



FISCAL YEAR 2022 REPORT ON THE FEDERAL TRADE COMMISSION'S TOP MANAGEMENT AND PERFORMANCE CHALLENGES

**Federal Trade Commission
Office of Inspector General**

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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: Lina M. Khan, Chair

SUBJECT: FY 2022 Report on the FTC's Top Management and Performance 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, as well as a brief assessment of the agency's progress in addressing those challenges. The challenges summarized in this document are based either on work conducted by the Office of Inspector General (OIG) or separate 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 and performance challenges currently facing the FTC:

- 1. Securing Information Systems and Networks from Destruction, Data Loss, or Compromise**
- 2. Seeking Monetary Relief for Consumers**
- 3. Successfully Managing the Volume of Merger Transactions**
- 4. Controlling Expert Witness Costs**
- 5. Managing Records and Sensitive Agency Information**

In section II, the OIG has identified **Managing Consumer Misuse of the Consumer Sentinel Network** as a "watch list" item—an issue 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.

I. The FTC's Top Management and Performance Challenges

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

Guarding information technology (IT) systems remains a priority for the FTC. As we noted in last year's *Top Management and Performance Challenges (TMC)* report, our most recent Federal Information Security Modernization Act of 2014 (FISMA) audit¹ has concluded that the FTC's information security program and practices were effective.² Nevertheless, cyber intrusion remains a government-wide threat—and a top challenge for the agency.

While the Office of Management and Budget's (OMB's) fiscal year (FY) 2021 FISMA Annual Report to Congress has yet to be issued as of the date of this report, the *FY 2020 FISMA Annual Report to Congress*³ noted that the federal government experienced an 8% increase in reported cybersecurity incidents between FYs 2019 and 2020. The report referred specifically to the December 2020 discovery of a sophisticated supply chain attack⁴ used to gain access to a large number of information systems across several federal government agencies and U.S.-based companies.⁵

In response, the FY 2021 IG FISMA reporting metrics included a new domain on supply chain risk management (SCRM) within the Identify function, focusing on the maturity of agency strategies, policies, procedures, plans, and processes.⁶ IG metric questions related to the implementation of policies and procedures were also streamlined to reduce duplication and redundancies. We look to this evolution in IG FISMA reporting to begin addressing perceived shortcomings in related federal testing. In the past, the FTC has communicated to the OIG how neither tests of controls conducted in accordance with National Institute of Standards and Technology (NIST) 800-53⁷ nor compliance with the

¹ [Fiscal Year 2021 Audit of The Federal Trade Commission's Information Security Program and Practices](#), at 1, FTC OIG (Jan. 10, 2022).

² The U.S. Department of Commerce National Institute of Standards and Technology (NIST) lists five cybersecurity functional areas: Identify, Protect, Detect, Respond, and Recover. The Council of the Inspectors General on Integrity and Efficiency's FISMA guidance uses NIST's five functional areas to create a five-level maturity model for IGs to rate their respective agencies. See [FY 2021 Inspector General FISMA Reporting Metrics Version 1.1](#) (May 12, 2021), at 6, *Cybersecurity and Infrastructure Security Agency*. After assessing all five functional areas, we scored the FTC's overall information security program at level 4 (Managed and Measurable). The Department of Homeland Security has established level 4 (Managed and Measurable) as the effective level for federal program maturity.

³ [FISMA FY 2020 Annual Report to Congress](#), at 4, OMB (May 2021).

⁴ In a *supply chain attack*, hackers infiltrate and exploit a vulnerable feature of a network of systems within an external entity, which would supply software or IT services to the organization. The exploited vulnerability in the external entity could compromise the organization's ability to secure the network of systems.

⁵ This supply chain attack was most commonly associated with a compromise of SolarWinds Orion Code. CISA issued [Emergency Directive 21-01](#) to mitigate similar future incidents.

⁶ The new domain references SCRM criteria in NIST Special Publication (SP) 800-53, Revision 5.

⁷ [NIST Special Publication 800-53, Revision 5](#) (September 2020), *Security and Privacy Controls for Information Systems and Organizations*, contains federal information security standards and guidelines, including minimum requirements for federal information systems.

Federal Risk and Authorization Management Program (FedRAMP)⁸ can effectively prevent outside supply chain attacks that take advantage of unknown vulnerabilities.

To promote further vigilance, on January 6, 2022, OMB issued memorandum M-22-09, *Moving the U.S. Government Toward Zero Trust Cybersecurity Principles*. This memorandum sets forth a federal zero trust architecture (ZTA) strategy, requiring agencies to meet specific cybersecurity standards and objectives by the end of FY 2024 to reinforce the government’s defenses against increasingly sophisticated and persistent threat campaigns. In August 2022, our office announced a ZTA audit to address the FTC’s progress against the strategy and related milestones.

Although the OIG made no recommendations in the FY 2021 FISMA report, we identified areas for improvement in risk management, configuration management, and contingency planning. Addressing these areas for improvement and positioning itself to detect advanced persistent threats to its systems will help the FTC better ensure that its data and information are properly protected.

FTC Progress in Addressing the Challenge

FTC management reported executing corrective actions for the four areas of improvement identified in the FY 2021 FISMA audit report. According to the agency, corrective actions addressed improvements in the Risk Management, Supply Chain Risk Management, Configuration Management, and Contingency Planning FISMA domains. In addition, agency management informed the OIG that it executed corrective actions addressing the 4 penetration testing observations cited in the report.

2. Seeking Monetary Relief for Consumers

The FTC continues to grapple with how to obtain relief effectively for consumers following last year’s Supreme Court decision in *AMG Capital Management, LLC v. FTC*, 593 U.S. ___, 141 S. Ct. 1341 (2021) (“*AMG*”). The decision stripped federal courts of the authority—which they had been exercising for more than 4 decades—to award equitable monetary relief to consumers when the FTC obtains a permanent injunction in federal court pursuant to FTC Act Section 13(b), 15 U.S.C. § 53(b).

Since the decision, the FTC has had to rely on FTC Act Sections 5 and 19 (“Section 5” and “Section 19”), which prohibit unfair or deceptive acts or practices, to obtain monetary relief for consumers. Under Section 19, in order to head directly to federal court to pursue monetary relief, the FTC must allege an unfair or deceptive act or practice that violates an established rule enforceable under Section 19(a)(1). If the FTC only alleges an unfair or deceptive act or practice without a specific rule violation, the FTC must secure a cease and desist order through the administrative process laid out in Section 5 before seeking monetary relief for consumers in federal court. In other words, the agency must litigate the case twice—once through the administrative process and once in federal court.

⁸ FedRAMP, a product of the U.S. General Services Administration Technology Transformation Services, provides a standardized approach to security authorizations for cloud services.

While the FTC traditionally used Section 13(b) to seek equitable monetary relief in consumer protection cases (e.g., in cases like *AMG*), the FTC more recently had used Section 13(b) to seek monetary relief in antitrust cases as well. Section 19, however, only authorizes the Commission to seek monetary relief for unfair or deceptive practices. Accordingly, because of *AMG*, the Commission no longer may seek monetary relief for unfair methods of competition.

The inability to seek equitable monetary relief via Section 13(b) is expected to impact the Commission's ability to secure monetary relief for consumers. Between 2017 and 2021, the FTC secured more than \$10 billion for consumers through Section 13(b) actions in federal court. The FTC is concerned that, post-*AMG*, it will recoup substantially less monetary relief for consumers.

In 2022, legal challenges to agency administrative processes have further complicated the Commission's ability to rely on its administrative process to obtain refunds for harmed consumers.

FTC Progress in Addressing the Challenge

Since the Supreme Court issued its decision in *AMG*, the FTC has described to the OIG how it has taken steps to mitigate the loss of its equitable monetary relief authority under Section 13(b).

The FTC notes that it continues the work it began in 2021 to provide support and technical assistance to Congress on proposed legislation that would restore its authority to obtain monetary relief under 13(b). Since we first raised this challenge in our FY 2021 *TMC*, several bills have been introduced to restore the FTC's ability to secure equitable monetary relief via Section 13(b).⁹ As of this report's publication, Congress has not yet passed such a bill.

The FTC also indicates that it has turned to using alternative remedial authorities, such as the Penalty Offense Authority—which allows it to seek civil penalties if an entity engages in conduct that the Commission has previously found unfair or deceptive in an administrative order other than a consent.¹⁰

The FTC also has pursued rulemaking, including proposing a major expansion of the Telemarketing Sales Rule and finalizing the Made in the USA Rule. In addition, the Commission reports initiating rulemakings around auto sales, impersonator fraud, and false earnings claims.

⁹ See Consumer Protection Remedies Act of 2022, S. 4145, 117th Cong. (2022); The Consumer Protection and Due Process Act, S. 3410, 117th Cong. (2021); Consumer Protection and Recovery Act, H.R. 2668, 117th Cong. (2022).

¹⁰ To exercise this authority, the FTC can send a Notice of Penalty Offenses outlining conduct that the Commission has determined is unlawful. In the last fiscal year, the Commission sent Notice of Penalty Offenses to approximately 1,100 businesses, 70 for-profit colleges, and 700 advertisers and consumer product companies.

Regarding administrative actions, the FTC reports increased enforcement of its orders against repeat offenders and filings of administrative cases.¹¹ With respect to cases brought in federal court, through the third quarter of FY 2022, the FTC Bureau of Consumer Protection (BCP) reports that it had filed numerous complaints in federal district court and obtained a number of permanent injunctions and orders.¹²

3. Successfully Managing the Volume of Merger Transactions

How the FTC can most efficiently and effectively manage its workload related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act)¹³—and the difficulties encountered by BC attorneys charged with reviewing reported HSR transactions—has grown into one of the agency’s top management challenges.

Since FY 2019, the sheer volume of transactions submitted to the FTC has made an already burdensome HSR workload even more challenging for agency leadership and its Bureau of Competition (BC) attorneys. After 2,089 submissions in FY 2019, the FTC fielded about 20% fewer (1,637) in FY 2020, the first year of the global pandemic. But FY 2021 brought the agency more than double the transaction workload (the FTC’s public website reports a preliminary total of 3,644 HSR transactions received October 2020–September 2021¹⁴). That significant increase in HSR transactions persists into the first 9 months of FY 2022. Through June 2022, the FTC had received 2,660 submissions. Even though the monthly numbers of submissions have stabilized over the first half of this calendar year—at an average of 221 monthly submissions from January to June 2022—FY 2022 will likely bring the FTC almost double the annual number of HSR transactions that it received before the pandemic.

¹¹ The Commission has issued 10 new administrative complaints and entered 11 final administrative orders requiring defendants to pay more than \$5.4 million.

¹² Through the third quarter of FY 2022, the FTC BCP reports that it had filed 26 complaints in federal district court and obtained 34 permanent injunctions and orders requiring defendants to pay more than \$62.7 million in consumer redress or disgorgement. In addition, the agency indicates that cases referred to the U.S. Department of Justice (DOJ) resulted in 10 court judgments imposing more than \$162.2 million in civil penalties.

¹³ The HSR Act, 15 U.S.C. § 18a—together with Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and Section 15 of the Clayton Act, 15 U.S.C. § 25—enables the FTC and the Antitrust Division of the Department of Justice (Antitrust Division) to obtain preliminary relief against anticompetitive mergers. The HSR Act requires that certain proposed mergers be reported to the FTC and the Antitrust Division prior to consummation. The parties must then wait a specified period, usually 30 days, before they may complete the transaction.

After the companies report a proposed deal, the agencies conduct a preliminary review to determine whether it raises any antitrust concerns that warrant closer examination. Because the FTC and the Antitrust Division share jurisdiction over merger review, transactions requiring further review are assigned to one agency on a case-by-case basis, depending on which agency has more expertise with the industry involved.

The FTC and the Antitrust Division do not take action on the vast majority of transactions, and those transactions are allowed to proceed following the specified HSR period. During the HSR waiting period, the FTC and/or the Antitrust Division may issue a “second request” to the parties for more information and documents. Once the parties have certified that they have substantially complied with the request, the investigating agency has 30 additional days (10 days in the case of a cash tender or bankruptcy transaction) to complete its review of the transaction and take action, if necessary.

¹⁴ See <https://www.ftc.gov/enforcement/premerger-notification-program>.

FTC leadership has highlighted the successes achieved by BC’s Premerger Notification Office (PNO) in the face of the high volume of HSR submissions. In a November 8, 2021, statement¹⁵ on the release of the FY 2020 HSR annual report, the Chair was joined by another Commissioner in noting 28 merger enforcement challenges brought by the FTC during FY 2020, the highest such number in almost 20 years. On the same date, in another statement¹⁶ accompanying the FY 2020 HSR annual report’s release, the other two Commissioners hailed the success of PNO’s implementation of a new electronic HSR filing system, prompted by agency-wide remote work starting in March 2020.

Despite the agency’s efforts in fielding an increased volume of submissions—whose growth seems to have stabilized after last year’s increases, but whose size represents a substantially greater workload than pre-pandemic years—the FTC faces challenges in strategizing the most efficient and effective response. Among the related issues are the increased depth of review and volume of Requests for Additional Information (second requests).

On February 4, 2021, the FTC publicly announced¹⁷ a pause in granting Early Terminations¹⁸ to HSR filings, while it reviewed the relevant processes and procedures—citing the increase in volume of HSR submissions, the transition in leadership, and the continuing global pandemic. As of the publication of this report, the agency has not resumed granting Early Terminations.

In August¹⁹ and September²⁰ 2021, the acting director of FTC BC posted public blog entries clarifying the FTC’s stance on (1) sending pre-consummation warning form letters, when the agency “cannot fully investigate [the proposed merger or acquisition] within the requisite timelines,” and (2) how recent agency changes improve the FTC’s handling of second requests. The August blog entry acclimated stakeholders to an FTC form letter notifying companies that—if their HSR submission is not fully investigated within requisite

¹⁵ See

https://www.ftc.gov/system/files/documents/public_statements/1598131/statement_of_chair_lina_m_khan_joined_by_rks_regarding_fy_2020_hsr_rep_p110014_-_20211101_final_0.pdf.

¹⁶ See

https://www.ftc.gov/system/files/documents/public_statements/1598127/phillips_wilson_hsr_report_statement_102821_final.pdf.

¹⁷ See <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination>.

¹⁸ Under the HSR Premerger Notification Program, companies report some proposed mergers and acquisitions to the government before they occur, and the agencies identify and challenge those transactions that may substantially lessen competition in violation of federal law. During the preliminary review, the parties must wait 30 days (15 days in the case of a cash tender or bankruptcy transaction) before closing their deal. Based on what the agency finds, it can (1) terminate the waiting period and allow the parties to consummate their transaction (this action often is referred to as an “early termination”); (2) let the waiting period to expire, which allows the parties to consummate the transaction; or (3) if the initial review has raised competition issues, extend the review and ask the parties to turn over more information so that it can take a closer look at how the transaction will affect competition. (FTC Press Release, February 4, 2021, “FTC, DOJ Temporarily Suspend Discretionary Practice of Early Termination,” <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination>.)

¹⁹ See <https://www.ftc.gov/enforcement/competition-matters/2021/08/adjusting-merger-review-deal-surge-merger-filings>.

²⁰ See <https://www.ftc.gov/enforcement/competition-matters/2021/09/making-second-request-process-both-more-streamlined-more-rigorous-during-unprecedented-merger-wave>.

timelines—the delayed response signals an FTC review that remains open, regardless of how companies decide to proceed (or not) with their transactions. The September blog entry alerted stakeholders to changes the FTC has made to the second request process.

All of the issues noted above reflect challenges that emerged before FY 2022. The most recent HSR annual report reflects agency success in handling the transaction workload; still, debate over the handling of HSR timelines, the unresolved issue of Early Terminations, and the results of adjusting second requests persist among internal and external stakeholders.

Since FY 2022 began, we reached out to BC attorneys to learn their perspective on BC’s management of the merger/acquisition review workload. Our March 1, 2022, survey²¹—posted publicly on May 1, 2022—asked about their work generally, as well as specifically pertaining to merger transactions. The more specific questions related to how management supports them with training, staffing levels, technology, and other resources. We also offered respondents (who comprised almost half of the total number BC leadership estimated working on merger transactions) the open-ended opportunity to provide additional comments.

Regardless of respondents’ organizational location or level of experience, they expressed concerns when reflecting on whether there is enough human capital to handle the HSR review workload. More than three-fourths of respondents viewed their teams as understaffed, which corresponded with a comparable majority of respondents who found that the workload pace had become unmanageable, in the face of a “significant” workload increase (a description agreed with, completely or somewhat, with near unanimity). In addition, respondents indicated a concern with whether the FTC has an effective IT/software strategy to support their work—fewer than one-third of those surveyed agreed (entirely or somewhat) that the current technology meets their needs.

An additional top concern, raised in respondents’ additional comments, related to higher agency leadership not allowing lower management and staff attorneys a sufficient level of discretion in their handling of merger reviews—with an end result of lower efficiency and staff morale. Comments also reflected problems with management communication deemed unclear or contradictory about agency priorities related to their HSR work.

The agency’s challenge remains confronting the persistent large volume of filings—while staying mindful of attorneys’ concerns as it executes its HSR mission.

FTC Progress in Addressing the Challenge

To address the volume of merger work and the significant staff challenges that it poses, BC has described to the OIG how it closely tracks all incoming HSR filings and commits weekly triage efforts to ensure that resources are allocated to the most troublesome transactions—and accommodate strict HSR statutory deadlines. BC management reports that the increased merger activity is one driver of management’s requests for additional resources through the budget process, which the agency has consistently advocated for with OMB and Congressional appropriators.

²¹ See https://www.ftc.gov/system/files/ftc_gov/pdf/2022-05-02_OIG%20HSR%20survey_final.pdf.

In addition, management has reported engaging in lateral hiring to the greatest extent allowed, given the agency's current budget constraints, as well as utilizing and reprioritizing available resources across the agency to support BC's competition investigations and litigation.

FTC management has also informed the OIG about how it is keenly aware of staff concerns around frontline staff and manager discretion and empowerment, as well as associated effects on morale. It has reported engaging in a variety of efforts to address them, including clarifying priorities, strengthening communication and engagement, and streamlining processes.

4. Controlling Expert Witness Costs

Since 2017, the FTC has included expensive expert witness contracts as a "top risk" on its risk register. A major component of the agency's litigation costs, these contracts will likely remain a top risk in FY 2023 and beyond. The complexity of its cases, which necessitates expert witness services, contributes significantly to the challenge. Prior to FY 2022, the FTC's litigation activity has required spending on expert witness costs that have exceeded available budgeted resources—potentially threatening the agency's ability to challenge meritorious cases.

Between FYs 2014 and 2021, the FTC's costs for expert witness services outpaced its budgeted appropriations.²² In FY 2022, the agency expanded BC's expert witness contracts budget to a total of \$15 million, more than three times the FY 2021 budgeted amount of \$4.8 million. While BC's FY 2022 spending on these contracts (approximately \$7 million) thus far remains well below the pace of its FY 2021 spending (approximately \$16 million), the unpredictable nature of agency investigations, Commission decisions, and the response of parties to FTC matters continue to challenge the agency's ability to anticipate expert witness costs accurately.²³ The expanded budget substantially mitigates the challenge, though not entirely; the FTC's current fiscal year spending on expert witnesses could very well approach the FY 2021 expense level.²⁴

In our November 2019 audit,²⁵ we recommended that the FTC update its approach to acquiring expert witness services. The FTC's Bureau of Economics (BE) had previously considered relying more heavily on internal FTC experts—but noted the difficulty in hiring them, given the higher salaries and increased benefits that academic institutions or other federal agencies can offer. Additionally, some cases require expert testimony that cannot be provided by BE economists, due to the specialized and frequently-changing subject matter. Nevertheless, the agency has continued to explore this solution. The FY 2023 Congressional Budget Justification envisions the FTC building, within its Office Policy Planning (OPP), a staff infrastructure for analytical resources including data analysts, financial analysts, and

²² See [Federal Trade Commission Fiscal Year 2023 Congressional Budget Justification](#).

²³ It was identified, in the [Audit of Federal Trade Commission Expert Witness Services](#), OIG Report No. A-20-03, FTC OIG (Nov. 14, 2019), that the agency's primary hurdle in controlling expert witness costs was the ability to anticipate costs for individual cases as well as the overall program.

²⁴ Through the first three quarters of FY 2022, outlays for expert expenses total \$7,037,414, far below the total FY 2021 expert witness expenses of \$16,085,974.

²⁵ [Audit of Federal Trade Commission Expert Witness Services](#), OIG Report No. A-20-03, FTC OIG (Nov. 14, 2019).

technologists who can conduct investigative and analytical work traditionally done by expert witness support staff.²⁶

As a result, the FTC may not find it feasible to replace all, or even most, of its expert witness needs with less costly in-house support.²⁷ Stakeholders will likely continue to monitor this issue as a top agency risk while the FTC continues to address the challenge.

FTC Progress in Addressing the Challenge

As discussed, one way the agency addresses its expert witness challenge is by leveraging internal expertise when possible. The FTC has reportedly established requirements for its bureaus to document why internal staff cannot fulfill a relevant expert engagement in a memorandum—which the FTC Chair’s Office uses to inform its decision of whether to direct FTC staff to seek an external expert witness.

In its FY 2023 Congressional Budget Justification, the Commission requested an increase of \$15 million to meet the projected costs of the Bureau of Competition’s (BC) expert witness contracts.²⁸ This request for a significant increase in resources highlight the difficulties that unpredictable case demands present as the FTC decides whether to commit initially to the use of FTC resources for expert services.

In FY 2021, BC began to perform monthly expert witness cost projections—consistently updating them with data from current cases, abandoned cases, and new cases that may require future expert witness costs. In FY 2022, the frequency of the cost projections increased to a twice-monthly basis. While these projections provide BC management with greater insight into how to prioritize resources, they remain only a part of how the agency mitigates the challenge.

5. Managing Records and Sensitive Agency Information

In last year’s *TMC* report, we highlighted on our “Agency Watch List” concerns about the FTC’s data controls. Two of our FY 2020 audit reports on agency programs—the Bureau of Consumer Protection’s redress program²⁹ and the Personnel Security Office’s Personnel Security and Suitability Program³⁰—conveyed findings concerning the collection, organization, and standardization of data. The resulting risks included unreliable data analysis (in the former case) and lack of data uniformity (in the latter). In addition, an FY 2021 OIG management advisory on controls over the agency’s sensitive

²⁶ The [OIG’s FY 2019 audit of the FTC’s Expert Witness Services](#) found that contracted support staff were paid \$287/hour for services versus an average of \$112/hour for FTC staff. Support staff assist the expert by conducting research on economic literature, collecting, and cleaning data, and assisting with data analysis.

²⁷ See [Federal Trade Commission Fiscal Year 2023 Congressional Budget Justification](#).

²⁸ *Ibid.*

²⁹ [Audit of Federal Trade Commission Redress Process Controls](#), OIG Report No. A-20-06, FTC OIG (Mar. 4, 2020).

³⁰ [Audit of Federal Trade Commission Personnel Security and Suitability Program Processes](#), OIG Report No. A-20-09, FTC OIG (Sept. 29, 2020).

data discussed FTC employees' access to, and lack of effective training about, nonpublic information.³¹

The agency had already begun addressing the recommendations from those FY 2020 audit reports—and was in the process of developing new National Archives and Records Administrations (NARA) records schedules³² for its operating units—when we issued last year's Agency Watch List. Nevertheless, a related February 2022 OIG management advisory highlighted both the progress made and the challenges remaining in establishing agency-wide records management that is suitably compliant and consistent.³³ As a result, we have elevated the issue to the level of a management and performance challenge.

While the FTC recently has made significant progress in some areas of records management, such as shifting to all-electronic recordkeeping, the FTC still faces challenges in (1) complying with NARA records schedule requirements and (2) setting up automated practices for properly storing and timely disposing of records in a uniform manner across the agency. Our February 2022 management advisory reported how a lack of agency-wide records management coordination has hindered the FTC's efforts to modernize its recordkeeping. We observed a lack of a comprehensive file management system as an obstacle to the FTC meeting NARA requirements. And we acknowledged how complex challenges (such as budget constraints, competing priorities, and nationwide staff lacking access to hard-copy records during a transition to all-electronic records) hinder the FTC's efforts to institutionalize a properly automated records management system—one which stores and timely disposes of records in a uniform manner across the agency.

Confronting this management and performance challenge now—making records management progressively more integral to its operations—will significantly ease the FTC's long-standing burden of records management and compliance with NARA requirements. But it compels the agency to assess whether its current personnel and technology resources are capable of meeting both NARA and OMB requirements before the end of this year.³⁴

³¹ See [Management Advisory on Controlling and Protecting Sensitive FTC Information](#), OIG Report No. M-21-04, FTC OIG (Sept. 29, 2021).

³² As required by the National Archives and Records Administrations (NARA), records schedules provide agencies with mandatory instructions regarding how to maintain operational records and what to do with them when they are no longer needed for current business. These instructions are required to state whether individual series of records are “permanent” or “temporary,” as well as how long to retain the records. Records with historical value, identified as “permanent,” are transferred to the National Archives of the United States at the end of their retention period. All other records are identified as “temporary” and are eventually destroyed in accordance with the NARA Records Schedule or the General Records Schedule.

³³ See [Management Advisory on FTC Records Management](#), OIG Report No. M-22-05, FTC OIG (Feb. 28, 2022).

³⁴ On June 28, 2019, OMB issued M-19-21, *Transition to Electronic Records*, to set “consistent, government-wide policy and practices,” directing all federal agencies to “[e]nsure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata.” It further called on federal agencies to develop plans to close agency-operated storage facilities for paper and other analog records and transfer records to NARA centers or commercial storage facilities by December 31, 2022. By January 1, 2023, all other legal transfers of permanent records must be in electronic format, to the fullest extent possible, whether the records were “born electronic” or not. After that date, agencies will be required to digitize permanent records in analog formats before transfer to NARA.

FTC Progress in Addressing the Challenge

The agency has reported taking several actions to address concerns regarding employee training about sensitive information and staff access to nonpublic information, including updates of the following:

- its annual cybersecurity training and required staff agreement to protect nonpublic information and forwarding restrictions;
- its Rule of Behavior on all FTC laptops and smartphones, to alert staff to treat all FTC information as nonpublic information unless otherwise authorized for release;
- its annual ethics training for senior staff and their key staff advisors, to include reinforcement on the use of email forwarding restrictions and the use of nonpublic information; and
- new requirements to restrict forwarding of weekly reports.

Notably, the Chair issued communication stressing the importance of protecting nonpublic information and reinforcing the renewed training efforts.

The agency also reported completing several initiatives in its efforts to modernize recordkeeping and making records management progressively more integral to agency operations, including the following:

- developing policy for information governance of electronically stored information (ESI) and a memorandum to all staff on the use of ESI;
- moving forward, with the authorization of the Chair, on the agency email and chat management policy; and
- developing an email record schedule, using the NARA Capstone approach, for NARA approval.

Further, the agency reports completing its draft contract package and unfunded request for the procurement of FY 2023 resources to modernize the agency's recordkeeping and records management practices. In addition, management has reported that it continues to develop and submit to NARA draft records disposition schedules for program offices and for specific series of records.

II. Agency Watch List

The OIG also maintains a “watch list,” currently with one issue that does not meet the threshold of a serious management or performance challenge—but nevertheless warrants the vigilant attention of agency officials.

Managing Consumer Misuse of the Consumer Sentinel Network

The FTC’s Consumer Sentinel Network (CSN) is a unique investigative cyber tool that provides its members (typically federal, state, and local law enforcement) with free access to millions of reports filed by consumers, member entities, and other data contributors. In addition to consumer fraud scams, CSN includes reports about Identity Theft, and Do Not Call (DNC) Registry violations. Misuse of CSN related to the latter two types of reports have become a growing concern.

Identity Theft report misuse. In 2021, approximately 1.3 million Identity Theft complaints were submitted to CSN; credit card fraud, government documents or benefits fraud, and loan or lease fraud were the three most frequent types of identity theft complaints. Recently, it appears that CSN has been increasingly misused by individuals and groups who submit fraudulent identity theft complaints in furtherance of larger scams involving financial institutions, student loans, and personal loans. The FTC OIG has recently assisted several jurisdictions in the prosecution of large financial fraud crimes by providing them with fraudulent subject identity theft reports.

DNC Registry violations. The FTC helps consumers to stop receiving telemarketing calls by registering their home or mobile phone numbers for free on the DNC Registry. If consumers receive unwanted calls after their phone numbers have been on the Registry for 31 days, they can submit a complaint to the FTC—which can issue significant fines to violators under the Telephone Consumer Protection Act.

In 2021, the DNC Registry received over 5 million complaints. Recent data indicate that fraudsters are exploiting the Registry by de-registering consumers from the DNC without their permission. In late 2021, the FTC’s DNC Registry contractor began observing a significant spike in monthly phone numbers de-registered or removed from the DNC Registry. It appears that phone numbers were de-registered without the permission of consumers by scammers calling the DNC 1-800 number with a “spoofed” caller ID and removing actual registered phone numbers.

We place this item on our “watch list” to highlight how the FTC’s consumer-focused data gathering systems such as Identity Theft and DNC Registry are increasingly subject to misuse, which can dilute both the accuracy of the data and consumer confidence in it.

Agency Status

The FTC has reported taking several measures, and continuing to explore options, to prevent and mitigate misuse of CSN in an effort to maintain the integrity of the system.

To help minimize the number of fraudulent reports submitted through the IdentifyTheft.gov website, management has described how it has implemented several back-end security

measures and enhancements. Most recently, the website was updated to require all users to complete a phone validation process to download and obtain a copy of an Identity Theft Report. The FTC continues to consider additional protections, which it anticipates will offer greater security to real consumers and additional barriers for those abusing the system.

In its effort to prevent the removal of someone's telephone number from the Do Not Call Registry without their consent, the FTC recently reported it has implemented a callback feature to confirm that person actually requested the deletion.