stage of the pandemic.

As communicated to the OIG, the FTC believes it has also capably supported the transition to telework for the vast majority of staff during the pandemic, including:

- pushing out security patches and software updates to all users connected at home;
- allowing the agency to install software to access web conferences hosted by external parties using a variety of different platforms, such as Zoom, Adobe Connect, and WebEx;
- allowing staff to take home docking stations and monitors to improve the efficiency and productivity of their telework experience, making employees' teleworking capabilities as similar as possible to being in the office;
- managing a rapid expansion of remote and virtual mission-essential services; and
- reengineering business processes to receive data supporting legal filings, such as those for premerger notifications as well as data supporting Civil Investigative Demands (CIDs).

With respect to leave and attendance, the FTC informed us of several policy decisions it made to enable staff to maximize their productivity while in a telework status, including:

- implementing mandatory telework for all agency staff, with the exception of emergency and mission essential personnel, by March 30, 2020;
- relaxing core hours to provide flexibility to staff balancing caregiving and other responsibilities;
- providing employees with additional leave options;
- moving all in-person training programs to virtual learning events;
- implementing a new Emergency Backup Dependent Care Program to assist employees for when dependent care is interrupted; and
- transitioning new employee orientations to a virtual environment and developing an online onboarding course with uploaded video presentations for regional offices.

The FTC further communicated various building access and employee safety actions it has taken, including:

- developing a Return to Normal Operations Decision-Making Framework and Action Plan, including a phased approach to reopening agency facilities;
- maintaining essential services on-site (e.g., mail, security, and housekeeping) and ensuring that all facilities are operating within CDC and GSA building and cleaning guidelines;
- developing virtual processes for a range of services, including Commission filings;
- developing an online appointment tool for staff who need to come into the building (e.g., for remote litigation or virtual depositions) to ensure safe social distancing for those in the building and more rapid contact tracing, if necessary.
- during phase 1 of the FTC's Return to Normal Operations Decision-Making Framework and Action Plan, providing all staff with personal protective equipment and related guidance, including on performing health self-assessments before entering an FTC facility and wearing facemasks while inside the common areas of all facilities; and
- establishing COVID-19 protocols for visitors who enter FTC facilities.

3. Understanding Fraudulent Identity Theft Complaints

The FTC faces a significant challenge in addressing the number of potentially fraudulent complaints submitted to IdentityTheft.gov. Administered by the FTC, IdentityTheft.gov is a website that provides a vehicle for consumers to file identity theft complaints with the federal government.

The complaints are housed in the FTC's Consumer Sentinel, which provides members with access to millions of consumer complaints, including complaints about identity theft. In 2019, Consumer Sentinel received over 3.2 million consumer complaints related to fraud, identity theft, and other financial concerns, of which 650,547 (or 20.3%) were identity theft complaints.

According to the FTC, between 2018 and 2019, the agency experienced a 46% increase in the volume of complaints submitted to IdentityTheft.gov. Continuing this trend, through June 30, 2020, the FTC experienced a significant increase in the volume of identity theft complaints compared to the same period in 2019.⁹ An FTC analysis of the complaints received since January 2020 revealed significant patterns that strongly suggest the fraudulent use of IdentityTheft.gov. These factors all represent a risk to the credibility of a high number of complaints within the system.

In addition to concerns about violations of federal criminal law,¹⁰ an influx of fraudulent complaints could require considerable FTC resources in identifying and implementing counter measures, and could affect federal agencies' and other members' confidence in the validity of individual reports and the aggregated data, more broadly.

⁹ The federal government was shut down through most of January 2019, during which time the FTC took in zero complaints.

¹⁰ Potential criminal violations for submitting fraudulent complaints to IdentityTheft.gov include False Statements (18 U.S.C. § 1001) and Wire Fraud (18 U.S.C. § 1343).

FTC Progress in Addressing the Challenge

The FTC closely monitors IdentityTheft.gov to analyze patterns that suggest complaints are potentially fraudulent. The agency is also taking steps to mitigate the harm, such as disallowing suspect reports from being downloaded and printed, and is actively working with state and federal law enforcement on investigations of misuse of IdentityTheft.gov.

4. Costs of Expert Witness Services

The escalating costs of expert witness services represents a significant and continuing risk to the FTC. Between FY 2015 and 2018, the cost of expert witness services rose from \$9.3 million to \$14.9 million, far outpacing FTC appropriation increases in the same period. Aware of this rapid increase in costs, the FTC has designated its expert witness services as a “top risk” on the agency’s risk register.

In our November 2019 audit of the FTC’s expert witness services, the OIG noted that the agency’s primary hurdle in controlling expert witness costs was its ability to anticipate these costs for individual cases and the program overall.¹¹ In particular, evolving technologies, automation, and intellectual property issues continue to increase the complexity of antitrust investigations and litigation. This complexity, coupled with significant complaints of harmful business practices and fluctuations in merger activity, make it difficult to anticipate the specific investigative and litigation needs and for the FTC to estimate the costs of expert services as a result.

In our November 2019 audit, the OIG recommended that the FTC update its approach to acquiring expert witness services. The FTC’s Bureau of Economics previously considered relying more heavily on in-house FTC experts, but noted that the agency is hamstrung when competing with academic institutions or other federal agencies that are able to offer higher salaries and other benefits.¹² Following the audit, FTC management began revisiting a greater use of in-house economists as experts, understanding that FTC cases often require experts with vast knowledge of a very narrow subject matter, and that a needed area of expertise could change in each case. Further, the compressed schedule and unpredictable demands that accompany a competition case could make it more challenging to commit to the use of FTC resources for expert services at the outset.

FTC Progress in Addressing the Challenge

The FTC has implemented a strategy to better control expert costs through enhanced competition in the bidding process, proactive contract management, and the exploration of alternative avenues of expert services (including in-house experts). The FTC has further communicated to us that it monitors work performed by outside experts and consulting firms more closely and utilizes in-house economists where practical during enforcement investigations and litigations.

However, as the FTC has pointed out, due to a significant increase in enforcement activity in the Bureau of Competition in FY 2020, and projections for an unusually large number of litigation matters, the agency predicts even higher expert witness costs in FY 2021 compared to what it

¹¹ [Audit of Federal Trade Commission Expert Witness Services](#), OIG Report No. A-20-03, FTC OIG (Nov. 14, 2019).

¹² Carlson J and Koochi S, *Economist Recruiting 2019-2020*, FTC (Apr. 16, 2020).

considers already significant FY 2020 levels. According to the FTC, the anticipated increase is due to the timing and volume of existing litigation matters, a large number of likely enforcement recommendations, litigation resulting from ongoing investigations, and anticipated new cases. The FTC believes this increased competition enforcement activity is placing a strain on resources that may affect its ability to adequately fund the expert witnesses necessary to sustain this level of activity. The FTC states that it is attempting to and will continue to pursue more resources through the appropriations process to address this challenge.

II. Agency Watch List

The OIG has also established a “watch list” with one issue that does not meet the threshold of a serious management or performance challenge, but still warrants attention and vigilance by agency officials.

1. Acquisition Planning and Contract Management

As the FTC obligates approximately 20% of its annual budget on contractor services, managing contracts in a cost effective and efficient manner is key to the agency’s success in achieving its mission.¹³ Although the FTC’s Acquisitions Branch has recently addressed some of its most pressing issues, it must remain vigilant in maintaining the proper level of staff and resources and in following established processes to ensure proper oversight and management of contracts. The FTC faces this challenge in an environment where it increasingly relies on contractors to execute critical functions, such as expert witness services and its migration to the cloud.¹⁴ Despite the contracting volume, the agency must ensure that it is capable of completing acquisitions within the Procurement Action Lead Time (PALT)¹⁵ so that goods and services are available when needed.

While not rising to the level of a serious management challenge, meeting the agency’s ongoing contracting needs in a timely manner – and during times when the FTC has more limited resources – should continue to be an area requiring the agency’s focus.¹⁶

FTC Status

The FTC communicated to the OIG that the Financial Management Office (FMO) consistently evaluates the resources available and resources needed for its acquisition function. During FY 2020, FMO filled several positions – fully staffing the acquisition office in the FTC’s estimation – and assigned senior level contracting officers (Team Leads) to the program areas with the highest volume of acquisition need. FMO also stated that during FY 2020 it filled two vacant Team Lead positions. According to the FTC, this structure and staffing level allowed FMO to begin to reduce

¹³ [Audit of Federal Trade Commission Acquisition Planning Activities](#), OIG Report No. AR-18-05, FTC OIG (Sept. 28, 2018).

¹⁴ OCIO, with assistance from Acquisitions, awarded a blanket purchase agreement to industry partners in support of OCIO’s work to migrate agency IT services to the cloud.

¹⁵ PALT sets timeframes for completing different acquisitions once an FTC component provides the necessary documentation and requirements to Acquisitions.

¹⁶ CIGIE included acquisitions management as a top management challenge throughout the federal government in its 2018 report. See [Top Management and Performance Challenges Facing Multiple Federal Agencies](#), at 12, CIGIE (Apr. 18, 2018).

its reliance on outside contracting support. Further, the FTC is confident that its move to the Department of the Treasury's Administrative Resource Center has greatly improved its system access and provided an enhanced reporting capability.