Federal Election Commission

Office *of the* Inspector General

Management and Performance Challenges Facing the FEC for FY 2023

November 14, 2022

MEMORANDUM

TO: The Commission

FROM: Christopher Skinner

SUBJECT: Inspector General (IG) Statement Summarizing the Management and Performance Challenges Facing the Federal Election Commission (FEC) for FY 2023

DATE: November 14, 2022

In accordance with the Reports Consolidation Act of 2000, the Federal Election Commission (the "FEC" or "Commission") Office of Inspector General (OIG) identifies the most serious management and performance challenges facing the Commission and provides a brief assessment of the Commission's progress in addressing those challenges.[1] By statute this report is required to be included in the FEC's Agency Financial Report.

The Government Performance and Results Modernization Act of 2010 defines major management challenges as programs or management functions that are vulnerable to waste, fraud, abuse and mismanagement and where a failure to perform well could seriously affect the ability of the FEC to achieve its mission objectives. Each challenge is related to the FEC's mission and reflects continuing vulnerabilities and emerging issues. The FEC OIG identified the top management and performance challenges facing the Commission as the following:

1. Growth of campaign spending
2. Identifying and regulating unlawful foreign contributions
3. Continuity of operations
4. Human capital management
5. Cybersecurity

Further attention to the management challenges identified in this report will improve the Commission's ability to execute its mission. The FEC OIG encourages the Commission to continue to focus on addressing the management challenges discussed herein. We hope that

[1] The Reports Consolidation Act of 2000 permits agency comment on the IG's statements. Accordingly, we provided senior management a draft of our statement for comment on October 26, 2022.

this report, accompanied by the oversight work we perform throughout the year, assists the Commission in its efforts to improve the effectiveness and efficiency of its programs and operations.

We appreciate the Commission's collaboration throughout the year in addressing the management challenges process. Please contact me if you have any concerns regarding the identified challenges.

cc: Alec Palmer, Staff Director and Chief Information Officer
John Quinlan, Chief Financial Officer
Lisa Stevenson, Acting General Counsel

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Introduction and Approach

Why do we publish this report?

In accordance with the Reports Consolidation Act of 2000, the Federal Election Commission (the "FEC" or "Commission") Office of Inspector General (OIG) identifies the most serious management and performance challenges facing the Commission and provides a brief assessment of the Commission's progress in addressing those challenges. By statute, this report is required to be included in the FEC's Agency Financial Report.

What are management challenges?

The Government Performance and Results Modernization Act of 2010 identifies major management challenges as programs or management functions that are vulnerable to waste, fraud, abuse, and mismanagement, and where a failure to perform well could seriously affect the ability of the agency to achieve its mission objectives. Each challenge area is related to the agency's mission and reflects both continuing vulnerabilities and emerging issues. The FEC OIG identified the top management and performance challenges facing the Commission as the following:

- Growth of election spending
- Identifying and regulating unlawful foreign contributions
- Continuity of operations
- Human capital management
- Cybersecurity

How did we identify these challenges?

We identified the Commission's major management and performance challenges by recognizing and assessing key themes from OIG audits, special reviews, hotline complaints, investigations, and an internal risk assessment, as well as reports published by external oversight bodies, such as the Office of Personnel Management (OPM) and the Government Accountability Office (GAO). Additionally, we reviewed previous management challenge reports to determine if those challenges remain significant for this submission. Finally, we considered publicly available information and internal Commission records. As a result, we identified five key management and performance challenges, which are detailed herein.

Management and Performance Challenge: Growth of Election Spending

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In recent years, federal campaign fundraising and spending have increased dramatically, particularly since the U.S. Supreme Court's decision in *Citizens United v. FEC* in 2010. The rapid growth of contributions to campaigns and committees, both in total dollars and in the number of contributions, has not been met with corresponding budgetary resources for the FEC to provide campaign finance oversight.

Total spending on federal election campaigns during presidential years increased from $3.1 billion in 2000 to approximately $14.4 billion for the 2020 election cycle, nearly a 5-fold increase. Spending on the 2022 mid-term elections reached $5.6 billion through September 30, 2022, nearly equaling the $5.7 billion spent for the entirety of the 2018 mid-term election cycle. Projected spending for the full 2022 mid-term is $7.7 billion based on historical precedents.

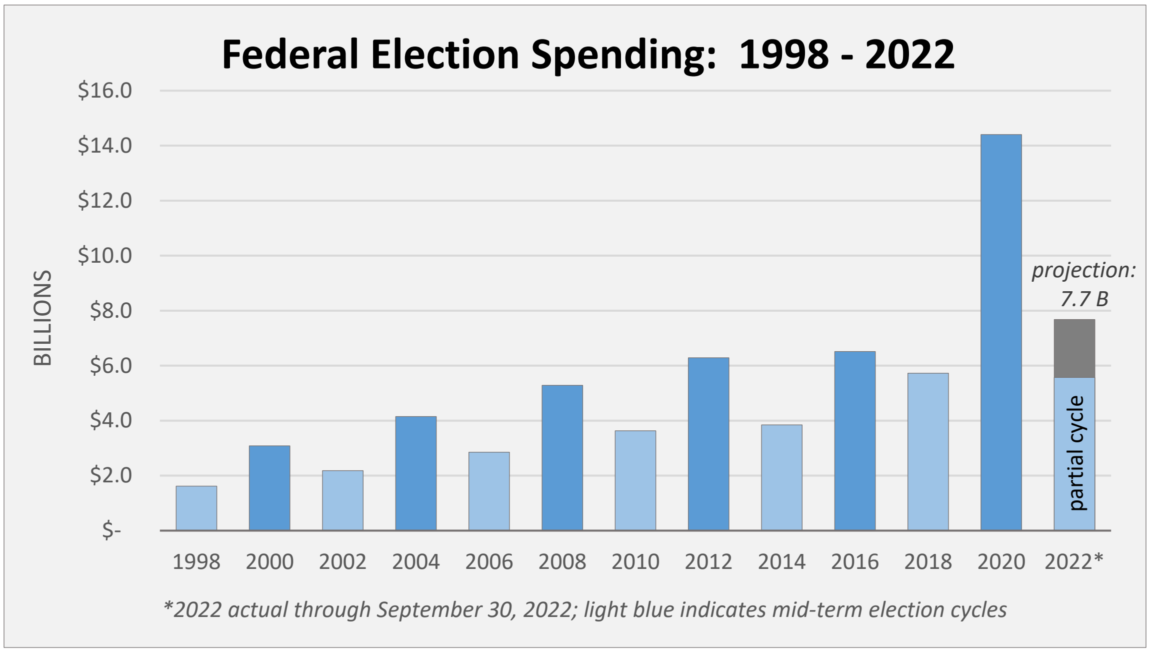


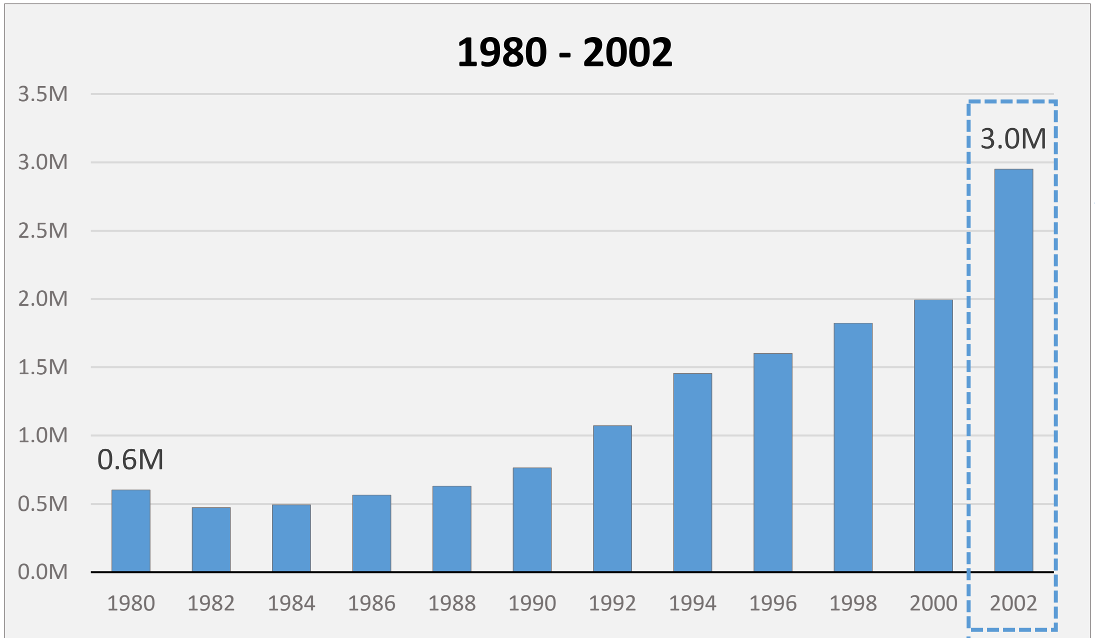
Figure: Total spending on congressional, presidential, and party committees per election cycle reported to the FEC by all filers. The totals in this figure include PAC expenditures to campaign committees. All data is obtained from FEC filings. The 2022 projection is based on 2018 percentages.

The total number of transactions subject to FEC regulation and oversight has also dramatically increased, especially in recent years. Transactions are reported in mandatory filings with the FEC and are comprised of itemized details of receipts (including contributions), disbursements (including expenditures), and other financial activity.

Some highlights of transaction growth, which is illustrated on the following page, include:

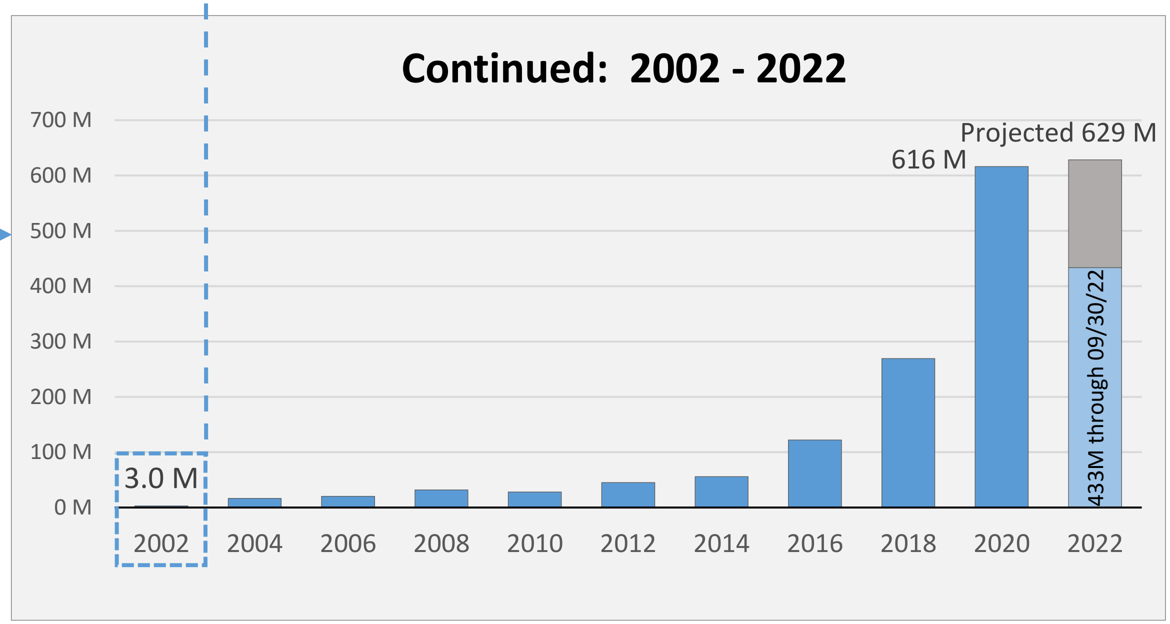
- Between 1980 and 2002, the total number of transactions subject to FEC regulation and oversight increased from approximately 602,000 to nearly 3.0 million per election cycle.
- In the 2018 election cycle, the FEC handled nearly 270 million transactions.
- That number exceed 616 million transactions in the 2020 election cycle.
- The number of transactions for the 2022 mid-term cycle is expected to surpass the 2020 presidential cycle.

FEC Total Transactions (1980 - 2022)



Between 1980 and 2002, the total number of transactions subject to FEC regulation and oversight increased from approximately 602,000 to nearly 3.0 million per election cycle.

By 2018, the FEC handled nearly 270 million transactions in that cycle. That number exceeded 616 million in 2020 and is expected to surpass 629 million for 2022.



Despite dramatic increases in campaign expenditures and the number of transactions subject to FEC regulation and oversight, the Commission's budget has remained largely static and has even faced recent reductions. Since 2008, the FEC's budget has increased by an average of only 1.4% per year. Those increases have not kept up with inflation, which has averaged approximately 2.5% per year over the same period. Indeed, the FEC's 2022 budget was **approximately 14.3% less** than its 2008 budget when adjusted for inflation.[1]

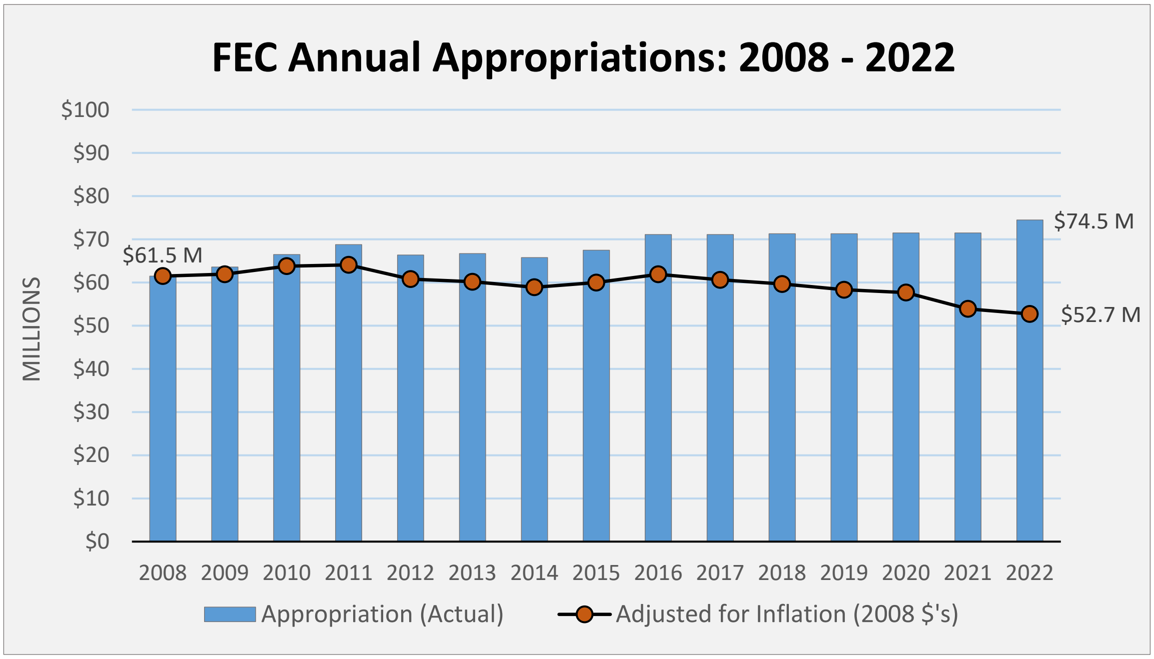


Figure: Annual congressional budget appropriations to the FEC, as reported in Congressional budget justifications. Inflation adjustment from Bureau of Labor Statistics published annual CPI data.

In addition, the nature of federal campaigns has evolved in recent years. Online fundraising, the influence of dark money, and potential foreign electoral influence continue to place further strain on the FEC's ability to provide oversight of federal campaigns. As such, absent additional resources, the FEC faces challenges in successfully regulating campaign finance.

Management and Performance Challenge: Identifying and Regulating Unlawful Foreign Contributions

Identifying and regulating unlawful foreign campaign contributions continues to pose a significant challenge to the FEC. As campaign expenditures and the number of transactions subject to FEC regulation and oversight increase, potential contributions by foreign nationals also increase, which demands greater scrutiny by agency regulators. However, an August 2021 OIG report found that the FEC's practice of relying on filers' self-certifications concerning potential foreign contributions poses a national security risk and provides insufficient oversight

[1] This is not merely due to recent inflation during 2021-2022. As shown in the accompanying chart, the FEC's annual budget evinces a pattern of decline dating back to 2011 when adjusted for inflation.

of possible illegal foreign donations. Indeed, numerous recent cases highlight the risk of unlawful foreign influence in U.S. elections.

The Federal Election Campaign Act of 1971 (FECA), related statutes, and implementing regulations prohibit direct and indirect contributions to candidates, political committees, and inaugural committees by foreign nationals. As noted above, campaign expenditures and transactions subject to FEC regulation and oversight have dramatically increased in recent years. However, as previously noted, the FEC's budget has remained static, if not reduced, over the same period. Indeed, the FEC's FY 2022 budget was approximately 14% less than its 2008 budget when adjusted for inflation. The increase in transactions subject to review, in conjunction with declining resources (in real terms), poses a challenge for the FEC in identifying and regulating unlawful contributions.

Moreover, recent cases demonstrate that the risk of foreign electoral influence is real and not hypothetical. For example, a matter that came before the Commission in 2016, and was decided in October 2021, involved a consultant for a super PAC that supported a presidential candidate. The consultant allegedly solicited a $2 million contribution from representatives of a foreign national. The Commission ultimately reached a settlement with the super PAC. Numerous other reported cases further illustrate the risk.

Notwithstanding these risks, an August 2021 investigative report by the OIG found that the FEC's current practices provide limited oversight of potential foreign contributions. Specifically, the OIG investigation found that the FEC identifies many potential foreign national donations based on the reported addresses of donors, but generally defers to a committee's self-certification that it verified the U.S. citizenship of those donors. However, that practice does not appear to be memorialized in policy and relies heavily on the good faith and due diligence of filers.

Accordingly, the OIG recommended that the FEC update and memorialize its practice concerning donors with foreign addresses to identify unlawful foreign donations more effectively. However, we recognize that the FEC's resources are significantly constrained as detailed above. As such, identifying and regulating foreign contributions will likely continue to challenge the FEC.

Management and Performance Challenge: Continuity of Operations

Recent and dramatic changes in workplace dynamics due to the COVID-19 pandemic pose many management and performance challenges for the FEC. Federal agencies, including the FEC, have implemented various return-to-office policies after the expiration of evacuation orders that mandated remote work during the height of the pandemic. However, substantial uncertainty remains regarding how the post-pandemic work environment will look for the FEC, how the FEC's telework policies will affect retention and recruitment, and how the agency would respond to a future pandemic or similar event that disrupts operations.

The FEC implemented a pilot program that provides more telework opportunities than were available to most employees prior to the pandemic. However, that pilot program will end in March 2023. Significant disagreements remain among stakeholders, including the Commissioners, FEC managers, and the FEC workforce, concerning the degree to which the

FEC should permanently embrace telework and remote work. Moreover, if the Commissioners themselves are unable to agree upon permanent changes to agency policies, it may result in much more limited telework and remote work options for FEC employees.

The OIG has observed concerns about the impact of limited telework and remote work options on employee morale and attrition in the course of numerous recent engagements. Concerns include potential employee turnover, given that greater telework and remote work options appear to be permanent expectations for the modern public and private sector workplaces. As such, many stakeholders at the FEC have expressed concerns that, absent continued telework and remote work flexibilities, FEC employees may seek telework and remote employment options elsewhere, resign, or retire, if eligible. The OIG will further evaluate this issue in future engagements; however, FEC leadership should prioritize further study of this and related concerns.

Management and Performance Challenge: Human Capital Management

Human capital management is the process of acquiring, training, managing, and retaining employees to effectively execute the agency's mission. In prior management challenge reports the OIG identified, among other things, the unusual salary structure of certain senior leaders at the Commission (including Commissioners), the practice of agency personnel serving in acting positions for extended periods of time, and the Commission's attempt to address these issues through repeated legislative recommendations to Congress.

These challenges have a direct impact on the Commission's management of human capital. For example, the problems brought about by the challenged senior salary structure, coupled with declining staffing levels and increased workload, appear to have contributed to the recent 29th out of 29 ranking among small agencies that the FEC received in the Partnership for Public Service's 2021 Best Places to Work in the Federal Government report.[2]

Commissioner Pay: The FECA specifies that FEC Commissioners are to be paid equivalent to level IV of the Executive Schedule; however, pay for political appointees at the FEC has been frozen since 2019 with little increases over the last 10 years. As a result, some personnel in the GS 15 and Senior Level (SL) positions earn higher salaries than the FEC Commissioners. This unique salary structure has a direct impact on Commissioner morale and may indirectly impact staff morale throughout the agency. The problem is intensified by the high costs of living and working in Washington, D.C. that commissioners must bear to serve term appointments.

Salary Structure (Staff Director and General Counsel): Currently, the senior leadership roles of the Staff Director and Chief Information Officer (CIO) are occupied by the same individual and have been since August 2011. Information technology is ever evolving, which affects all government agencies. Without a fully dedicated CIO to focus on technological issues, to ensure resources are properly allocated, and that adequate processes are in place for the protection and safeguards of the agency, the agency will remain at risk.

[2] See Partnership for Public Service Survey Results and Rankings.

Similarly, the Deputy General Counsel for Law is concurrently serving as the Acting General Counsel and has been doing so since September 2016.[3] This has potential to put the agency at risk of not effectively and efficiently meeting its mission requirements, as robust internal dialogue and diversity of opinion are essential to ensuring the agency considers competing legal theories and courses of action.

The FECA requires the Staff Director to be paid at Level IV and the General Counsel to be paid at Level V of the Executive Schedule. Further, this statutory requirement provides that both positions supervise personnel at the GS 15 and SL pay scales, who may have higher salaries than Levels IV or V of the Executive Schedule. This disparity creates significant challenges in recruitment and retention of talent for two of the most senior career positions at the FEC.

Management previously reported that the Commission adopted legislative recommendations in 2021, 2018, 2017, 2016, 2015, 2014, 2013 and 2011 that urged Congress to remove the statutory references to the Executive Schedule in FECA with respect to the FEC Staff Director and General Counsel Positions. The removal of that reference would ensure the two positions be compensated under the same schedule as the Commission's other senior managers.

Declining Staffing Levels: Despite dramatic increases in campaign expenditures and the number of transactions subject to FEC regulation and oversight (see management challenge #1), the Commission reported that staffing levels have decreased by over 17.5% since 2012.[4] The agency maintained an average of 295-296 employees throughout FY 2022. The increase in workload combined with declining staffing levels has resulted in performance benchmark and morale challenges. Additionally, the FEC must focus on employee retention challenges as the Commission continues to define its new normal in a hybrid work environment.

Morale: The FEC ranked last (29/29) among small agency workplaces in the 2021 Partnership for Public Service report. Each year, the Partnership for Public Service ranks federal workplaces by analyzing employee engagement and satisfaction scores across all federal agencies. Specifically, these results refer to the commitment of the workforce, job and organizational satisfaction, and employee desire to achieve results. The rankings are separated by large, medium, and small agencies and the data used for compiling these rankings is collected by OPM through its Federal Employee Viewpoint Survey (FEVS). Additionally, the OPM published preliminary results from the 2022 FEVS survey and the data indicated that employee morale across the federal government fell two points in 2022.

The foregoing human capital challenges are impacting the FEC's ability to achieve its mission objectives effectively and efficiently. Despite the internal resource constraints and emerging external issues beyond the Commission's control, we encourage the Commission to continue to invest in the recruitment of quality employees, training employees, and motivating employees to complete mission objectives.

[3] The FEC posted a job announcement for the General Counsel position on USAJOBS with an opening application date of September 30, 2021, and a closing date of October 22, 2021. As of October 26, 2022, the position remains unfilled.

[4] The FEC reported 293 employees on board as of September 2022—a 17.5% decrease compared to FY 2012 (355).

Protecting data, systems, and networks from threats remains a top challenge. The FEC was established to protect the integrity of federal campaign finance by providing transparency and enforcing and administering federal campaign finance laws. In doing so, the FEC discloses campaign finance data to the public and as a result, encounters large volumes of webpage traffic from stakeholders and members of the public. In efforts to streamline transparency initiatives and improve business processes, the Commission is more technology reliant today, as is society; as such, it is imperative that the Commission continue to prioritize cybersecurity.

Cybersecurity encompasses attempts from criminals and adversaries to obtain sensitive information linked to government networks, personal identifiable information, intellectual property, and other sensitive data. Cyber threats may arise from phishing, ransomware, or other malware attacks and can infiltrate any level within an organization. In response to ever-growing threats, the Commission has partnered with the Department of Homeland Security (DHS) and the Cybersecurity and Infrastructure Security Agency (CISA), an operational component under DHS, to improve its overall security posture by identifying, protecting, and responding to network vulnerabilities. We encourage the agency to continue to utilize these partnerships and work to develop the in-house expertise to protect the network.

It is essential that the Commission continue to maintain the integrity and availability of its information, as it looks to modernize its systems, which includes moving towards a cloud environment. We recognize that federal agencies have struggled to compete with the private sector for cyber expertise and talent; however, the Commission should continue to seek and adequately compensate industry experts to manage the FEC's cybersecurity requirements. We encourage the Commission to continue to be proactive in establishing a cybersecurity framework and strengthen internal controls to mitigate external threats from entering the FEC's network.

Conclusion

The OIG presents these challenges as ongoing issues facing the FEC in FY 2023. These challenges impede efficiency and effectiveness in the management of FEC operations and programs. The OIG remains dedicated to independent oversight to ensure accountability of the mission of the FEC.

FY 2022 Management Challenges Not Included in FY 2023 Report

All FY 2022 management challenges have been included in this report although some have been updated, retitled, and/or consolidated.

Federal Election Commission
Office *of the* Inspector General

REPORT
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Individuals including FEC and FEC contractor employees are encouraged to alert the OIG to fraud, waste, abuse, and mismanagement of agency programs and operations. Individuals who contact the OIG can remain anonymous. However, persons who report allegations are encouraged to provide their contact information in the event additional questions arise as the OIG evaluates the allegations. Allegations with limited details or merit may be held in abeyance until further specific details are reported or obtained. Pursuant to the Inspector General Act of 1978, as amended, the Inspector General will not disclose the identity of an individual who provides information without the consent of that individual, unless the Inspector General determines that such disclosure is unavoidable during the course of an investigation. To learn more about the OIG, visit our Website at: **http://www.fec.gov/oig**.

Together we can make a difference!

Management's Response to the Office of Inspector General's Statement on the Federal Election Commission's Management and Performance Challenges[1]

November 9, 2022

In its Statement on the FEC's Management and Performance Challenges ("Statement"), the Office of the Inspector General ("OIG") identified five overarching management and performance challenges for inclusion in the FEC's Agency Financial Report for Fiscal Year 2022. Management's response to the OIG's Statement is below.

Challenge 1: Growth of Campaign Spending
In its Statement, OIG describes how the FEC's budget has not kept pace with inflation. Without an appropriate level of funding, the agency will be unable to fund several modernization projects and hire and retain staff needed to address the increased volume of campaign finance data, specifically, and increased FECA related activity, generally. Over the past several years, the FEC has advocated for increases to its budget in its annual submissions to Congress. For example, for FY 2023 the FEC requested a 9.63 percent increase in its appropriation.

As illustrated in the OIG's description of this management challenge, increases in the amount of money raised and spent in federal elections, and changes in the way political committees raise and report contributions, have resulted in explosive growth in the number of campaign finance transactions reported to the FEC each election cycle. Each of these transactions represents a data element that must be received by the FEC, added to our database and disclosed and made searchable on the FEC website and via the FEC campaign finance Application Programming Interface (API).

The FEC receives campaign finance reports, statements and other disclosure documents from more than 16,000 political committees and other filers. During the 2020 election cycle, these filers reported more than 600 million financial transactions, which were reviewed by FEC staff and disclosed to the public on the FEC's website and through the agency's API. This volume of data is more than double the number of transactions reported in the previous election cycle, and a nearly 400% increase compared to 2016, the last presidential election cycle. With the steep rise in transactions reported every election cycle comes a heavier burden on the FEC's API to quickly search across the FEC's campaign finance database and display the data requested by the public.

In FY 2015 the FEC proactively launched a comprehensive, multi-year IT Modernization project in part in response to projected increases in campaign finance activity. The IT Modernization plan outlines reducing the agency's physical data center footprint by migrating applications to a cloud environment, modernizing internal applications, modernizing the electronic filing platform, adopting open-source software solutions, and increasing the use of shared services.

Budget and staffing constraints have limited the FEC's progress, but the agency has accomplished some of the plan's goals. As part of the FEC's website redesign, the FEC redesigned its website

[1] Management consists of the agency's senior managers, including the Staff Director, Acting General Counsel and Chief Financial Officer.

and migrated both the website and the campaign finance database that supports it to a cloud environment. In addition to providing faster and easier access to campaign finance data hosted in the cloud, this migration allowed the agency to shut down one of its physical data centers during FY 2018, realizing attendant costs associated with maintaining that data center. During FY 2020, the FEC made additional database enhancements to improve database performance and control costs of hosting and maintaining the database. Over the past several years, the FEC has concluded the migration to a cloud environment of the FEC's primary campaign finance database, which contains over forty years of transaction-level campaign finance data reported to the agency, the searchable legal systems and related databases, almost all legacy mission-critical applications and some of its infrastructure. As a result of these efforts, the FEC has been able to reduce its physical datacenter footprint, and it plans to continue to do so.

During FY 2022, the FEC completed the initial migration, commonly known as a lift and shift, of legacy applications to a cloud environment. The FEC is in the process of decommissioning old servers located in physical data centers to continue efforts to reduce the agency's physical data center footprint. Planning is underway to modernize mission-critical internal applications to ensure they take advantage of all the cost-saving benefits of cloud-native technologies. The trends in campaign finance activity of increasing spending, increasing transactions and increasing API hits illustrate how crucial it is for the agency to continue to implement new programs and systems to ensure the timely disclosure of campaign finance data. The migration of campaign finance data to a cloud environment and modernization of applications migrated to the cloud during previous fiscal years are essential components of these efforts. Modernizing the applications and data pipelines will permit users to utilize all the advantages of the cloud, which will help the agency to efficiently, fairly and effectively achieve its mission objectives. Data pipelines are a set of automated methods and procedures that process raw data files received from filers into the primary campaign database for internal agency use and for public consumption on FEC.gov. They are essential to processing and reviewing campaign finance disclosure information in compliance with the statutory mandates as well as government-wide customer service initiatives.

To continue to mitigate an anticipated steep rise in future costs from maintaining physical datacenters, the FEC will continue to pursue its IT modernization plan which requires investment now and over the next several years to continue cloud migration and realize improvements in its IT processes. The FEC will continue to strive to implement the recommendations of this study during FY 2023 and FY 2024, by modernizing migrated legacy applications to ensure they take full advantage of cloud-native technology, with the goal of generating efficiencies in future years while maintaining high levels of service to the public. Applications prioritized for modernization would include solutions for the Reports Analysis Division's review process as well as the voting and certification system used by the Commission.

Efforts to modernize the FEC's eFiling system are also essential components of the agency's efforts to ensure the timely disclosure of this increasing volume of campaign finance data. The FEC is currently working to upgrade its eFiling platform. In FY 2017, the Commission published a study of its current eFiling platform, including a survey of the existing functionality of the FEC's free filing software and an in-depth investigation of needs expressed by filers. The FEC is relying on the recommendations of this study to improve its eFiling platform to allow greater operating system flexibility for users when generating filings for submission to the Commission, and to increase the consistency and accuracy of reporting. The FEC's new eFiling platform will improve ease of filing for users by allowing greater operating system flexibility when generating filings for submission to the Commission, as well as the process for validating filings prior to acceptance and generate modern file outputs that will provide for more flexibility in accessing data. In addition, the modernization efforts will provide for seamless integration with the data portion of the website and, therefore, more efficient use of the agency's resources. The FEC will continue development in FY 2023 and work toward implementation of the new eFiling platform during FY 2024.

Challenge 2: Identifying and regulating unlawful foreign contributions

Management has undertaken a number of actions over the last several years to prioritize enforcement of the foreign national prohibition. Along with cases that are statute-of-limitations imperiled when OGC receives them, foreign national prohibition cases are assigned to OGC staff attorneys before any other class of cases. OGC has also modified its Status of Enforcement reports to the Commission so that the Commission is provided with complete data on every foreign national prohibition case on a quarterly basis. Further, OGC has revised its procedures so that it may more efficiently track the progress of all foreign national prohibition matters through the enforcement process. OGC has also modified its case management software to make it easier to run reports for the Commission concerning all foreign national prohibition matters.

Moreover, requirements for committee actions to prevent the receipt of foreign national, or other illegal, contributions are extensive. All committee treasurers are required by regulation to examine all contributions received for evidence of illegality. 11 C.F.R. 103.3(b). Contributions that present genuine questions as to whether they were made by foreign nationals, such as by coming from a foreign address or being drawn on a non-U.S. bank, may be, within ten days of receipt, either deposited in the campaign depository or returned to the contributor. If deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution, including at least one written or oral request for evidence of legality. If the contribution cannot be determined to be legal, the treasurer shall refund the contribution within 30 days of receipt. 11 C.F.R. 103.3(b)(1). If the treasurer determines that the contribution did not appear to be made by a foreign national, but later discovers that it is illegal based on new evidence not available at the time of deposit, the treasurer shall refund the contribution within 30 days of discovering the illegality. 11 C.F.R. 103.3(b)(2). Any contribution which appears to be illegal but is deposited in a campaign depository may not be used for any disbursements until the contribution has been determined to be legal, and the receiving committee must either establish a separate account for such contributions or maintain sufficient funds to make any required refunds. 11 C.F.R. 103.3(b)(4). The treasurer must keep a written record noting the basis for the appearance of illegality of any such contribution, and if a committee's disclosure report is due while resolution of a contribution's legality is still pending, a statement to that effect must be included in the disclosure report. 11 C.F.R. 103.3(b)(5).

In another document, OIG has suggested additional requirements for disclosure to the Commission about suspected foreign national contributions. However, legal and practical concerns block immediate implementation of additional requirements for disclosure. Disclosure of additional information would require a legislative change, which of course is solely the purview of Congress. Specifics as to what must be reported to the Commission as part of disclosure reports are exhaustively described in 52 U.S.C. 30104. Moreover, given that all disclosure reports must be made available to the public, 52 U.S.C. 30111(a)(4), reporting of information such as contributors' U.S. passport numbers, as suggested elsewhere by OIG, would potentially raise serious privacy concerns.

In its Statement, OIG recounts its recommendation that the FEC update and memorialize its practice concerning donors with foreign addresses to identify unlawful foreign contributions more effectively. That practice is already memorialized and regularly updated. The practice is based on a regulation, duly promulgated by the Commission, 11 C.F.R. § 110.20(a)(7), which provides a regulatory safe harbor for these situations. The practice is memorialized in the Reports Analysis Division's Policies and Procedures, which are updated for every election cycle and approved by the Commission, and which are publicly available on FEC.gov, with certain redactions unrelated to this practice.

Finally, Management notes that as of July 1, 2022, only five cases on OGC-Enforcement Division's docket pertain to FECA's foreign national prohibition, which is a marked reduction over recent years.

Challenge 3: Continuity of Operations

Upon returning additional employees to the physical workplace in late-February 2022, the FEC implemented a one-year Expanded Workplace Flexibilities Pilot Program that provides significantly expanded telework options for employees as compared to the agency's pre-pandemic policies. Under the Pilot Program, over 98 percent of FEC employees now participate in the agency's telework program on a regular or episodic basis. OIG notes that significant disagreements may remain among stakeholders, including the Commissioners, concerning the degree to which the FEC should permanently embrace telework and remote work when the Pilot Program ends in March 2023.

However, the one-year Pilot Program was specifically designed to test and evaluate the impact of providing expanded telework flexibilities on FEC operations before determining the agency's new permanent program. The Pilot Program policies require management to complete informal and formal assessments of program operations, effectiveness, and impacts during the one-year Pilot period. Management is currently conducting its formal assessment using data from agency-wide surveys of employees and supervisors, performance metrics, and cost-evaluations. Results of the assessment will be shared with Commissioners and the FEC workforce, and will be utilized by management in developing recommendations to the Commission for the permanent telework program.

The FEC's Office of Human Resources has also implemented exit surveys to gather data on potential reasons for employee departures, including whether the current telework program is impacting attrition. In addition, the agency has begun collecting data regarding whether the FEC's telework policies might affect the agency's recruitment efforts.

Challenge 4: Human Capital Management

As the OIG recognizes, the FEC continues to confront a heavy workload alongside relatively flat funding levels that have contributed to the reduced staffing levels the FEC has seen over the past several years. Over the past decade, the FEC has been able to meet its statutory mission primarily due to efficiencies gained by reassigning staff using details, maximizing operational efficiencies through reorganizations, and improving technology and processes, among other efficiencies. However, in recent years the FEC has begun to exhaust the benefits that can be gained through such efficiencies and has, in some situations, reduced performance targets in response to these reductions in staffing amid increasing campaign finance activity. The FEC intends to continue its current efforts to maintain the current high performance of staff and the excellent service that they provide to the public. A critical part of this effort is obtaining adequate funding, promoting adequate staffing levels across the agency, and ensuring improvements in the agency's salary structure to be able to compete and retain top talent in leadership positions.

As identified by the OIG, the FEC Commissioners are currently compensated at level IV of the Executive Schedule (EX) as specified in FECA. The full compensation for this level in 2022 is $176,300. However, the compensation for certain political appointees, including Members of the FEC, has been frozen. A pay freeze has been in effect since 2014, which set commissioner pay at 2013 levels. A small adjustment was made in 2019, which set the frozen pay level at $158,500, or 1.9% more than the 2013 amount. EX salaries are uniform nationwide, while the General Schedule (GS) salaries include locality adjustments. The relatively high cost of living in the Washington, D.C. region means that salaries at the top of the GS scale applicable to FEC employees have outpaced frozen salaries on the EX scale. Thus, the pay freeze exacerbates a salary discrepancy where commissioners receive less compensation than FEC employees in Senior Level (SL) positions, and less compensation than some agency employees in the GS-14 and GS-15 positions, including many of their direct reports. Under these circumstances, it may be difficult to find individuals willing to serve as FEC commissioners in the future, and recruitment will be limited to a smaller pool of potential commissioners due to this salary constraint. While FEC management is not responsible for recruiting potential commissioners, the lack of quorum that could result from vacant commissioner seats would be a management challenge for the FEC. Looking ahead to May 1, 2023, it is very likely that the terms of four of the six Commissioners serving at that point will have expired. An expired term leaves a commissioner serving in a hold-over capacity and eligible to be replaced at any time.

In addition, section 306 of FECA links salaries to Level IV and Level V of the Executive Schedule for the Staff Director and General Counsel. Both positions supervise personnel at the GS-15 and Senior Level pay scales, which often provide higher salaries than Levels IV and V of the Executive Schedule. The Commission has proposed removing the statutory references to the Executive Schedule, so that the Staff Director and General Counsel would be compensated under the same schedule as the Commission's other senior managers. This revision will remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports and will ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for federal executives when filing the current vacancy or when further vacancies arise.

Management continues to fully support the Commission's ongoing efforts to change the salary structure for key leadership positions of Staff Director and General Counsel. Meanwhile, the Commission has implemented interim solutions for these positions that, very importantly, have allowed the Commission to maintain consistency and needed stability in its two most senior staff leadership positions. Moreover, the Commission has been able to continue to receive the services of agency leaders who were selected for these positions after substantial experience working in positions of significant responsibility for the FEC. Instability in these positions has been the subject of prior management challenges identified by the OIG, and the Commission attributes the stability in these positions that has been achieved to the use of the interim solutions.

In recent years, the FEC has also been challenged to recruit and retain talent necessary to meet the agency's workload and hiring goals across the agency, in part as a result of the FEC's relatively flat funding levels over this period. Indeed, between FY 2012 and FY 2022, the FEC's overall staffing levels were reduced by over 17 percent. The agency's challenges in filling leadership positions on a permanent basis were compounded by the lapse in appropriations from December 22, 2018 to January 25, 2019 and the FEC's loss of a quorum between September 2019 and May 2020 and again between July and December 2020. An affirmative vote of four FEC Commissioners is required to permanently fill any position at the GS-15 level or higher. Upon resumption of operations following the lapse in appropriations in FY 2019, the Commission prioritized filling several critical senior management positions. Leveraging the FEC's partnership with OPM HR Solutions, the agency was able to move efficiently through the hiring process and in the summer of 2019 filled the positions of Inspector General, Associate General Counsel for Policy, and Assistant General Counsel for Administrative Law. However, upon losing quorum in September 2019, the Commission could not approve selections at the GS-15 or Senior Level. During the brief period in FY 2020 when the Commission had a quorum, the position of Director of Human Resources was filled. Following the resumption of a quorum in December 2020, led by its Personnel Committee, the Commission again prioritized filling critical management vacancies and since that time eight GS-15 management vacancies and one Senior Level vacancy, the Associate General Counsel for Enforcement, were filled. The Commission and its senior managers continue to prioritize hiring, particularly management positions that result in cascading details and vacancies. Indeed, in this fiscal year alone, the agency permanently filled eight management positions that were previously filled in an "acting" capacity. Currently, only two supervisory positions are filled in an "acting" capacity.

Finally, the agency has undertaken significant efforts to increase morale and employee satisfaction across the agency, including instituting an Employee Engagement Steering Committee, and supporting the implementation of the Diversity, Equity and Inclusion Council. The Engagement Steering Committee was established to help foster improved employee engagement across the agency. The Steering Committee, through the FEVs results and internal surveys, identifies key areas for improvement. Some of the areas that have been identified have been better and more frequent communication from management to staff, more transparency in the hiring and budget processes, and suggested improvements with work/life balance issues. The Steering Committee also works with offices across the Agency to promote training and development opportunities to the FEC workforce and co-sponsors Public Service Recognition Week. The Diversity, Equity and Inclusion Council was established to promote diversity, equity and inclusion efforts across the agency. Through its efforts, the Council has put on numerous programs and trainings, organized the first ever Diversity, Equity and Inclusion Week, and have made several recommendations to help improve hiring, promotion, and retention throughout the agency.

Management recently received preliminary data from the 2022 Federal Employee Viewpoint Survey (FEVS) and is in the process of evaluating the data and preparing it for publication. The FEC's score on OPM's Employee Engagement Index, which measures employees' perceptions of senior leaders, supervisors, and the intrinsic work experience, increased by two percentage points from 2021 to 2022 (72% to 74%). While the agency has yet to receive full data comparison reports for the 2022 FEVS, management notes that the FEC's increase is in contrast with the overall government-wide reduction in EEI scores identified by OIG.

Challenge 5: Cybersecurity

The FEC developed a comprehensive cybersecurity program led by the Chief Information Security Officer (CISO) to protect critical infrastructure from the cyber threats. The FEC's overarching strategy to protect the security and privacy of its systems and network begins with the adoption of the National Institute of Standards and Technology (NIST) Risk Management Framework and NIST IT security control "best practices." NIST Special Publication 800-37 Rev. 2 – Risk Management Framework for Information Systems and Organizations," identifies seven steps essential to the successful execution of the risk management framework (RMF):

- **Prepare** to execute the RMF from an organization- and a system-level perspective by establishing a context and priorities for managing security and privacy risk.
- **Categorize** the system and the information processed, stored, and transmitted by the system based on an analysis of the impact of loss.
- **Select** an initial set of controls for the system and tailor the controls as needed to reduce risk to an acceptable level based on an assessment of risk.
- **Implement** the controls and describe how the controls are employed within the system and its environment of operation.
- **Assess** the controls to determine if the controls are implemented correctly, operating as intended, and producing the desired outcomes with respect to satisfying the security and privacy requirements.
- **Authorize** the system or common controls based on a determination that the risk to organizational operations and assets, individuals, other organizations, and the Nation is acceptable.
- **Monitor** the system and the associated controls on an ongoing basis to include assessing control effectiveness, documenting changes to the system and environment of operation, conducting risk assessments and impact analyses, and reporting the security and privacy posture of the system.

The FEC currently employs this continuous monitoring and ongoing authorization approach to assess the risk to systems and networks and allow the authorizing official to determine whether that risk is acceptable. Three of the FEC's major systems follow the formal Authority to Operate (ATO) process: the General Support System, the FEC website and the FEC's eFiling system.

Robust Security Architecture

As a result of, and in support of, the RMF, the FEC's Office of the Chief Information Officer (OCIO) continues to take steps to implement a robust security architecture. For example, in partnership with the Department of Homeland Security (DHS), the OCIO has collaborated with

FEC stakeholders and technical experts to identify, protect, detect and respond to the impact of known and unknown threats, continuously assessing security controls and addressing residual and new risks.

As identified in OIG's description of this management challenge, the FEC has proactively pursued three significant joint efforts with DHS over the past two years to better identify and remediate emerging threats to the FEC's systems and networks. In addition, the FEC maintains ongoing information security efforts, including our security operation center and the applications for continuous diagnostics and mitigation, and implementing security controls to address identified cybersecurity gaps. These efforts help to ensure that identified risks are appropriately addressed and that its cybersecurity program and security architecture will continue to safeguard the agency's infrastructure, networks, and applications against cyber threats and malicious activities.

Continuous Monitoring and Mitigation

OCIO Security has worked with DHS to improve security capability by integrating with the Continuous Diagnostics and Mitigation (CDM) program. OCIO Security has also introduced the use of secure baselining standards, such as the use of Defense Information Systems Agency (DISA) Security Technical Implementation Guides (STIGs) and Benchmarks. System hardening and secure baselining practices are being expanded in OCIO teams. The OCIO security team has developed a privileged user account agreement and a new password policy to add administrative controls to supplement the technical access controls. The addition of the new password policy and multi-factor authentication (MFA) has improved the security posture of authentication types within the FEC's information systems.

Cloud-First Initiative

The FEC has also adopted a cloud first initiative for security, accessibility and recoverability. The FEC has migrated many legacy applications and systems to the cloud. Leveraging cloud computing allows the Commission to take advantage of cloud service providers' significant resources and expertise dedicated to maintaining the highest level of security. Hosting information, data and systems in the cloud will allow the FEC to better leverage government and industry best practices, such as DevSecOps, which improves our security posture by adding security mechanisms into the development and operation processes. Adopting a cloud first initiative will ultimately result in the consolidation and the modernization of all FEC's application and systems. Moreover, in cloud architecture, the security controls are built into the native configuration. In addition, by utilizing the cloud service providers' robust disaster recovery solutions, the FEC eliminates the need to maintain physical disaster recovery sites, which are costly to maintain and secure. The FEC has already completed the migration of its largest database, the campaign finance database, and its website to a cloud environment. The FEC's new website, launched in May 2017, uses FedRAMP Authorized cloud services, which provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services.

Building a Cybersecurity Culture

At the same time, the FEC is working to build a cybersecurity culture among its employees. The first line of defense in maintaining the protection and integrity of the agency's network is the ongoing education of employees about their role in identifying and preventing malicious actors—

internal or external—from compromising the FEC's systems and networks. Efforts to build a cybersecurity culture include steps to educate staff about FEC IT security policies and to ensure staff awareness of potential cybersecurity threats, such as phishing scams. The FEC promotes this cybersecurity culture in part through annual, mandatory IT security trainings and through year-round communication and notices to staff from the CISO. This year, the FEC implemented additional trainings for all staff to help staff recognize and avoid social engineering attempts.

Building Capacity in the Information Security Office

The FEC has also taken steps to build capacity in its Information Security Office. In April 2019, the FEC entered into a partnership with the Partnership for Public Service to participate in the Cybersecurity Talent Initiative. This selective, cross-sector program, which provides loan forgiveness to top bachelors and masters graduates around the United States in exchange for at least two-years' service at a federal agency, addresses the immediate cybersecurity talent deficiency faced by Federal government agencies by attracting service-minded individuals to government who might not otherwise have applied. During FY2020, the FEC completed the selection process and brought on board an individual for a two-year cybersecurity fellowship. In the past two years, FEC actively participated in the CTI program, attended the CTI's leadership panel discussions, and encouraged the cybersecurity analyst from the CTI program to actively participate in CTI training activities as well as training outside of CTI. However, with a two-year limit on the fellowship, and in the hopes of retaining employees with cybersecurity expertise, the Commission has created a permanent position to replace this fellowship position. FEC has recently filled this security position with a cybersecurity engineer/analyst.