

FEDERAL TRADE COMMISSION

OFFICE OF INSPECTOR GENERAL



SEMIANNUAL REPORT TO CONGRESS

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Report No. 40



Office of Inspector General

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

October 30, 2008

The Honorable William E. Kovacic
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairman Kovacic:

I am pleased to present the attached report that covers the Office of Inspector General's (OIG) activities for the second half of fiscal year 2008 and is submitted according to Section 5 of the Inspector General Act of 1978, as amended.

During the six-month reporting period ending September 30, 2008, the OIG issued an audit of the FTC administration of leave, and a follow-up report on *Audit of FTC Redress Administration Performed by Analytics, Inc. (AR-06-071)*. The OIG completed a review of the FTC's Implementation of the Federal Information Security Management Act for FY 2008 and issued Management Challenges for inclusion in the FTC's FY 2008 Performance and Accountability Report.

The OIG processed 40 consumer inquiries and complaints/allegations of possible wrongdoing during the reporting period. We opened three new investigations of possible misconduct and closed four investigations.

As in the past, management has been responsive in working with the OIG to implement all proposed recommendations. I appreciate management's support and I look forward to working with you in our ongoing efforts to promote economy and efficiency in agency programs.

Sincerely,

John M. Seeba
Inspector General

INTRODUCTION

The Federal Trade Commission (FTC) seeks to ensure that the nation's markets are competitive, efficient and free from undue restrictions. The FTC also seeks to improve the operation of the marketplace by ending unfair and deceptive practices with emphasis on those practices that might unreasonably restrict or inhibit the free exercise of informed choice by consumers. The FTC relies on economic analysis to support its law enforcement efforts and to contribute to the economic policy deliberations of Congress, the Executive Branch and the public.

AUDIT ACTIVITIES

During the six month reporting period ending September 30, 2008, the OIG completed the following activities:

- *AR 08-002 - Review of the FTC Administration of Leave*
- *AR 08-003 - Follow-up Report on Audit of FTC Redress Administration Performed by Analytics, Inc. (AR-06-071)*
- *AR 08-004 - Review of Federal Trade Commission Implementation of the Federal Information Security Management Act for FY 2008*

Summary Information on Completed Audits

AR 08-002 - Review of the FTC Administration of Leave

The objective of this audit was to determine whether the FTC properly administers leave in accordance with Office of Personnel Management and internal policies and procedures.

As a benefit to employees, the Federal government provides employees several types of leave, many of which are earned because of employment longevity with an agency. The traditional types of leave earned because of employment with the Federal government are annual and sick leave. Other types of leave that can be banked or allowed by statute include court leave, military leave, religious comp time, and Leave Without Pay (LWOP).

We found that overall, the Federal Trade Commission followed the policies and procedures promulgated by OPM for leave management. However, our audit found minor discrepancies in the leave database that were caused by manual input corrections, but these discrepancies did not affect the outcome of this audit. We also found that not all timekeepers interviewed record compensatory overtime work for religious observances in the Federal Personnel and Payroll System (FPPS). Instead, manual records were kept in the local office to control the earning and use of compensatory overtime work for religious observances. In addition, we found that the policy on the charging of military leave needed to be updated because of changes by OPM.

We recommended that the Director, Human Resources Management Office stress to timekeepers the need to record all time in the FPPS, including the earning and use of compensatory overtime work for religious observances; assess the need for training for all new timekeepers; and revise the policy on charging military leave to reflect updated OPM regulations. Management agreed with our recommendations and has initiated corrective actions.

AR 08-003 - Follow-up Report on Audit of FTC Redress Administration Performed by Analytics, Inc.

Our objective was to determine the status of recommendations made to Redress Administration Office's (RAO) in the Audit of FTC Redress Administration Performed by Analytics, Inc. (AR-06-071). The purpose of that audit was to evaluate financial controls in place at Analytics over the redress process and also to assess the RAO oversight of contractor-administered redress. The audit found many effective management controls in place at RAO. The report made eight recommendations to improve RAO's oversight of redress payments.

In this follow-up, we found that the RAO has taken actions which addressed the intent of all eight recommendations from the original report and we consider all issues closed.

AR 08-004 - Review of Federal Trade Commission Implementation of the Federal Information Security management Act for FY 2008

The objectives were to evaluate the adequacy of the FTC's information security program and its procedures for identifying and protecting Personally Identifiable Information (PII) and other Privacy Act concerns. This information is provided to senior management and others to enable them to determine the effectiveness of overall security programs, to ensure the confidentiality and integrity of data entrusted to the FTC, and to develop strategies/best practices for cost effectively improving information security.

A critical component of the FISMA information assurance program monitoring requirements is an independent assessment of program effectiveness by the Inspector General (IG) of the respective federal agency. This assessment is intended to identify weaknesses in agency programs, provide recommendations for corrective actions, and monitor agency success in maintaining the security of agency information assets (hardware, software, data, and system availability). In its FY 2008 FISMA reporting guidance, Office of Management and Budget expanded the scope of the annual FISMA assessment to include evaluation of agency policies and procedures for collecting, storing and protecting privacy information.

This year's OIG review found that the FTC security environment is strong and robust and continues to evolve to expand its coverage and to address changing threats and requirements. FTC management recognizes that continued vigilance, and resource investment is required to continue to protect the data entrusted to its care and secure the availability and integrity of the information technology (IT) systems that are critical to the agency's ability to successfully complete its antitrust and consumer protection missions.

The FTC Information and Technology Management Office (ITMO) has implemented or addressed most of the OIG-identified security vulnerabilities discussed in the prior year evaluation. ITMO took actions that addressed 15 of 19 recommendations at FTC Headquarters and 6 of the 8 recommendations at the San Francisco Regional Office. Our analysis of the current FTC security/privacy control environment identified 12 findings at Headquarters (6 with an estimated LOW severity and 6 MEDIUM). Generally, the recommendations addressed two areas: FTC's efforts to continue revising and updating security policies, and procedures and guidelines and the continued refinement of FTC's system inventory. The major effort for ITM next year will be its focus on establishing a contractor owned and operated network.

Planned Audits

The OIG plans the following activities during the first half of FY 2009:

- *AR 09-001- Audit of the FTC's Financial Statements for Fiscal Year 2008*
- *AR-09-XXX- Audit of FTC's Compliance with Domestic and International Travel Regulations*

AR 09-001- Audit of the FTC's Financial Statements for Fiscal Year 2008

This audit is required annually under the Accountability of Tax Dollars Act of 2002. The purpose of the audit is to express an opinion on the financial statements of the Federal Trade Commission for the fiscal year ending September 30, 2008. The audit will also test the internal controls associated with the FTC's financial system and assess compliance with selected laws and regulations. The audited financial statements are required to be included in the financial section of the agency's Performance and Accountability Report to be issued on or before November 17, 2008.

The size and tight deadlines needed for this audit require that the OIG hire an independent public accountant to perform this work. The OIG will act as the Contracting Officer's Technical Representative (COTR) and provide oversight on the contract.

AR-09-XXX- Audit of FTC's Compliance with Domestic and International Travel Regulations

The objective of this audit will be to determine compliance with applicable travel regulations. We will determine if the FTC Travel program is in compliance with GSA Federal Travel regulations and internal agency travel policies. We will also test the accuracy and integrity of the accounting data related to FTC travel.

We will review the administration of the FTC travel program including but not limited to the following: 1) Administration of the Travel Card program; 2) Review the new automated travel system; 3) Review voucher accuracy; 4) Premium Class travel; and 5) Accounting data.

A new electronic travel system was introduced to FTC employees in August 2006. This audit will cover the dates August 2006 through March 2008 and may be expanded according to initial findings.

Other Potential Reviews

During the year we will also conduct research on the following FTC operations to determine any areas for audit:

- *Review of selected contracts*
- *Inventory controls over accountable property*

INVESTIGATIVE ACTIVITIES

The Inspector General is authorized by the IG Act to receive and investigate allegations of employee misconduct as well as fraud, waste and abuse occurring within FTC programs and operations. Matters of possible wrongdoing are referred to the OIG in the form of allegations or complaints from a variety of sources, including FTC employees, other government agencies and the general public. Reported incidents of possible fraud, waste and abuse can give rise to administrative, civil or criminal investigations.

In conducting criminal investigations during the past several years, the OIG has sought assistance from, and worked jointly with other law enforcement agencies, including other OIGs, the Federal Bureau of Investigation, the U.S. Postal Inspection Service, the U.S. Secret Service, the U.S. Marshals Service, the Internal Revenue Service, U.S. Capitol Police, Federal Protective Service as well as state agencies and local police departments.

Investigative Summary

During this reporting period, the OIG received 40 consumer and other inquiries and reports of possible wrongdoing. Of the 40 complaints, 23 involved issues that fall under the jurisdiction of FTC program components (identity theft, credit repair, Do Not Call violations, etc.). These matters were referred to the appropriate FTC component for disposition. Of the remaining complaints, the OIG opened three new investigations and 10 complaints were closed with no further OIG action. We referred three complaints to another federal agency with appropriate jurisdiction to assist the individual and the remaining complaint is ongoing at the close of this reporting period (i.e., the OIG is currently conducting a preliminary inquiry into the matter).

In one of the foregoing matters referred to the OIG during the current reporting period, we provided investigative resources and support to the Department of Treasury OIG in connection with an ongoing investigation of an employee of that agency.

Following is a summary of the OIG's investigative activities for the six-month period ending September 30, 2008:

Cases pending as of 3/31/08	6
PLUS: New cases	3
LESS: Cases closed	(4)
Cases pending as of 9/30/08	5

Investigations Closed

During this reporting period, the OIG closed four investigations. The first investigation, opened during a prior reporting period, involved an allegation that a GS-15 FTC employee was misusing his Government computer by viewing pornographic images, some of which may have involved minors. Because the alleged misconduct could implicate federal criminal statute, the agency's Human Resources Management Office referred the allegation to the OIG. Evidence obtained by the OIG indicated that the employee affirmatively searched for pornographic internet websites, to include child pornography and/or child erotica, from his FTC office while using his FTC-issued computer. The websites visited by the employee included sites containing child pornography images. The OIG obtained a forensic image of the employee's computer hard drive and forensic analysis revealed that some of the pornographic images that were recovered from the hard drive were identified as child pornography and/or child erotica. The employee's alleged misuse of his Government computer dated back to 2002. Our investigation revealed that the agency's Information Technology Management Office had notified the employee's supervisor about the employee's alleged computer misuse on multiple occasions, dating back to 2005.

The OIG sought to interview the employee, however, through counsel, he exercised his Fifth Amendment right against self-incrimination and refused to submit to questioning. The OIG presented the investigative findings to the Department of Justice (United States Attorney for the District of Columbia). The prosecutor reviewed the evidence and identified images that contained known victims of child pornography and/or exploitation. Although the victims were affirmatively identified, the number of images containing known victims of child pornography and/or exploitation failed to meet the prosecutorial threshold, therefore, DOJ declined criminal prosecution. With this declination, the OIG renewed its attempt to interview the employee. His counsel failed to produce the subject for the required interview.

The OIG transmitted an investigative referral describing administrative violations to the attorney's organizational head, with ultimate supervisory responsibility over both the attorney and the supervisor who had previously been informed of the alleged computer misuse. The OIG was informed that the employee retired shortly after transmittal of the OIG investigative referral.

The OIG closed an investigation opened during the prior reporting period involving alleged misuse of a Government computer and operating a business outside of his FTC employment that may conflict with his official position. The OIG received an allegation that an agency employee was contacting outside attorneys who represented clients in FTC premerger filings in an attempt to sell software marketed by his private business. The employee, through his private business, marketed the software to outside counsel as an aid in their preparation of pre-merger notifications required under the Hart-Scott-Rodino Act of 1976 (HSR). Although the employee had obtained agency approval for his outside business, our investigation revealed that he was using information obtained from sources available to him because of his FTC employment. This contradicted his prior certification to the agency ethics staff that he would not use FTC resources, his official position or any information obtained as a result of his official position to further his private business interests. Our investigation also revealed that the employee installed software on his FTC-issued computer without agency approval and in violation of agency policy. The OIG referred its investigative findings to management for further action.

Another closed investigation involved an allegation that an FTC attorney disclosed nonpublic information without Commission authorization. We received the allegation from counsel representing a respondent (a publicly traded company) in an FTC enforcement matter. Counsel alleged that an agency source was leaking information to individuals in the securities investment industry (e.g., industry analysts and portfolio manager) regarding the FTC's investigative and enforcement activity relating to a particular company and industry. Our investigation uncovered no evidence indicating either (1) that an unauthorized disclosure had occurred, as alleged, or (2) the source of any unauthorized disclosure, assuming that the disclosure had occurred. We closed the matter with no referral of our investigative findings.

The final investigation closed during the reporting period involved an allegation received from an agency supervisor regarding possible misuse of FTC resources. The supervisor suspected that a member of his staff was using Government resources in connection with the operation of the employee's private home-based business. During an OIG investigative interview, the employee admitted to using the FTC email account for the private business and having at least one piece of correspondence (a check) sent to the employee's FTC work address. Although the employee had previously obtained FTC ethics staff approval for the private business, the foregoing actions violated the terms under which agency approval was granted. The approval was contingent upon the employee's certification that FTC resources would not be used in connection with the private business. The OIG referred its investigative findings to the employee's supervisor, who had made the initial allegation, for further action. Management action respecting the referral is pending.

Matters Referred for Prosecution

During this reporting period the OIG did not refer any new matters to the Department of Justice (DOJ) for consideration of potential criminal action. The closed investigative matter, described in the preceding section, was presented to DOJ during a prior reporting period.

Another matter, referred to DOJ during a prior reporting period remains pending at DOJ, with no final action to date.

OTHER ACTIVITIES

During this reporting period, our OIG has sought the technical expertise of the United States Postal Service OIG in conducting an ongoing criminal investigation.

Our Counsel participates regularly in the monthly meeting of the Council of Counsel to the Inspectors General, as well as contributes to the legal discourse within that Council on matters that are germane to the entire IG community.

Management Advisories

The OIG issued no new Management Advisories during this reporting period.

Significant Management Decisions

Section 5(a)(12) of the Inspector General Act requires that if the IG disagrees with any significant management decision, such disagreement must be reported in the semiannual report. Further, Section 5(a)(11) of the Act requires that any decision by management to change its response to a significant resolved audit finding must also be disclosed in the semiannual report. For this reporting period there were no significant final management decisions made with which the OIG disagreed and management did not revise any earlier decisions on OIG audit recommendations.

Access to Information

The IG is to be provided with ready access to all agency records, information, or assistance when conducting an investigation or audit. Section 6(b)(2) of the IG Act requires the IG to report to the agency head, without delay, if the IG believes that access to required information, records or assistance has been unreasonably refused, or otherwise has not been provided. A summary of each report submitted to the agency head in compliance with Section 6(b)(2) must be provided in the semiannual report in accordance with Section 5(a)(5) of the Act.

During this reporting period, the OIG did not encounter any problems in obtaining assistance or access to agency records. Consequently, no report was issued by the IG to the agency head in accordance with Section 6(b)(2) of the IG Act.

Audit Resolution

As of the end of this reporting period, all OIG audit recommendations for reports issued in prior periods have been resolved. That is, management and the OIG have reached agreement on what actions need to be taken.

Review of Legislation

Section 4(a)(2) of the IG Act authorizes the IG to review and comment on proposed legislation or regulations relating to the agency or, upon request, affecting the operations of the OIG. During this reporting period, the OIG reviewed no legislation.

Contacting the Office of Inspector General

Employees and the public are encouraged to contact the OIG regarding any incidents of possible fraud, waste, or abuse occurring within FTC programs and operations. The OIG telephone number is (202) 326-2800. A confidential or anonymous message can be left 24 hours a day. Complaints or allegations of fraud, waste or abuse can also be emailed directly to OIG@ftc.gov. OIG mail should be addressed to:

Federal Trade Commission
Office of Inspector General
Room NJ-1110
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

OIG reports can be accessed via the internet at: www.ftc.gov/oig. A visitor to the OIG home page can download recent (1996-2008) OIG semiannual reports to Congress, the FY 1998 - 2008 financial statement audits, and other program and performance audits issued beginning in FY 1999. A list of audit reports issued prior to FY 1999 can also be ordered via an e-mail link to the OIG. In addition to this information resource about the OIG, visitors are also provided a link to other federal organizations and Offices of Inspector General.

**TABLE I
SUMMARY OF INSPECTOR GENERAL
REPORTING REQUIREMENTS**

<u>IG Act Reference</u>	<u>Reporting Requirement</u>	<u>Page(s)</u>
Section 4(a)(2)	Review of legislation and regulations	8
Section 5(a)(1)	Significant problems, abuses and deficiencies	1-3
Section 5(a)(2)	Recommendations with respect to significant problems, abuses and deficiencies	1-3
Section 5(a)(3)	Prior significant recommendations on which corrective actions have not been made	8
Section 5(a)(4)	Matters referred to prosecutive authorities	7
Section 5(a)(5)	Summary of instances where information was refused	8
Section 5(a)(6)	List of audit reports by subject matter, showing dollar value of questioned costs and funds put to better use	10-11
Section 5(a)(7)	Summary of each particularly significant report	1-3
Section 5(a)(8)	Statistical tables showing number of reports and dollar value of questioned costs	10
Section 5(a)(9)	Statistical tables showing number of reports and dollar value of recommendations that funds be put to better use	11
Section 5(a)(10)	Summary of each audit issued before this reporting period for which no management decision was made by the end of the reporting period	8
Section 5(a)(11)	Significant revised management decisions	7
Section 5(a)(12)	Significant management decisions with which the Inspector General disagrees	7

**TABLE II
INSPECTOR GENERAL ISSUED REPORTS
WITH QUESTIONED COSTS**

	<u>Dollar Value</u>		
	<u>Number</u>	<u>Questioned Cost</u>	<u>Unsupported Costs</u>
A. For which no management decision has been made by the commencement of the reporting period	0	0	0
B. Which were issued during the reporting period	0	0	0
Subtotals (A + B)	0	0	0
C. For which a management decision was made during the reporting period	0	0	0
(i) dollar value of disallowed costs	0	0	0
(ii) dollar value of cost not disallowed	0	0	0
D. For which no management decision was made by the end of the reporting period	0	0	0
Reports for which no management decision was made within six months of issuance	0	0	0

TABLE III
INSPECTOR GENERAL ISSUED REPORTS
WITH RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE

	<u>Dollar Value</u>		
	<u>Number</u>	<u>Questioned</u> <u>Costs</u>	<u>Unsupported</u> <u>Costs</u>
A. For which no management decision has been made by the commencement of the reporting period	0	0	0
B. Which were issued during this period	0	0	0
C. For which a management decision was made during the reporting period	0	0	0
(i) dollar value of recommendations that were agreed to by management	0	0	0
- based on proposed management action	0	0	0
- based on proposed legislative action	0	0	0
(ii) dollar value of recommendations that were not agreed to by management	0	0	0
D. For which no management decision has been made by the end of the reporting period	0	0	0
Reports for which no management decision was made within six months of issuance	0	0	0