



Federal Election Commission
Office of the Inspector General

October 30, 2023

Chairman Bryan Steil
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515
Via email: Hillary.Lassiter@mail.house.gov

Ranking Member Joseph D. Morelle
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515
Via email: Hillary.Lassiter@mail.house.gov

Dear Chairman Steil and Ranking Member Morelle,

This letter transmits the Federal Election Commission (FEC) Office of Inspector General (OIG) response to the Committee on House Administration's questions for the record following the September 20, 2023 hearing on "Oversight of the Federal Election Commission."

Majority

1. *When allegations of wrongdoing are levied against Commissioners, how does your office determine which allegations rise to the level that an investigation should be opened?*
 - a. *How does your office determine what merits serious concern as opposed to a frivolous complaint?*
 - b. *How does your office handle complaints that arise from political actors with partisan ends?*
 - c. *In the past calendar year, how many complaints against Commissioners has your office received and how many investigations have been opened?*
 - i. *How do these numbers compare to past years?*
 - d. *Is an investigation into a Commissioner any different from an investigation into career staff?*
 - i. *If yes, how?*

The FEC OIG treats complaints and investigations involving Commissioners like those involving career FEC staff. Allegations against Commissioners and/or career FEC staff are evaluated and investigated in accordance with the Quality Standards for Investigations promulgated by the Council of Inspectors General on Integrity and Efficiency (CIGIE Standards). Among other things, considerations include whether the complaint alleges a violation of law or policy that is appropriate for investigation, whether the complaint includes specific and firsthand information, and whether the complaint is timely.

The OIG evaluates complaints on the merits of their substance and without speculation as to complainants' motives (partisan or otherwise). Moreover, complainants are often anonymous; as such, we are frequently unaware of a complainant's identity or motives. In the past calendar year, the FEC OIG has received no complaints against Commissioners.

2. *When Commissioners have been investigated by your office in the past, how do they and their legal counsel usually participate in the investigation?*

a. Is it common for a Commissioner to only respond to requests for information through his or her legal counsel?

i. If not, how responsive are Commissioners typically when being investigated by your office?

ii. When Commissioners respond through legal counsel, how responsive are legal counsel typically?

b. Is it common for Commissioners to participate in interviews with your office for the purpose of conducting an investigation?

i. How many times has an interview with a Commissioner for the purpose of an investigation happened during your tenure?

c. When requesting documents from Commissioners to conduct investigations, do Commissioners typically provide the requested documents voluntarily, or do you often have to subpoena them?

i. While serving as Inspector General, how many times have you had to subpoena documents from a Commissioner and how many investigations do these subpoenaed documents relate to?

With the exception of the recent investigation into alleged ethical violations ([Investigative Summary I22INV00033](#)), Commissioners in the past have cooperated with OIG investigations by providing verbal testimony and requested documents. During my tenure as Inspector

General, Commissioners have typically responded directly (as opposed to responding through legal counsel); however, investigations involving Commissioners are rare, so I am reluctant to draw broad conclusions from a small sample. Overall, the OIG's experience has been that Commissioners and their staff have communicated directly with our office and cooperated with investigations, audits, and other engagements.

For example, prior to my tenure, the OIG summarized the result of an investigation into a Commissioner's conduct in the [May 2018 Semiannual Report to Congress](#) that examined whether they or their staff violated ethical standards. The OIG found no evidence of misconduct by the Commissioner or their staff. In that investigation, the OIG was able to secure the testimony of two Commissioners, one of whom was the subject of the investigation. Both responded to the OIG directly (i.e., not through counsel).

During my tenure as Inspector General, my office has not had a need to interview a Commissioner for an investigation with the exception of the aforementioned case ([Investigative Summary I22INV00033](#)). Additionally, during my tenure, my office has not had the need to subpoena documents from a Commissioner.

Minority

- 1. Mr. Skinner, as you know, Commission gridlock has been one of the primary issues facing the FEC throughout the past decade. Deadlocked votes regularly block the agency from even investigating alleged campaign finance violations in many of the most critical matters before the FEC and matters where the agency's nonpartisan career staff recommends action. How is Commission gridlock affecting fair, transparent, and equitable enforcement of campaign finance law?*

My office has not conducted an assessment into this matter to date. Accordingly, I am reluctant to draw any conclusions related to the Commission's enforcement of campaign finance law. However, we anticipate conducting an evaluation related to FEC administration and enforcement per our [FY 2024 Work Plan](#). This evaluation may consider the extent and nature of current and historical campaign finance issues in relation to FEC activity including issue identification, investigation, and enforcement activity. Programs relevant to the evaluation include the Matters Under Review (MUR) process, Alternative Dispute Resolution Process, Administrative Fines Program, and referrals for potential criminal investigation. The evaluation will consider administration and enforcement activity in the context of rapidly increasing campaign contribution totals and transaction volumes. Where relevant, it will identify constraints and challenges in resources, processes, and organization.

In accordance with the IG Act, we plan to publish the results of this evaluation to our webpage and to Oversight.gov. In addition, we will provide our report to this Committee on request.

2. *In the Office of the Inspector General's (OIG) May 2023 semi-annual report to Congress, the OIG identified five serious management challenges that FEC management must address to ensure the proper functioning of the Commission. These include: (1) growth of campaign spending; (2) identifying and regulating unlawful foreign contributions; (3) continuity of operations; (4) human capital management; and (5) cybersecurity. What progress has FEC management made in addressing these challenges, since the release of the semiannual report?*

The Commission has reported progress in certain areas related to these challenges as detailed further in the response provided in our [FY 2023 Management Challenges Report](#). In addition, the FEC reported progress in addressing cybersecurity challenges and recently engaged in a concerted effort to increase the rate of hiring new employees to address human capital shortages. However, budget constraints continue to limit the agency's ability to overcome a decade of attrition, as well as to address other challenges identified in our report. For example, the FEC recently reduced the rate of hiring due to FY 2024 budget limitations and uncertainty.

My office is currently preparing the FY 2024 Management Challenges Report and many of the FY 2023 challenges will be updated for FY 2024. In accordance with the Report Consolidations Act of 2000, the agency will have an opportunity to comment on those challenges.¹ We will publish the report to our webpage and to Oversight.gov in November 2024 and will provide a copy of the report to this committee on request.

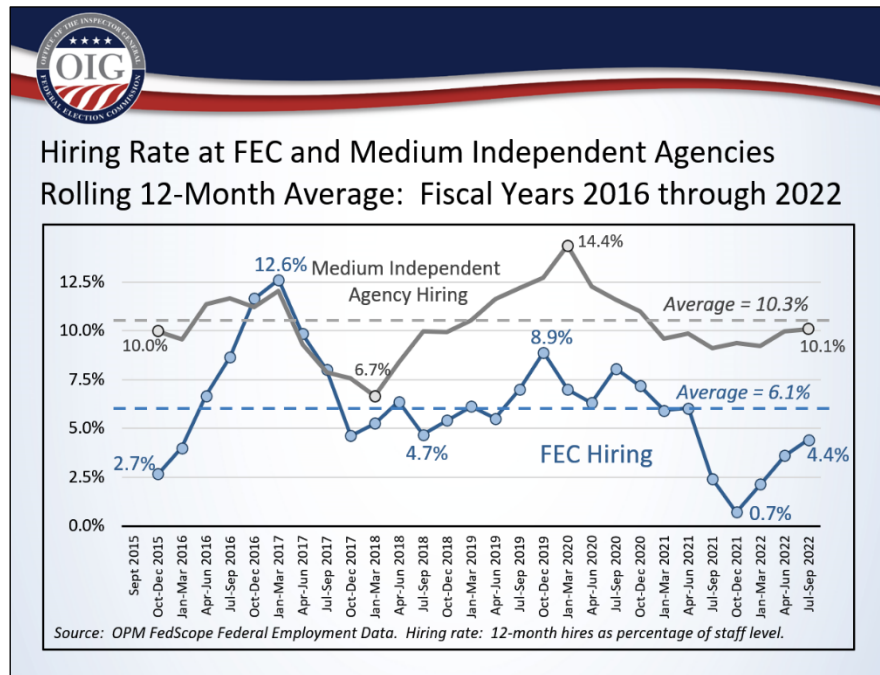
3. *Human capital management, including the Commission's difficulties with acquiring, managing, training, and retaining talented staff, is one of the areas where the Commission continues to face challenges. The OIG's April 2023 Audit Report of the Federal Election Commission's Human Capital Management Program for Fiscal Year 2022 made five recommendations designed to enhance strategy, efficiency, workforce planning and performance and take other steps to improve the program. According to the audit report, "FEC management largely disagreed with the auditors' findings and recommendations." Along these same lines, your written testimony for this Hearing details a 12 percent drop in agency staffing at the Commission since FY2010.*
 - a. *What factors are leading to this dramatic loss in human capital and important public servant talent?*
 - b. *What impact has the Commission's high attrition rate had on its ability to serve its directive and meet performance goals?*

¹ By statute, that report is required to be included in the FEC's Agency Financial Report.

- c. *What steps, if any, has the Commission taken since the release of the audit report and what steps should the Commission take moving forward to improve attrition numbers?*

As a follow up to our audit of the FEC’s Human Capital Management Program for Fiscal Year 2022, my office initiated an evaluation on this topic in February 2023 and we have issued a draft report to management for comment. We are coordinating with FEC management to consider feedback to the draft and plan to finalize our report in the coming weeks.

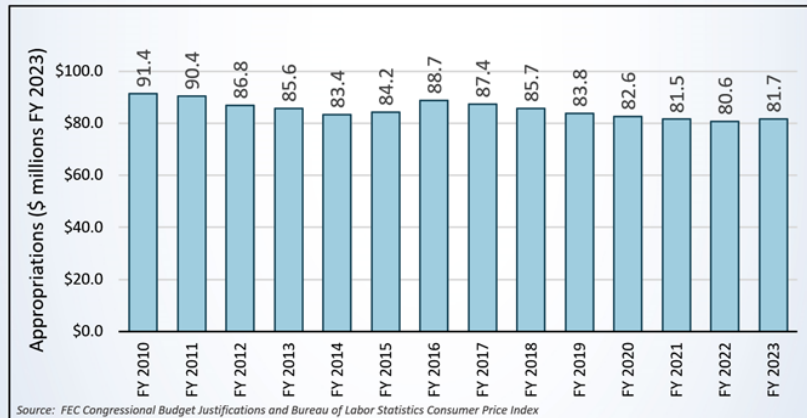
By way of summary, we identified a low accession rate (i.e., hiring rate) as the proximate cause of the FEC’s staff reduction since 2010. Specifically, the FEC historically has hired only three personnel for every four personnel who departed the agency. As shown in the chart below, that dynamic is unique to the FEC when compared to comparable agencies.



As discussed in my hearing testimony and depicted in the chart below, the root cause of the FEC’s human capital losses appears to be budgetary constraints, as staff reductions coincide with agency budget reductions (adjusted for inflation).



FEC Appropriations: FY 2010 Through FY 2023 Inflation-Adjusted FY 2023 Dollars



As a result of the foregoing reductions, the FEC reported in its recent budget justifications to Congress that it has not met performance goals to complete audits and process committee reports on time due to staff shortages. In addition, Commissioners have frequently alluded to resource limitations in decisions not to proceed with enforcement actions. For example, in July 2023, the Commission published Statements of Reason for seven MURs in which Commissioners cited resource limitations as a factor in deciding not to proceed with enforcement of campaign finance law. These included MURs 7464, 7724, 7752, and 8038, which included split 3-3 votes.

In addition, the Commission and FEC career staff leaders have not concurred with our audit recommendations to develop and implement a strategic human capital plan in accordance with the Office of Personnel Management (OPM) guidelines. Career staff cited regulatory exemptions from OPM requirements. Our report expressly recognized that our recommendations went beyond mere regulatory compliance and focused on leveraging OPM’s Human Capital Framework, which are standards it advocates to enhance agency performance.

As detailed further in our report, OPM has advocated implementation of its Human Capital Framework on the basis that studies show that organizations that strategically manage human capital outperform those that do not. Moreover, OPM previously applied elements of the Human Capital Framework to the FEC in a prior engagement in which it recommended improvements to the FEC’s performance management of human capital. Accordingly, the OIG continues to endorse its prior

recommendations that the FEC develop and implement a strategic human capital plan in accordance with OPM guidelines.

Again, my office is finalizing a more detailed evaluation of the proximate and root causes of human capital attrition at the FEC. Upon completion, we will publish a final report to our webpage and to Oversight.gov. In addition, we will provide the final report to this Committee on request.

4. *Along these lines, the agency has persistently struggled to hire, retain, and promote staff of color, especially in upper-level positions amongst the career workforce.*
 - a. *What steps, if any, has the OIG identified that the Commission is taking to improve diversity amongst upper-level staff and ensure retention amongst staff of color?*
 - b. *What additional steps should the Commission take to improve diversity within the agency, especially in upper-level and managerial positions?*
 - c. *What additional resources are needed to improve accessibility for FEC personnel?*

My office initiated an independent performance audit into these topics in September 2023 (see [FY 2024 Work Plan](#)). Specifically, the objectives of this performance audit include assessing the FEC's Equal Employment Opportunity (EEO) program compliance with statutory requirements, applicable Equal Employment Opportunity Commission and OPM guidance, best practices, as well as applicable agency policies and procedures. Further the audit will analyze the FEC's implementation of diversity and inclusion efforts related to the workforce, and develop recommendations to increase racial, ethnic, and gender diversity in the workforce.

We anticipate completing the audit report in April 2024. We plan to publish the results of the audit to our webpage and to Oversight.gov, and in addition, we will issue the report to this Committee on request.

5. *Your written testimony notes the sharp increase in campaign spending since the 2010 Supreme Court decision in Citizens United. By way of example, the total spending on federal elections skyrocketed from \$6.3 billion in 2012, a presidential election year, to \$14.4 billion in 2020. Similarly in midterm elections, the total spending increased from \$3.6 billion in 2010, the year of the Citizen's United decision, to \$8.9 billion in 2022.*
 - a. *How has the sharp increase in campaign spending affected the Commission's workload and investigative capacity?*
 - b. *What resources, if any, does the Commission currently have available to respond to the increased spending and what additional resources are needed?*

Based on the results of OIG engagements and agency reports, the increase in workload has strained the agency's human capital and information technology resources. As noted in my responses above, the FEC reported that it has not met performance goals to complete audits and process committee reports on time due to staff shortages. In addition, as noted in my response to question #5 above, Commissioners have frequently alluded to resource limitations in decisions not to proceed with enforcement actions.

The attrition rate of Office of General Counsel (OGC) personnel is notably higher than that of the FEC overall.² OGC has experienced an 11.8% separation rate for FY 2019 through FY 2023 which is nearly 50% higher than the FEC's overall separation rate of 8.1% for career staff. Further, the FEC reported in its [FY 2024 Congressional Budget Justification](#) that FY 2023 OGC staffing levels were at only 61% of FY 2012 staffing levels.

The FEC recently attempted to accelerate hiring but is has presently reduced the rate of hiring due to FY 2024 budgetary limitations and uncertainty. Indeed, the FEC would require an FY 2024 appropriation of approximately \$98.7 million to return to FY 2012 staffing levels agency wide. The FEC FY 2024 budget request of \$93.5 million would move the FEC meaningfully toward restoring historical staffing levels.

In addition, budgetary constraints have limited the FEC's ability to modernize IT resources and keep pace with the growth of campaign transactions and costs. As the FEC reported in its [FY 2024 Congressional Budget Justification](#):

Between FY 2016 and FY 2022, the FEC reduced IT operational costs and refrained from funding the modernization of certain systems to stay within appropriated levels. This has placed strain on IT operations and the agency predicts that additional funding is needed during the FY 2024 presidential election year to continue services at current levels.

As I provided in response to question #3 above, we plan to conduct an evaluation related to FEC administration and enforcement per our [FY 2024 Work Plan](#). We plan to publish the results of our reviews to our webpage and to Oversight.gov. In addition, we will provide our report to this Committee on request.

² The Enforcement Division is housed within the FEC Office of General Counsel.

6. *On August 7, 2023, OIG released an investigative summary detailing its investigation into alleged ethics violations related to Commissioner Trainor’s conduct surrounding his appearance at an event where he was billed as a member of the “Trump Elections Team” as well as his nonrecusal in FEC matters related to the 2016 Trump Campaign. The summary notes that Commissioner Trainor did not participate in the investigation despite multiple attempts by the OIG over the course of several months to contact him and his attorney for an interview.*
- a. *What impact did that have on your office’s ability to investigate the allegations and draw conclusions from that investigation?*
- b. *What can Congress do to ensure the Commissioners are accountable to the OIG moving forward?*

*The CIGIE Quality Standards for Investigations provide that, “Investigations must be conducted in a timely, efficient, **thorough**, and objective manner” (emphasis added). Those standards further provide that, “Evidence should be collected in such a way as to ensure that all known or obviously relevant material is obtained[.]”*

Subject testimony is “obviously relevant material.” As noted in the [Investigative Summary \(I22INV00033\)](#), the lack thereof in this case created uncertainty regarding the findings of fact and the investigation’s conclusions. Specifically, it prevented the investigators from obtaining the Commissioner’s testimony concerning, among other things, his role in framing his appearance at the event in question, the reasons for his recusals in certain matters (but not others), the timing of his representation of the campaign, and whether he has continued to advise or otherwise communicate with the campaign during his tenure as a Commissioner, which may violate the ethical standards found in 5 CFR Chapter 2635.

As noted in my testimony, the primary tool that Congress could provide would be testimonial subpoena authority. This is a governmentwide challenge because, with very limited exceptions, federal law does not presently confer such authority to Inspectors General. As such, CIGIE [has proposed legislation](#) to Congress that would confer testimonial subpoena authority to federal Inspectors General.

Questions from Rep. Kilmer (WA-06)

Question: Could you please comment on how delinking the salaries would impact the agency?

As noted in our [FY 2023 Management Challenges Report](#), the status quo limits the agency’s ability to recruit and obtain high level talent. The Federal Election Campaign Act (FECA) requires that the Staff Director be paid at Level IV of the Executive Schedule and that the General Counsel be paid at

Level V of the Executive schedule. These salary limitations have impeded the FEC's ability to recruit qualified candidates for those positions because candidates with the necessary qualifications for such critical positions already occupy higher salaried positions.

As a result, the senior leadership roles of the Staff Director and Chief Information Officer (CIO) have been held by the same individual since August 2011. Information technology is ever evolving, which affects all government agencies. Without a fully dedicated Staff Director to focus on human capital challenges, or a fully dedicated CIO to focus on technological challenges, 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.

Similarly, the Deputy General Counsel for Law has served as the Acting General Counsel since September 2016. This puts the agency at risk of not effectively and efficiently meeting its mission (including enforcement) requirements, as robust internal dialogue and diversity of opinion are essential to ensuring the agency considers competing legal theories and courses of action.

In addition, the Staff Director and General Counsel positions supervise personnel at the GS 15 and Senior Level pay scales, many of whom 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 and urged Congress to remove the statutory references to the Executive Schedule in FECA with respect to the Staff Director and General Counsel Positions. The removal of those references would ensure the two positions be compensated under the same schedule as the Commission's other senior managers, attract well qualified candidates, and create balance and effectiveness in administering enforcing federal campaign finance law.

Question: Could you please add additional detail on the general staffing and pay issues experienced at the agency, and how they impact the FEC right now?

General Staffing Issues

As noted in my testimony and response to question #5 above, the FEC has experienced a staffing decline of approximately 12% in the past decade due to a low rate of hiring to succeed lost talent and budget constraints. As a result, the agency has reported that performance has been adversely impacted by staff shortages and that performance targets have been reduced as a result. For example, the agency reported that it has not met

performance goals to complete audits and process committee reports on time due to staff shortages. In addition, Commissioners have frequently alluded to resource limitations in declining to proceed with enforcement actions. Statements of Reasons published in July 2023 include references to “limited resources,” “scarce resources,” and “whether the agency has enough resources to undertake the action at all.” These include MURs 7464, 7724, 7752, and 8038 which involved split 3-3 votes.

Relatedly, FEC staff have reported low morale and satisfaction rates, ranking the agency last among 29 comparable agencies in employee satisfaction. In addition, the FEC has adopted inconsistent telework policies across its workforce. The updated FEC Telework Policy (which applies only to Non-Bargaining Unit (NBU) employees) requires employees to return to the office four to six days each pay period, dependent upon, among other things, whether an employee has supervisory duties.

In contrast, earlier this year, the FEC and National Treasury Employees Union (NTEU) reached an impasse in negotiating an updated telework policy for the FEC bargaining unit employees. As a result, the Federal Service Impasses Panel recently issued a decision that requires bargaining unit employees to return to the office three days each pay period. Specifically, the Panel concluded that the evidence supported greater telework flexibilities for FEC employees on the basis that, *inter alia*, employee productivity, performance, and morale remained the same or increased when employees were afforded greater telework opportunities.

As a result, the current disparity between the number of telework days available to NBU and bargaining unit employees may create an undesired incentive structure for FEC employees. For example, this disparity may cause NBU staff (largely supervisors and managers) to seek alternative employment with greater telework opportunities. It may further disincentivize bargaining unit employees from seeking NBU supervisory positions because doing so would limit their telework flexibilities. Those factors will potentially exacerbate the FEC’s existing human capital challenges detailed in my responses above.

Pay Issues

52 U.S. Code § 30106 provides that “Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315). However, pay for political appointees at the FEC has been frozen since 2019 with little increases over the last 11 years.

As a result, Commissioners' salaries are lower than many personnel in GS 14, 15, and Senior Level (SL) positions. Currently, Commissioner salaries are less than approximately one third of the entire FEC workforce. This unique salary structure has a direct impact on Commissioner morale and may indirectly impact staff morale throughout the agency. The high costs of living and working in and around Washington, D.C. exacerbates the problem.

Question: What actions do you need from Congress to address these challenges?

Congress should consider the FEC's legislative recommendation to revise section 306 of the FECA to require the Staff Director and General Counsel positions to be compensated similar to other senior leaders at the agency. Congress should also revise the FECA and other relevant laws to remove the salary freeze for Commissioners and other appointed officials.

Additionally, Congress should consider the data presented in my testimony and pending Evaluation on FEC Staffing, Hiring, and Retention (Report IE-23-01, to be provided on issuance) and ensure the FEC's funding level is commensurate with its statutory mandate.

Question: In your testimony, you included a table labeled "FEC OIG Open Recommendations (1- 20) as of September 8, 2023." Of the 20 open OIG recommendations, which recommendation do you think would have the greatest positive impact on the agency's ability to execute its mission, if fully implemented?

The recommendations associated with the [Audit Report of the FEC's Human Capital Management](#) warrant action and attention. As detailed further in my response to question #5 above, the auditors concluded that the FEC should develop and implement a plan to strategically manage human capital resources across the agency. The human capital plan should address the FEC's size and needs, succession planning, skills gap analysis, and training.

We continue to encourage the Commission to consider the findings and recommendations in the audit report as the issues documented are a matter of **agency effectiveness, economy, and efficiency** rather than strict regulatory compliance. We also reported to the Commission that efforts to improve the strategic management of human capital at the FEC are subject to budget constraints, workforce reductions, and competing priorities; however, those very challenges further amplify the need for the strategic management of human capital.³

³ CIGIE has implemented a new feature on Oversight.gov where OIG's can label any open recommendation with a "Priority" or "Significant" marker. See [Oversight.gov Data Definitions | Oversight.gov](#).

Please don't hesitate to contact me for additional questions. Thank you for the opportunity to provide this additional information.

A handwritten signature in black ink, appearing to read 'C. Skinner'.

Sincerely,
Christopher Skinner
Inspector General