

**Federal Trade Commission  
Office of Inspector General**



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

**OIG Report No. OIG-19-03      September 27, 2019**





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:** FY 2019 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. Escalating Costs of Expert Witnesses

Section II is a "Watch List" of issue areas that do not rise to the level of serious management and performance challenges, but nonetheless require management's continued attention.

1. Acquisition Planning and Contract Management
2. Impersonations of the FTC and its Employees

We provided a draft of this report to FTC management, whose comments have been incorporated into this final version.

We appreciate the FTC leadership's ongoing support for the OIG, and we will continue to work with you in addressing these and other challenges 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

As identified in its first community-wide report on the top management and performance challenges,<sup>1</sup> 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 complex challenge for the FTC.

Five cybersecurity functional areas are described in the National Institute of Standards and Technology's (NIST) [Framework for Improving Critical Infrastructure Cybersecurity](#) – Identify, Protect, Detect, Respond, and Recover. These five functional areas are evaluated annually against a five-level maturity model adopted by the Council of Inspectors General on Integrity and Efficiency. The median rating across the government for all five functions is Level 3.<sup>2</sup> The Department of Homeland Security has established Level 4 (Managed and Measurable) as the effective level for federal program maturity.

As reported in our fiscal year (FY) 2018 Federal Information Security Modernization Act of 2014 (FISMA) evaluation,<sup>3</sup> the OIG assessed the overall information security program of the FTC at Level 3, “Consistently Implemented.” The OIG noted that the FTC methodology for identifying and managing risk was determined to be not supported by an enterprise architecture with an embedded security architecture. Also, the agency had systems and system components that were determined to not have associated security control baselines. In addition, although the FTC had a documented information security continuous monitoring (ISCM) strategy, the strategy had not been fully implemented.

To achieve a Level 4 rating for the overall information security program, the agency should continue the implementation of technical capabilities that enforce its policies in accordance with documentation for systems within its inventory, including system security plans, authorizations to operate, and authorizations to use. The FTC must maintain the integrity and availability of its information assets as it modernizes its systems, reorganizes its information technology support staff, responds to new security requirements, and provides reliable mission support. Successfully addressing these areas of risk will require the continued attention of senior and executive management.

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<sup>1</sup> *Top Management and Performance Challenges Facing Multiple Federal Agencies*, Council of Inspectors General on Integrity and Efficiency, April 2018.

<sup>2</sup> [FISMA FY 2018 Annual Report to Congress](#), p. 32.

<sup>3</sup> *OIG Independent Evaluation of the Federal Trade Commission's Information Security Program and Practices For Fiscal Year 2018*, dated Feb. 28, 2019, p.1-2.

## *Agency Progress in Addressing the Challenge*

At a high level, the FTC is executing its Information Resources Management (IRM) Strategic Plan for Fiscal Years 2019 – 2022. This plan collectively supports the strategies outlined in the FTC’s Strategic Plan for FY 2018 – FY 2022, reflecting the FTC’s changing IT environment and evolving mission and business needs. This effort builds off the work done in the prior fiscal year, which outlined a roadmap for changes specific to the Office of the Chief Information Officer. Additionally, this revised plan aligns the FTC with the May 2017 Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.

In FY 2019, the FTC awarded multiple task orders, which focus on modernizing and securing the agency’s IT services. The agency reports that it executed the implementation of the ISCM program that conducts ongoing measurement, analysis and reporting of metrics to quantify the performance of cybersecurity and risk management as defined by the Agency’s Information Resources Management Strategic Plan. It also reports as having achieved significant progress on deploying standard security baselines on operating systems, servers and equipment endpoints. In addition, the FTC reports that it has embedded system-level security principles into the enterprise information security architecture, and that updates to system security plans, which reflect the information security architecture, are ongoing. The FTC has further completed additional work to close several outstanding recommendations, including those for security architecture, and has submitted these results for the OIG’s consideration.

## **2. Escalating Costs of Expert Witnesses**

As identified in the FTC’s risk register, the escalating costs of expert witnesses is one of the agency’s top challenges. As an enduring and complicated challenge that does not lend itself to a simple solution, overcoming it will be critical to the success of the FTC’s dual enforcement mission of Competition and Consumer Protection.

The FTC’s Bureau of Competition and Bureau of Consumer Protection are pursuing larger and more complex cases involving anticompetitive practices and fraud, as well as cases in emerging technologies, privacy and data security, and deceptive advertising in new media channels. In the FTC’s estimation, unpredictability surrounding the mix of scope and disposition of these matters makes it difficult to project future expert witness costs and more precisely understand the size and scope of the challenge.

Evolving technologies, automation, and intellectual property issues continue to increase the complexity of antitrust investigations and litigation. This increasing complexity, coupled with significant complaints of harmful business practices and fluctuations in merger activity, make it difficult to anticipate the specific investigative and litigation requirements, adding to the even greater difficulty of projecting costs to specific cases. As a result, the FTC likely faces higher costs to obtain the kinds of outside experts needed to support these cases.

Our preliminary work evaluating the FTC’s expert witness program has shown that the agency would benefit from an updated approach to considering expert witness services. The FTC’s Bureau of Economics has previously considered possibilities beyond contracted services in this area (e.g., the provision of some level of in-house support), noting various challenges in acquiring and

retaining talent. As such, FTC program officials have immense experience supporting theories, ideas, and views on addressing the escalating costs of expert witness contracts. Based on the noted trends and information on historical costs, our independent evaluation shows that working again to explore possibilities surrounding the potential availability of in-house expert witness talent is worth revisiting.

Our work has also noted that documentation of key decisions made throughout the expert witness acquisition process varies widely. Throughout most of FY 2019, there was no specific guidance on documentation requirements detailing the consideration of an in-house expert witness.

### ***Agency Progress in Addressing the Challenge***

The FTC strategy to address expert costs involves options for enhanced competition, more proactive contract management, exploration of alternative avenues of experts services (including in-house experts), and obtaining additional appropriated resources to support FTC litigation activities. In its FY 2020 Congressional Budget Justification, the FTC requested a funding increase of \$1,624,000 for the Bureau of Competition's expert witness requirements. FTC management is also exploring a more effective competitive bidding process; investigating alternative contract structures to incentivize outside experts to complete their work in a more cost-effective manner; enhancing the monitoring approach of the work performed by outside experts and consulting firms; and considering opportunities for greater use of in-house economists as experts in enforcement actions.

In addition, the Bureau of Competition reports that it has developed practices, now listed in the Bureau's Handbook, to require more detailed documentation of decision-making in the hiring of expert witnesses. This includes documenting all experts considered and the reasons behind the selection process that lead to the selection of a particular expert.

## **II. Agency Watch List**

The OIG has established a Watch List, which incorporates issues that do not meet the threshold of a serious management or performance challenge. These issues, in the OIG's view, still warrant attention and vigilance by agency officials.

### **1. Acquisition Planning and Contract Management**

The FTC relies heavily on contractors to support its mission, especially for expert witness and IT services. FTC obligations for contracted services over the past 5 years has been approximately \$75 million annually, or about 20% of the agency's budget. The FTC will need to maintain resources and ensure it has effective processes, including regular contractor reviews, to ensure proper oversight and management of these contracts.

The Commission must ensure the effective acquisition of goods and services to meet mission needs. Implicit in accomplishing this objective is having consistent, flexible acquisition practices to better ensure that goods and services are available when needed. The FTC's dependence on contractor support will continue to expand with the increasing need for administrative support and additional IT requirements. The Acquisition Branch's ability to execute critical acquisitions such as expert

witness services and IT services to support the FTC's migration to the cloud in a timely manner is critical to the agency's success.<sup>4</sup>

The FTC's acquisition activities on behalf of its Bureaus and Offices include providing guidance and assistance with all aspects of the requisition process – including statement of work preparation, requests for proposal, contract preparation, award, and administration – and training the agency's Contracting Officers' Representatives.

The FTC measures the efficiency of its acquisition activities by tracking the percentage of contract actions finished within established lead times, which vary among different contract types. In FY 2018, acquisitions staff completed 678 contract actions, a significant increase from the 529 actions completed in FY 2017. The increased workload, accompanied by staffing issues, led to a lower percentage of contract actions completed within the Procurement Action Lead Time (PALT).<sup>5</sup>

A shortage of key acquisition officials, particularly Contracting Officers, combined with a demanding volume of procurements and tight-deadlines, increases the potential for acquisition delays or contract challenges. Similar issues were also identified as challenges throughout the federal government in the Council of the Inspectors General on Integrity and Efficiency's April 2018 report.<sup>6</sup> While not rising to the level of a serious management challenge, the lack of a stable cadre of acquisition professionals with strong institutional knowledge and a nuanced understanding of the FTC's contracting needs could be a formidable challenge facing FTC management in the future.

### *Agency Status*

During 2019, Financial Management Office (FMO) hired a Deputy Chief Acquisition Officer and was able to address other Contracting Officer staffing shortfalls with contractor support. FMO is also in the process of transitioning its shared service provider from the Department of Interior's Interior Business Center to the Department of the Treasury's Administrative Resource Center (ARC), and will transition to the ARC's acquisition system – PRISM – at the beginning of FY 2020.

In an effort to streamline its IT contracting process, the Acquisition organization implemented a blanket purchase agreement (BPA) in FY 2018 that enables the FTC to execute contracts in support of the Chief Information Officer's (CIO) modernization strategy more effectively and efficiently. During FY 2019, in partnership with the CIO's office, the Acquisition team awarded four task orders under the BPA. In addition, the Acquisition organization reports that it was able to award a new contract for an improved legal document management solution for FTC attorneys.

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<sup>4</sup> OCIO, with assistance from FTC's Acquisitions organization awarded a blanket purchase agreement to industry partners in support of OCIO's work to migrate agency IT services to the cloud.

<sup>5</sup> PALT assists in determining the timeframe required to process requirements after an acquisition is turned into the Acquisitions organization. The PALT chart explains the process for each type of acquisition and the required documents needed to complete the process.

<sup>6</sup> *Top Management and Performance Challenges Facing Multiple Federal Agencies*, Council of the Inspectors General on Integrity and Efficiency, April 2018, p. 12.

## 2. Impersonations of the FTC and its Employees

There have been an alarming number of allegations of individuals impersonating the FTC and its employees. Scammers are exploiting the FTC's good name by pretending to represent the Commission and asking people to provide personal information or send them money to pay a fake fine, cover "shipping" for a phony sweepstakes or lottery prize, etc. Sometimes scammers even use the names of actual FTC employees.

Last year, the FTC received approximately 2,100 complaints about the impersonation of FTC personnel, representing only a portion of all government imposter scams. As compiled in the FTC's most recent Consumer Sentinel Network Data Book, imposter scam complaints were the top complaint category reported to the FTC in calendar year 2018.<sup>7</sup> Complaints about government imposters – which included Internal Revenue Service (IRS) imposters, Social Security Administration (SSA) imposters, and various other government imposters, including FTC imposters – comprised 254,796 reports or 8.28% of the 3.07 million consumer complaints received during 2018.

Impersonation of the FTC and its employees not only harms consumers, it can negatively influence the public's perception of the Commission, thus impacting the Commission's ability to effectively protect consumers and maintain competition in commerce. The OIG and the Bureau of Consumer Protection's Division of Marketing Practices (DMP) are two of the divisions within the FTC responsible for investigating FTC impersonation complaints. DMP at its discretion conducts civil investigations of matters involving the impersonation of the Commission, while the OIG at its discretion conducts criminal investigations of matters involving the impersonation of actual FTC personnel.

We are including this issue on our watch list not because we have identified shortcomings in the FTC's enforcement efforts aimed at stopping scammers, but because of the reputational risk to the agency and the potential impact that the rising number of complaints could have on the agency's resources.

### Agency Status

Bureau of Consumer Protection staff have reportedly been aware of the significant number of consumer reports about government and business imposters over recent years. Using a variety of vehicles, Bureau of Consumer Protection staff have issued educational messages for the public and press about government impersonation. The Bureau also maintains a webpage highlighting the latest imposter scams through short videos, and provides links to relevant articles with advice on how to spot and avoid all types of imposter scams, including government impersonation.<sup>8</sup> Bureau of

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<sup>7</sup> The imposter scams category includes five subcategories: government imposters, business imposters, tech support scams, romance scams, and family/friend imposters. The top government imposters in 2018 misrepresented the IRS and SSA. Updated quarterly information on consumer complaints is located at [www.ftc.gov/exploredata](http://www.ftc.gov/exploredata).

<sup>8</sup> <https://www.consumer.ftc.gov/features/feature-0037-imposter-scams>; see also <https://www.consumer.ftc.gov/articles/0048-government-imposter-scams>.

Consumer Protection staff also regularly posts blogs about the latest imposter scams and updates the FTC’s educational content to give the public the most effective tips for protecting against such fraud.<sup>9</sup>

In addition, Bureau staff have launched new tools to amplify what consumers report about imposter scams. These new tools include interactive infographics specifically identifying the most common government imposters and related losses,<sup>10</sup> Data Spotlights that analyze trends in the growth of government imposter scams and how these scams are getting money from consumers,<sup>11</sup> and interactive public dashboards with maps, reporting trend lines, and fast facts about any fraud type, like imposter scams.<sup>12</sup> When appropriate, Bureau of Consumer Protection staff have investigated FTC impersonators and brought civil actions to halt the fraud (e.g., <https://www.ftc.gov/news-events/press-releases/2015/08/operators-bogus-credit-repair-scheme-settle-ftc-charges>). Also, because most FTC impersonators and other government impersonators appear to operate offshore, staff have worked closely with criminal law enforcement colleagues, particularly the Department of Justice, to refer possible targets.

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<sup>9</sup> See <https://www.consumer.ftc.gov/blog/2019/07/medicare-does-not-give-out-dna-kits>; <https://www.consumer.ftc.gov/blog/2019/09/social-security-not-trying-take-your-benefits>; <https://www.consumer.ftc.gov/blog/2019/07/whos-pretending-be-government-now>.

<sup>10</sup> <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/GovernmentImposter/Infographic>.

<sup>11</sup> See <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/07/government-imposter-scams-top-list-reported-frauds>; <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/04/growing-wave-social-security-imposters-overtakes-irs-scam>; <https://www.ftc.gov/news-events/blogs/data-spotlight/2018/10/scammers-increasingly-demand-payment-gift-card>.

<sup>12</sup> See <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/FraudReports/FraudFacts> (note tabs along the top that guide people to visit “state by state” and “metro area” maps, as well as “trends over time”).