

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<https://oversight.house.gov>

October 19, 2022

The Honorable Lina Kahn  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Chair Kahn:

We write to investigate the use of unpaid consultants and experts at the Federal Trade Commission (FTC or Commission) and what controls are in place to ensure they are not involved in inherently governmental functions like policy and legal work. The FTC Inspector General (OIG) recently found that the FTC lacked adequate controls to ensure compliance with applicable federal statutory law, regulations, and FTC policy. The lack of controls presents numerous risks of harm to the FTC, including the potential that FTC actions may be legally invalidated. The FTC has a vital mission to ensure consumer protection and assure healthy competition in America's markets. Therefore, we are seeking documents and information to understand the FTC's controls to ensure unpaid consultants and experts are not unlawfully performing governmental and policymaking tasks.

The OIG recently published the results of an audit finding a lack of comprehensive controls to ensure against violations of law and policy in the hiring of outside unpaid consultants and experts at FTC.<sup>1</sup> Federal statutory provisions<sup>2</sup> and implementing regulations<sup>3</sup> generally prohibit federal civilian agencies from hiring outside experts or consultants who will perform "managerial or supervisory work," make "final decisions on substantive policies," "function in the agency chain of command," or are hired to "do work performed by the agency's regular employees" or "fill in during staff shortages."<sup>4</sup> Any outside consultants or experts who are hired must be adequately supervised by the agency to ensure compliance with these laws.<sup>5</sup> In addition, the FTC's own policies prohibit experts and consultants from performing work "of a policy

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<sup>1</sup> Office of Inspector General, Federal Trade Commission, *Audit of the Federal Trade Commission's Unpaid Consultant and Expert Program*, OIG Report No. A-22-06 (Aug. 1, 2022), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2022-08-01\\_OIGauditreport\\_unpaidconsultants\\_FINAL.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2022-08-01_OIGauditreport_unpaidconsultants_FINAL.pdf).

<sup>2</sup> 5 U.S.C. § 3109

<sup>3</sup> 5 C.F.R. § 304.103

<sup>4</sup> *See id.*

<sup>5</sup> *See* 5 C.F.R. § 304.108(a).

and/or decision making or managerial nature.”<sup>6</sup> Despite these clear legal and policy prohibitions, OIG found that the FTC has limited controls to ensure unpaid consultants do not perform prohibited work.<sup>7</sup>

According to the OIG, half of the FTC’s position justifications reviewed by their audit included references to legally prohibited work, stating that unpaid outside experts and consultants would “play an integral role in the Commission’s strategic direction,” would “serve as a visionary leader on policy and strategic initiatives that directly and indirectly affect Commission technology policy and operation,” or would “provide the Chair advice and analysis to inform FTC policy.”<sup>8</sup> Other justifications indicated that these unpaid, unaccountable consultants would perform FTC employee functions including “to provide case support (investigation and litigation), policy research and development, competition and consumer advocacy, and, when needed, public outreach.”<sup>9</sup> OIG documented several risks presented by the FTC’s use of unpaid consultants without adequate controls to ensure compliance with federal law, including “operational, legal, compliance, and reputational risk,” resulting in decisions or policies promulgated by FTC that “could potentially be invalidated.”<sup>10</sup> You have claimed that no legal lines have been crossed in the FTC’s hiring and use of unpaid consultants and experts, but Oversight Committee Republicans have an obligation to investigate waste, fraud, abuse, and mismanagement.<sup>11</sup>

OIG’s report comes at a time when the FTC is suffering an exodus of senior and career officials,<sup>12</sup> as well as sinking overall morale.<sup>13</sup> According to Federal Employee Viewpoint Survey data, the number of FTC employees with a “high level of respect for the FTC’s senior leadership” plummeted from 83 percent in 2020, to a mere 40 percent in 2021.<sup>14</sup> The percentage of employees stating that senior leadership lacks “honesty and integrity” at the FTC grew to 28.8 percent in 2021, seven times higher than in 2020.<sup>15</sup> FTC was ranked 22 out of 23 agencies for employee responses relevant to the satisfaction with senior leaders.<sup>16</sup>

To assist Committee Republicans in conducting oversight into how the FTC plans to implement the OIG’s recommendations and ensure compliance with the relevant law and

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<sup>6</sup> *Supra*, n.1. at 5 (citing FTC Administrative Manual, ch. 3, sec. 200).

<sup>7</sup> *Supra*, n.1. at 6.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 9.

<sup>11</sup> Letter from the Hon. Lina Kahn, Chair, Federal Trade Commission to the Hon. Sen. Mike Lee (Sept. 9, 2022).

<sup>12</sup> *See, e.g.*, Theo Wayt and Josh Kosman, *FTC Faces Staff Exodus, Anger over Biden-Appointed Big Tech Foe’s Leadership*, N. Y. POST (June 12, 2022).

<sup>13</sup> *See, e.g.*, Cat Zakrzewski, *Sinking FTC Workplace Rankings Threaten Chair Lina Kahn’s Agenda*, Washington Post (July 13, 2022).

<sup>14</sup> Open Competition Center, *Mass Exodus at FTC over Lina Kahn’s “Abusive, “Tyrannical” Leadership*, Americans for Tax Reform (June 13, 2022) (“OCC Report”) (citing Federal Employee Viewpoint Survey).

<sup>15</sup> *Id.*; U.S. Office of Personnel Management, *2021 Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency* (“2021 FEVS: Report by Agency”) (response to Question 33).

<sup>16</sup> Joe Davidson, *Federal Employees Are Not Happy. These Agencies Are Especially Troubled*, WASH. POST (July 13, 2022).

regulations, please provide the following documents and information no later than November 2, 2022 covering the time period January 20, 2021 to the present:

1. All documents and information containing the name, title, and/or date(s) of employment for any unpaid expert or consultant, whether individual or entity, retained by the FTC for any amount of time;
2. All documents and communications containing any resume or other information concerning relevant qualifications for individuals or entities identified in response to request number 1;
3. All documents and communications containing any description of work to be or actually performed by any individual or entity identified in response to request number 1, including but not limited to any reports or updates provided to you concerning that work;
4. All documents and communications relating to any managerial or supervisory work performed, final decisions on substantive policies made, or functioning in the FTC's chain of command by any individual or entity identified in response to request number 1;
5. All documents and communications relating to any policymaking work performed by any individual or entity identified in response to request number 1;
6. All documents and communications relating to whether any work performed by any individual or entity identified in response to request number 1 could have been performed by the FTC's regular employees;
7. All documents and communications relating to whether any individual or entity identified in response to request number 1 was retained or used to fill in during a staff shortage at the FTC, including but not limited to any staff shortage related to the exodus of senior and other officials from the FTC during your tenure;
8. All documents and communications relating to any investigatory or litigation work performed by any individual or entity identified in response to request number 1;
9. All documents, communications, and other materials provided to the FTC OIG as part of its audit of the FTC's unpaid consultant and expert program;
10. All documents and information containing any analysis or legal opinion as to risk faced by the FTC in connection with use of unpaid consultants or experts, including but not limited to potential for agency actions to be invalidated;

11. A list identifying each FTC matter informed or influenced by work performed by any individual or entity identified in response to request number 1, including but not limited to each regulation promulgated or other final action taken, case, review or proceeding filed, opened or concluded, agreement or settlement entered into, refund paid or denied, or notification, warning or guidance issued.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform has primary legislative jurisdiction over the “[f]ederal civil service,” “[g]overnment management and accounting measures, generally,” and the “[o]verall economy, efficiency, and management of government operations and activities” pursuant to House Rule X. Additionally, the Committee is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



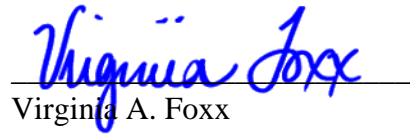
James Comer  
Ranking Member  
Committee on Oversight & Reform



Glenn S. Grothman  
Ranking Member  
Subcommittee on National Security



Michael Cloud  
Ranking Member  
Subcommittee on Economic and  
Consumer Policy



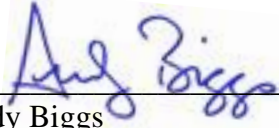
Virginia A. Foxx  
Member of Congress



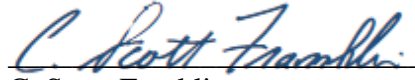
Bob Gibbs  
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Fred Keller  
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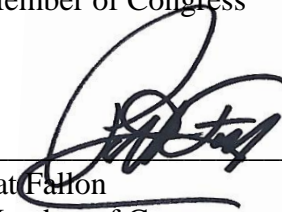
Andy Biggs  
Member of Congress



C. Scott Franklin  
Member of Congress



Jake LaTurner  
Member of Congress



Pat Fallon  
Member of Congress



Mike Flood  
Member of Congress

cc: The Honorable Carolyn B. Maloney, Chairwoman  
Committee on Oversight & Reform

The Honorable Stephen F. Lynch, Chairman  
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman  
Subcommittee on Economic and Consumer Policy