



AUDIT OF THE FEDERAL TRADE COMMISSION'S UNPAID CONSULTANT AND EXPERT PROGRAM

Office of Inspector General
Federal Trade Commission

OIG Report No. A-22-06
August 1, 2022





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

Office of Inspector General

August 1, 2022

MEMORANDUM

FROM: Andrew Katsaros
Inspector General

TO: David B Robbins
Executive Director

SUBJECT: Audit of the Federal Trade Commission's Unpaid Consultant and Expert Program

The Office of Inspector General (OIG) conducted a performance audit to determine whether the FTC's program used to hire and oversee unpaid consultants and experts is managed in accordance with federal and agency requirements.

Our audit found that, without a deliberate control structure and stronger mitigation posture, the agency is vulnerable to a variety of risks. More specifically, our audit found the following: (1) the FTC's unpaid consultant and expert program lacks a comprehensive system of controls and (2) the FTC identifies, recruits, and selects unpaid consultants and experts without uniformity and transparency across all agency stakeholders.

The FTC's response to the draft report's findings and recommendations is included as appendix C. The response reflects that the FTC concurred with the report's recommendations. Within 60 calendar days, please submit to us an action plan that addresses the recommendations in this report.

A public version of this report will be posted on the OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 and 8M).

The OIG greatly appreciates the cooperation and courtesies extended to us by the Office of the Executive Director throughout the audit.

If you have any questions regarding this report, please contact me at (202) 326-3527.



OFFICE OF INSPECTOR GENERAL

AUDIT OF THE FEDERAL TRADE COMMISSION'S UNPAID CONSULTANT AND EXPERT PROGRAM

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IN SUMMARY

Why We Performed This Audit

The audit objective was to determine whether the FTC's program used to hire and oversee unpaid consultants and experts is managed in accordance with federal and agency requirements.

The FTC leverages capabilities and expertise—not otherwise found within the agency's federal workforce—from additional human capital gained through a variety of paid and unpaid positions.

Our assessment of the risks inherent in the onboarding and integration of each of these employee classes led us to focus specifically on the FTC's deployment of unpaid consultant and experts, which we have done for the period covering October 1, 2020, through March 31, 2022.

When the FTC enters into agreements with unpaid consultants and experts, the agency introduces operational, legal, compliance, security, and reputational risk. Our audit found that, without a deliberate control structure and stronger mitigation posture, the agency is vulnerable to a variety of risks.

What We Found

Our audit found the following:

I. *The FTC's unpaid consultant and expert program lacks a comprehensive system of controls.* We found that the FTC has limited controls over unpaid consultants' and experts' involvement in inherently governmental functions. More specifically, it has not developed and adopted a formal process, informed by policy and procedures, to capture the scope of unpaid experts' or consultants' work—including clear restrictions on the scope of work (i.e., inherently governmental functions) to be conducted. We also found that the agency has not sufficiently developed criteria for its unpaid consultants and experts. It maintains these individuals' justifications and approvals, including term end dates and general activities that these individuals will participate in during their temporary stay with the agency. However, they do not contain sufficient caveats and restrictions that would limit the agency's exposure to a variety of risks.

II. *The FTC identifies, recruits, and selects unpaid consultants and experts without uniformity and transparency across all agency stakeholders.* The processes by which the FTC onboards and deploys its unpaid experts and consultants pose a number of risks. Currently, the identification, recruitment, and selection of unpaid consultants and experts is conducted on an ad hoc basis—which has contributed to confusion about where these consultants are located organizationally, the goals and scope of their work, and their objectives.

What We Recommend

Recommendation 1

We recommend that the FTC Executive Director, in coordination with bureau directors, develop internal policy or guidance requiring documenting unpaid consultants' and experts' scope of work—including guidance on allowable and prohibited activities and a process for communicating the scope of work with candidates prior to their time with the FTC.

Recommendation 2

We recommend that the FTC Executive Director, in coordination with office and bureau directors, establish individual employment agreements for each unpaid consultant and expert, delineating roles and restrictions for each position.

Recommendation 3

We recommend that the Executive Director, in coordination with bureau directors, develop and disseminate unpaid consultant and expert program policies and procedures for identifying and documenting position needs and standardizing recruitment and selection.

FTC management concurred with our report recommendations.

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AUDIT RESULTS SUMMARY

We conducted a performance audit to determine whether the Federal Trade Commission’s (FTC’s) program used to hire and oversee unpaid consultants and experts is managed in accordance with federal and agency requirements. The FTC leverages capabilities and expertise—not otherwise found within the agency’s federal workforce—from additional human capital gained through a variety of paid and *unpaid positions*.¹ In addition to unpaid consultants and experts, these positions include details, Presidential Innovation Fellows (PIFs), Presidential Management Fellows (PMFs), and Intergovernmental Personnel Act (IPA) personnel from non-federal entities. Each of these positions is described in more detail in the next section. Our assessment of the risks² inherent in the onboarding and integration of each of these employee classes led us to focus specifically on the FTC’s deployment of unpaid consultant and experts, which we have done for the period covering October 1, 2020, through March 31, 2022.

(For further detail on our objective, scope, and methodology, see appendix A. See appendix B for a list of acronyms and abbreviations used in this report.)

When the FTC enters into agreements with unpaid consultants and experts, the agency introduces operational, legal, compliance, security, and reputational risk. Our audit found that, without a deliberate control structure and stronger mitigation posture, the agency is vulnerable to a variety of risks. More specifically, our audit found the following:

- I. the FTC’s unpaid consultant and expert program lacks a comprehensive system of controls and
- II. the FTC identifies, recruits, and selects unpaid consultants and experts without uniformity and transparency across all agency stakeholders.

The report contains three recommendations for strengthening the controls and overall efficiency of the FTC’s unpaid consultants and experts program. In a written response to this report, FTC management concurred with all three recommendations and described planned actions that were responsive. The FTC response to our report is included in its entirety in appendix C.

¹ *Unpaid positions* include salaries that the FTC does not pay. Based on our research into and documentation of each type of unpaid position that the FTC uses, we determined that their salaries are paid by the home employer or agency (in the case of PIFs, the home agency is the General Services Administration; in the case of PMFs, the home agency is the U.S. Office of Personnel Management).

² Office of Management and Budget (OMB) Circular No. A-11—issued to help agencies in preparing, submitting, and executing their federal budgets—defines *risk* as the effect of uncertainty on objectives. Agencies must analyze risk in relation to their achievement of appropriate operational objectives.

WHY WE PERFORMED THIS AUDIT

Over the course of multiple administrations, the FTC has augmented its staff with several types of other paid and unpaid positions, including the following:

- *Interagency Details*³—the temporary assignment of federal employees from different agencies for specified periods (after which the employees return to regular duties at their original agencies)
- *Presidential Innovation Fellows (PIFs)*⁴—technologists, designers, and strategists who join a 12-month federal program (renewable for a second 12 months) administered by the General Services Administration (GSA) to work on innovation projects across federal agencies
- *Presidential Management Fellows (PMFs)*⁵—advanced-degree candidates in a federal government leadership development program, starting at an entry level, for a 2-year excepted service appointment
- *Intergovernmental Personnel Act of 1970*⁶ (*IPA*) *personnel*—staff temporarily assigned (generally less than 2 years) between the federal government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations
- *Consultants and experts*⁷—in the former case, consultants provide valuable and pertinent advice drawn from broad administrative, professional, or technical knowledge or experience; in the latter case, experts are specially qualified by education and experience to be authorities, or unusually competent and skilled, in a professional, scientific, or technical field; in both cases, the agency may procure by contract the temporary (not in excess of 2 years total) or intermittent services appointments on a strictly intermittent basis, for no more than 1 initial year (who may be reappointed for no more than 1 additional year)

The FTC has deployed unpaid consultants and experts at an increasing rate, including adding 9 such positions starting in FY 2021 through March 2022 (versus 2⁸ for FYs 2019–2020)

³ See [5 U.S.C. §§ 3341; 31 U.S.C. §§ 1301, 1535–36; 5 C.F.R. § 300.301](#).

⁴ See [5 U.S.C. § 3171](#).

⁵ Individuals who become *Presidential Management Fellows (PMFs)* join a federal government leadership development program that the Office of Personnel Management (OPM) oversees. To participate, an individual must have completed an advanced degree from a qualifying educational institution within the previous 2 years. OPM selects PMF finalists based on experience, accomplishments, and the results of a rigorous structured assessment process. For further details, see [5 C.F.R. Ch. 362](#).

⁶ See [5 U.S.C. §§ 3371–75; see also 5 C.F.R. Ch. 334](#).

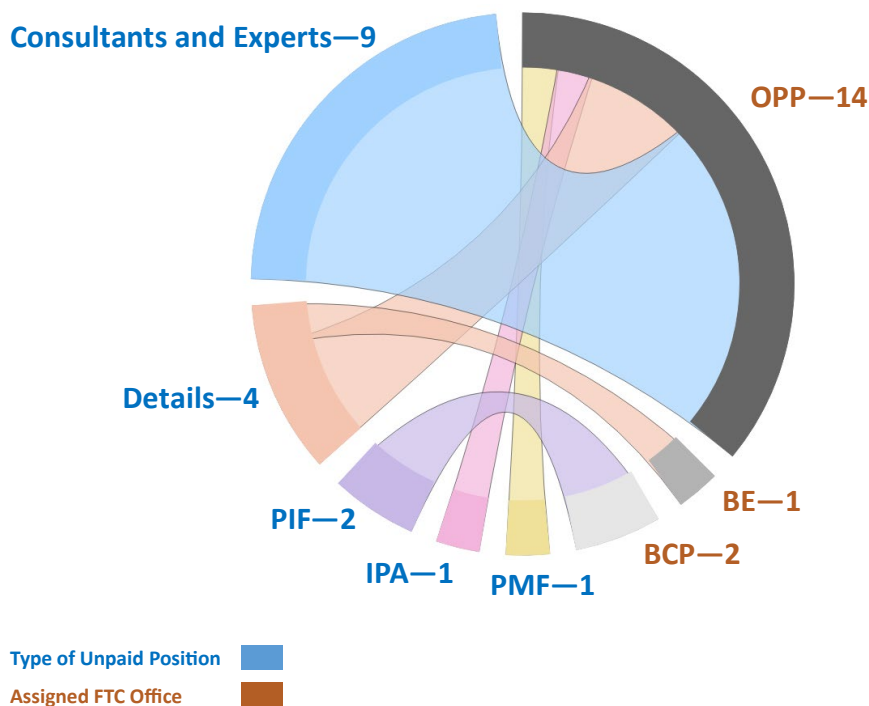
⁷ See [5 U.S.C. § 3109; 5 C.F.R. Ch. 304](#).

⁸ During this time period, the agency potentially onboarded additional consultants who had previously retired as FTC employees, then returned into unpaid positions.

combined). Our review of the risks associated with each of the positions above (see appendix A) led us to focus specifically on unpaid consultants and experts.⁹

The FTC’s program of unpaid consultants and experts, while not unique, involve challenges that do not exist in a traditional federal employment arrangement. Our audit scope included the activities of all 9 unpaid consultants and experts assigned to the FTC's Office of Policy Planning (OPP) who onboarded during the period of our audit scope.¹⁰ The agency has leveraged unpaid consultants and experts during previous administrations;¹¹ however, current FTC leadership has expanded their use, specifically in OPP, since 2021.

Figure 1: FTC Unpaid Positions (FY 2022)



⁹ Agency management also reported that it had added to its risk portfolio a top item concerning the possibility of a major data breach committed by “third party experts, consultants, and contractors that do not have access to the FTC network.”

¹⁰ During the time of our fieldwork, the FTC onboarded 1 additional consultant/expert.

¹¹ The FTC has reported onboarding 2 unpaid consultants in FYs 2019–2020.

FINDINGS AND RECOMMENDATIONS

I. The FTC's Unpaid Consultant and Expert Program Lacks a Comprehensive System of Controls

A. The FTC Has Limited Controls Over Unpaid Consultants' and Experts' Involvement in Inherently Governmental Functions

5 U.S.C. § 3109 provides that “[w]hen authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants.”¹² The regulations implementing Section 3109 prohibit agencies from, among other things, appointing experts or consultants

(3) [t]o perform managerial or supervisory work (although an expert may act as team leader or director of the specific project for which he/she is hired), to make final decisions on substantive policies, or to otherwise function in the agency chain of command (e.g., to approve financial transactions, personnel actions, etc.).

(4) [t]o do work performed by the agency's regular employees.

(5) [t]o fill in during staff shortages.¹³

Chapter 3, section 200, of the FTC *Administrative Manual* (last updated in March 2006) provides agency-specific guidance on “the proper appointment, use, and assignment of experts and consultants.”¹⁴ This guidance includes a section on the “Improper Use of Experts and Consultants”—prohibiting, among other types of work, that “of an ongoing nature more appropriately performed by permanent employees” and “of a policy and/or decision making or managerial nature.”

The law, implementing regulations, and the *Administrative Manual* do not expand on what duties should be considered the ongoing work more appropriately performed by permanent employees serving a governmental function. However, the Federal Acquisition Regulation (FAR) and OMB guidance related to federal contractors define *inherently governmental functions* to include (a) determination of agency policy, such as determining the content and application of regulations; (b) determination of federal program priorities or budget requests; (c) selection or non-selection of individuals for federal government employment, including the interviewing of individuals for employment; and (d) direction and control of federal employees.¹⁵

¹² The FTC's recent appropriations have all provided for this authority.

¹³ 5 C.F.R. § 304.103.

¹⁴ This section of the manual cites the authority of OMB Circular A-120, *Guidelines for Advisory and Assistance Services* (January 1988) and 5 U.S.C. § 3109, *Employment of Experts and Consultants; Temporary or Intermittent*. OMB Circular A-120, however, was fully rescinded in 1994. 59 *Fed. Reg.* 789 (Jan. 6, 1994).

¹⁵ See OMB, “Performance of Commercial Activities,” [Circular A-76](#) (August 4, 1983), and OMB OFPP, *Performance of Inherently Governmental and Critical Functions*, [Policy Letter 11-01](#) (October 12, 2011).

OMB OFPP Policy Letter 11-01 further informs federal management that an “[i]nherently governmental function,” as defined in section 5 of the Federal Activities Inventory Reform Act, Public Law 105–270, means a function that is so intimately related to the public interest as to require performance by federal government employees. In its appendix A, Policy Letter 11-01 lists examples of inherently governmental functions that include the following:

- the determination of agency policy, such as determining the content and application of regulations
- the determination of budget policy, guidance, and strategy
- the determination of federal program priorities or budget requests
- the selection or non-selection of individuals for federal government employment, including the interviewing of individuals for employment
- the direction and control of federal employees

Functions that unpaid consultants and experts can have involvement with may include activities that generally are not considered to be inherently governmental—but are closely associated with the performance of inherently governmental functions. In addition to examples contained in 5 C.F.R. § 304.103, examples provided by OMB’s Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, appendix B, identify permissible services in support of inherently governmental functions such as developing policies—including drafting documents as well as conducting analyses, feasibility studies, and strategy options.

The language included in several of the agency’s unpaid consultants’ and experts’ justifications and approvals¹⁶ approaches the proximity of a “policy” function reserved for federal employees only, as identified by OMB OFPP Policy Letter 11-01. Our fieldwork for this audit was not designed to determine whether unpaid consultant or experts were involved in activities prohibited by the federal policies and guidance identified herein, and we make no assertions on their involvement in those activities. Nevertheless, in its position justifications for these unpaid positions, the agency identifies the use of unpaid consultants and experts to perform such work. FTC management now has an opportunity to dedicate more attention to guarding against their expansion into inherently governmental functions.

In the context of complying with OMB guidance, FTC has not developed and adopted a formal process, informed by policy and procedures, to capture the scope of unpaid experts’ or consultants’ work. Based on our discussions with FTC officials and audit analysis, we found that many, if not all of the relationships with unpaid consultants and experts encompass a good deal of flexibility with respect to their potential use. Our

¹⁶ FTC Form 189, *Justification and Approval of Employment of Expert/Consultant*, provides general instructions to managers from the originating office to record a “summary of duties” and “summary of qualifications” in sufficient detail.

review of the audit sample’s justifications and approvals uncovered about half with language stating that the consultant or expert “will play an integral role in the Commission’s strategic direction”—and most included language stating that they will have “wide latitude of responsibility” in relevant areas. Further, most indicated that the consultant or expert will be involved with policy, using language such as the following:

- “serve as a visionary leader on policy and strategic initiatives that directly and indirectly affect Commission technology policy and operation”
- “work together with staff and attorneys throughout the FTC to provide case support (investigation and litigation), policy research and development, competition and consumer advocacy, and, when needed, public outreach”
- “provide the Chair advice and analysis to inform FTC policy”

Such justification and approval language, found in many forms from our sample, provides such flexibility to management that it does not include clear restrictions on the scope of work (i.e., inherently governmental functions) to be conducted.

We found several vulnerabilities that amplified this risk. At the time of our audit fieldwork, the FTC had neither a system of controls nor guidance on consultants’ and experts’ scope of work—particularly, guidance identifying allowable and prohibited activities. 5 C.F.R. § 304.108 requires the following:

- (a) Each agency using 5 U.S.C. 3109 must establish and maintain a system of controls and oversight necessary to assure compliance with 5 U.S.C. 3109 and these regulations. The system must include—
 - (1) Appropriate training and information procedures to ensure that officials and employees using the authority understand the statutory and regulatory requirements; and
 - (2) Appropriate provision for review of expert and consultant appointments.

Additionally, we discovered that the agency does not fully communicate the scope of work with unpaid consultants and experts prior to their time with the agency. Lastly, the FTC does not have a process in place to identify and evaluate instances when an unpaid consultant’s or expert’s scope of work changes (i.e., including prohibited activities or office assignment)—and notify HCMO, the Office of the General Counsel (OGC), and other appropriate agency officials when this issue arises.¹⁷

¹⁷ Chapter 3, section 200, of the *FTC Administrative Manual* does provide agency managers guidance that “[q]uarterly reviews of experts and consultants (FTC Form 244) will be made to determine the propriety of duties performed, observance of time limits, and a adequacy of documentation. These reviews will be conducted by [HCMO] after submission of FTC Form 244 by the Office Head or designee (Headquarters) or Regional Director (Regional Offices). The FTC Form 244 will be retained by [HCMO] and made available for post-audit.” Another management control listed by the *Administrative Manual* guides managers to review annually “the regulations governing experts and consultants.” However, neither the relevant guidance nor the FTC Form 244 includes

As a result, the FTC cannot reasonably ensure that unpaid consultants and experts will be restricted from performing inherently governmental functions. Without clear boundaries on the roles and responsibilities of FTC managers, unambiguous guidance on prohibited activities of unpaid consultants and experts, and an effective process of monitoring and review over their activities, the FTC runs a greater risk that non-federal employees will either undertake or be assigned to prohibited duties.

Recommendation

1. We recommend that the Executive Director, in coordination with bureau directors, develop internal policy or guidance requiring documenting unpaid consultants' and experts' scope of work—including guidance on allowable and prohibited activities and a process for communicating the scope of work with candidates prior to their time with the FTC.

B. The FTC Has Not Sufficiently Developed Criteria for Its Unpaid Consultants and Experts

Upon arrival at the agency, and throughout their tenure there, the FTC considers its unpaid consultants and experts who advise senior Commission leaders as making significant contributions to the mission and becoming integral to the agency's strategic direction. The individuals occupying these positions are not permanent (full- or part-time) civil servant federal employees. As such, the FTC maintains these individuals' justifications and approvals—routed more recently through OGC—that include term end dates and general activities that these individuals will participate in during their temporary stay with the agency.

These justifications, however, do not contain sufficient caveats and restrictions that would limit the agency's exposure to a variety of risks. Without properly constructed agreements beyond justifications—clearly stating unpaid consultants' and experts' expressly allowable activities and restrictions in consideration of the unique roles they fill—both the agency and the individuals lack sufficient protection throughout and after their tenure with the FTC.

Effective enterprise risk management (ERM)—including the exploration, analysis, and documentation of third-party provider risks—is essential to the effective and sound operation of the agency. The FTC agency has not determined whether the risks of using unpaid consultants and experts aligns with what its ERM has deemed a tolerable level.

Understanding the potential impact and likelihood of risks helps agencies with the formulation of internal control. The GAO's *Standards for Internal Control in the Federal Government* (the GAO Green Book) instructs agency management to define objectives clearly (i.e., in specific and measurable terms) to enable the identification of risks and define risk tolerances. Specific terms, fully and clearly set forth, are easily understood by managers and their staff. Measurable terms allow management to assess staff

language specifying what process managers must follow when an unpaid consultant's/expert's activities approach the proximity of a function reserved for federal employees only, as identified by OMB OFPP Policy Letter 11-01.

performance toward achieving objectives. After management initially sets objectives, they refine them as they incorporate them into the internal control system.

Absent clear, specific objectives for each unpaid consultant or expert, the FTC remains vulnerable because it does not establish sufficiently comprehensive agreements by the time unpaid consultants and experts arrive on board. The agency must manage the risks more deliberately, and proactively; otherwise, it will be challenged to identify, intervene in, and stop the involvement of unpaid consultants and experts in prohibited activities.

An OIG review of the language contained in some of the nine justifications we considered in this audit included “act as a key source of technical and policy expertise to facilitate visionary strategic initiatives.” Such vague language allows for overly broad interpretations of what role each unpaid consultant or expert will be filling, beyond their office assignment. In addition, none of the nine justifications we reviewed contained language identifying activities that the unpaid consultant or expert would be *restricted* from performing. In summary, as it increasingly turns to unpaid consultants and experts, the FTC has not fully considered these or other specific risks that could provide better clarity on roles, responsibilities, and restrictions. Without the development of restrictive agreements on allowable activities—and greater communication with pertinent agency officials—the agency lacks an important layer of assurance against potential ethical dilemmas, such as conflicts of interest.

The FTC does not purposefully identify its unpaid consultants or experts as third-party providers, similar to those relationships it has with contractors. As such, despite the increasing use of these individuals, the FTC has not defined broader objectives or goals on their deployment or communicated an organizational strategy, either within the third-party agreements or elsewhere in policy.

As a result, when entering into relationships with unpaid consultants and experts (i.e., in third-party provider relationships) without formal agreements, the FTC has unnecessary exposure to operational, legal, compliance, and reputational risk. Operational risk emerges when unpaid consultants or experts conduct FTC business without regard to their purpose, due to a lack of formal working boundaries. Legal risk arises from decisions made by such employees that could potentially be invalidated due to their position. Compliance risk follows when such third parties are placed in situations requiring them to perform inherently governmental functions (see previous subfinding I.A). Finally, reputational risk accompanies each of these other risks when full-time employees working with these third parties lack clarity on roles and targeted outcomes.

Recommendation

2. We recommend that the Executive Director, in coordination with office and bureau directors, establish individual employment agreements for each unpaid consultant and expert, delineating roles and restrictions for each position.

II. The FTC Identifies, Recruits, and Selects Unpaid Consultants and Experts Without Uniformity and Transparency Across All Agency Stakeholders

The processes by which the FTC onboards and deploys its unpaid experts and consultants pose a number of risks. Currently, the identification, recruitment, and selection of unpaid consultants and experts is conducted on an ad hoc basis—which the OIG observed has contributed to confusion about where these consultants are located organizationally, the goals and scope of their work, and their objectives.

A program such as the agency’s unpaid consultants and experts requires consistency and clarity. The activities and responsibilities involved in determining the needs, the criteria for evaluation, and the final selection of these unpaid services should be informed by and documented using agency-wide policy. According to the GAO Green Book, “management should implement control activities through policies.” Further, management should document, in policy, the responsibilities of program units to meet objectives, the design of control activities, the implementation of controls, and the response to risks. Additionally, the Green Book states that management should use quality information to make informed decisions about the use and prioritization of resources, as well as evaluating agency performance and potential risk areas that could affect efficiency and effectiveness.

At the FTC, we found no agency-wide policy in place for onboarding and managing unpaid consultants and experts. For example, there is no documented process (formal or informal) for identifying and recruiting candidates. Further, the FTC does not have a consistent policy or clear set of procedures guiding the identification of needed expertise, the search and selection process of individual unpaid consultants and experts, and the scope of work that they will participate in while at the agency.

In our discussions with agency personnel involved in the onboarding of unpaid consultants and experts, we found that many key internal stakeholders—such as the Human Capital Management Office (HCMO) and FTC managers of the unpaid positions—are also uninformed about and have little to no input on the recruitment and selection process. This has occurred even as the FTC has increasingly relied on unpaid consultants and experts. FTC leadership has not (a) clearly communicated program goals to, (b) allotted sufficient resources for program control development to, or (c) incorporated input from stakeholders across the agency.

As a result, the agency cannot determine whether its decisions on recruiting and selecting unpaid consultants or experts are informed with the best available information. Without a tighter structure guiding the hiring of unpaid consultants and experts, there persists a level of operational risk—which leaves the agency vulnerable to confusion about where organizationally these unpaid positions lie, as well as their purpose. This operational risk can lead to inefficient use of the valuable resources that unpaid experts and consultants provide.

Recommendation

3. We recommend that the Executive Director, in coordination with bureau directors, develop and disseminate unpaid consultant and expert program policies and procedures for identifying and documenting position needs and standardizing recruitment and selection.

SUMMARY OF AGENCY RESPONSE AND OIG COMMENTS

In a written response to this report, FTC management concurred with all three recommendations and described planned actions that were responsive. The FTC response to our report is included in its entirety in appendix C.

APPENDIX A: OBJECTIVE, SCOPE, AND METHODOLOGY

We conducted a performance audit to determine whether the FTC’s program to hire and oversee unpaid consultants and experts is managed in accordance with federal and agency requirements. As background for our audit, we researched and reviewed pertinent authorities, including federal laws and regulations, agency guidance, policies, and procedures. These included 5 U.S.C. § 3109, *Employment of experts and consultants, temporary or intermittent*; 5 C.F.R. § 304, *Expert and Consultant Appointments*; OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Controls*; OMB Circular A-76, *Performance of Commercial Activities*; the GAO *Standards for Internal Control in the Federal Government*; internal FTC policies; and policy memoranda. We also reviewed prior audit reports issued by other OIGs and GAO relevant to unpaid positions. During fieldwork, we conducted interviews with FTC officials and performed analysis on records. In planning and performing our audit, we identified the internal control components germane to our audit objective. We gained an understanding of controls over the unpaid positions and performed testing on documentation.

As part of our audit methodology, we reviewed and performed analysis on the following documentation:

- FTC Form FTC-189, *Justification and Approval of Employment of Expert/Consultant* for all experts and consultants included in our scope
- Memoranda of understanding (MOUs)/agreements between the FTC and other federal agencies documenting the understanding between parties completed for all details
- Interim suitability determinations prior for all unpaid positions
- HCMO welcome letters provided to unpaid experts and consultants

We conducted testing of the following, to confirm whether

- all unpaid consultants and experts and IPAs had signed waivers in advance of service to the FTC, waiving any claim for compensation for their services in accordance with 5 C.F.R. §§ 304.104, 334.106;
- all unpaid experts and consultants—as well as details, PIFs, PMFs, and IPAs—completed the required FTC security awareness training prior to onboarding at the agency, in compliance with the *FTC Administrative Manual*, chapter 3, section 830—Personnel Security; and
- an FTC Form 244 was completed for each expert and consultant who came on board prior to December 31, 2021, in compliance with the *FTC Administrative Manual*, chapter 3, section 200—Employment of Experts and Consultants (there was no significant changes in duty from the original justifications; however, there were some adjustments to the language as discussed in Findings and Recommendations).

As part of our audit, we identified the total population of the unpaid positions for the period covering October 2020–March 2022. The scope of the audit originally included 5 different types of paid and unpaid positions (refer to table 2 below for additional detail) and subsequently used a risk-based approach to refine our audit scope. We conducted research on the types of paid and unpaid positions at the FTC and reviewed the policies and procedures supporting the programs. Based on our research, we narrowed the focus of our audit should be on the unpaid consultants and experts.

Table 1: Unpaid Positions at the FTC

Type of Unpaid Position	Number of Participants
Detail	4
PIF	2
PMF	1
IPA	1
Consultant/expert	9
Total Participants	17

To ensure data reliability of records received from the FTC, we first requested the following from HCMO:

- program-level documentation;
- documents related to the unpaid positions program, including justifications/approvals, MOUs/agreements, interim suitability determinations, welcome letters to unpaid experts/consultants, documentation that unpaid experts/consultants had completed the IT Rules of Behavior for access to the FTC systems, and signed waivers for uncompensated positions; and
- a list of unpaid FTC staff from January 2018 to March 2022.

Then we compared data received from HCMO on the number of consultants and unpaid volunteers to the spreadsheet we developed from the new employee orientations, to determine whether data were sufficiently reliable for selecting samples to test.

We used the following criteria in the performance of our audit:

- FTC, *Administrative Manual*, chapter 3, section 200—Employment of Experts and Consultants (updated March 2006)
- GAO [Standards for Internal Control in the Federal Government](#)
- OMB Circular A-76, [Performance of Commercial Activities](#)

- OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*
- *5 U.S.C. § 3109, Employment of experts and consultants; temporary or intermittent*
- *5 C.F.R. Ch. 304, Expert and Consultant Appointments*

We performed the audit work remotely from February 28, 2022, through June 28, 2022. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX B: ACRONYMS AND ABBREVIATIONS

BCP	FTC Bureau of Consumer Protection
BE	FTC Bureau of Economics
CFR	Code of Federal Regulations
FTC	Federal Trade Commission
GAO	U.S. Government Accountability Office
HCMO	FTC Human Capital Management Office
IPA	Intergovernmental Personnel Act of 1970
MOU	Memorandum of understanding
OFPP	U.S. Office of Personnel Management Office of Federal Procurement Policy
OGC	FTC Office of the General Counsel
OMB	Office of Management and Budget
OPM	U.S. Office of Personnel Management
OPP	FTC Office of Policy Planning
PIF	Presidential Innovation Fellow
PMF	Presidential Management Fellow
USC	U.S. Code

APPENDIX C: FTC MANAGEMENT RESPONSE



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

Human Capital Management Office

Date: July 22, 2022
To: Andrew Katsaros, Inspector General
Thru: David Robbins, Executive Director DAVID ROBBINS
From: Sharrelle Higgins, Deputy Chief Human Capital Officer SHARRELLE HIGGINS
Subject: Management's Response to Draft Report on Audit of the Federal Trade Commission's Unpaid Consultant and Expert Program

Digitally signed by DAVID
ROBBINS
Date: 2022.07.21 12:41:06 -0400

Digitally signed by SHARRELLE
HIGGINS
Date: 2022.07.21 11:50:46 -0400

Thank you for the opportunity to provide comments on the draft report.

The FTC concurs with the recommendations and propose the following actions. The estimated completion dates will be established within 60 days of issuing the Final OIG Audit Report regarding this matter.

OIG Recommendation 1: We recommend that the Executive Director, in coordination with bureau directors, develop internal policy or guidance requiring documenting unpaid consultants' and experts' scope of work—including guidance on allowable and prohibited activities and a process for communicating the scope of work with candidates prior to their time with the FTC.

Planned Action: The Executive Director, together with staff in the Human Capital Management Office (HCMO) and the Office of General Counsel, and in coordination with the FTC's Bureau and Office Directors, will review, update, and finalize Administrative Manual Chapter 3 Section 200 – Employment of Experts and Consultants, which will include documenting unpaid consultants' and experts' scope of work, provide guidance on allowable vs prohibited activities and communicate the scope of work with candidates prior to them beginning work at the FTC.

OIG Recommendation 2: We recommend that the Executive Director, in coordination with office and bureau directors, establish individual employment agreements for each unpaid consultant and expert, delineating roles and restrictions for each position.

Planned Action: The Executive Director, together with staff in the Human Capital Management Office (HCMO) and the Office of General Counsel, and in coordination with the FTC's Bureau and Office Directors, will establish individual employment agreements for each unpaid consultant and expert, delineating roles and restrictions for each position.

OIG Recommendation 3: We recommend that the Executive Director, in coordination with bureau directors, develop and disseminate unpaid consultant and expert program policies and procedures for identifying and documenting position needs and standardizing recruitment and selection.

Planned Action: The Executive Director, together with staff in the Human Capital Management Office (HCMO) and the Office of General Counsel, and in coordination with the FTC's Bureau and Office Directors, in addition to the planned actions for Recommendation 1, which includes developing policies, will develop standard operating procedures and guidance for onboarding and managing unpaid consultants and experts and standardizing recruitment and selection.