



**FMCS**

FEDERAL MEDIATION &  
CONCILIATION SERVICE

# **ANALYSIS OF FMCS SYSTEMS, CONTROLS, AND LEGAL COMPLIANCE**

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December 2023

## **Assurance Statement of the Chief Operating Officer, Performing the Duties of the Director**

The Federal Mediation and Conciliation Service (FMCS)'s senior leaders are responsible for managing risks and maintaining effective internal control to meet the objectives of Sections 2 and 4 of the Federal Managers' Financial Integrity Act (FMFIA) as detailed in the General Accountability Office (GAO)'s *Standards for Internal Control in the Federal Government* (The Green Book) and implemented through the Office of Management and Budget (OMB) Circular A-123. Furthermore, as detailed in OMB Memorandum M-16-17, Agency internal controls are now an integral part of the FMCS's Enterprise Risk Management (ERM) framework.

Based on its annual assessment of the adequacy of its internal controls, the FMCS is able to provide an unmodified statement of assurance that its internal controls and financial management systems met the objectives of FMFIA as of September 30, 2023.

In making this statement, the FMCS relies upon independent and self-assessments of its internal controls. Independent assessments in support of this statement include the results of the annual Federal Employee Viewpoint Survey (FEVS) and the annual Agency financial statement audit. The FMCS also generates a summary assessment of its internal management controls through an annual manager/supervisor questionnaire. Finally, the efforts of the Agency Chief Operating Officer (COO), Chief Information Officer (CIO), Chief Human Capital Officer (CHCO), General Counsel, and Head of Contracting Activity (HCA), and others, similarly provide specific assurances in areas that lie outside the scope of the FEVS, annual audit, or annual management questionnaire.

It is worth noting that the FMCS does not have an Inspector General. Instead, the FMCS relies upon its, General Counsel, Budget Director, and Finance Director to assist with oversight and enforcement activities. Given the small size of the Agency and the strength of its internal controls, I believe that this arrangement is more than reasonable and adequate for meeting the Agency's obligations under FMFIA.

Gregory Goldstein  
Chief Operating Officer, Performing the Duties of the Director

December 20, 2023

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## Introduction

FMCS is an independent Federal agency whose primary statutory mission is to prevent or minimize labor-management disputes affecting interstate commerce by providing mediation, conciliation, and arbitration services. The FMCS performs these activities in both the private and public sectors, except for the railroad and airline industries, which are covered by the Railway Labor Act [45 U.S.C. § 151 et seq.].

The FMCS conducts operations at its Washington, DC headquarters, 6 district offices, and 3 field offices. At the close of 2023, the FMCS had 202 employees, 201 of which were permanent. Of that number, 143 were delivering core services (0241 series). The FMCS receives most of the funding needed to support its operations through direct appropriations.

For 2023, Congress provided the FMCS with an appropriation of \$53.7 million, plus an additional \$482,000 in spending authority for three Economy Act reimbursable employee details.

## **Responsibilities Under OMB Circular A-123**

As detailed in OMB Circular A-123, FMCS is responsible for establishing and maintaining internal control to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations. The FMCS must consistently apply the internal control standards to meet each of the internal control objectives and to assess internal control effectiveness. Annually, management must provide assurances on internal control in its Performance and Accountability Report, including a separate assurance on internal control over financial reporting, along with a report on identified material weaknesses and corrective actions.

Circular A-123 also requires agencies and individual Federal managers to take systematic and proactive measures to (i) develop and implement appropriate, cost-effective internal control for results-oriented management; (ii) assess the adequacy of internal control in Federal programs and operations; (iii) separately assess and document internal control over financial reporting; (iv) identify needed improvements; (v) take corresponding corrective action; and (vi) report annually on internal control through management assurance statements.

## Summary of 2023 Internal Control Review

The FMCS internal controls system is a continuous built-in component of operations, effected by people, that provides reasonable assurance, that the agency's objectives will be achieved, ensures that the FMCS conducts activities efficiently and effectively, reports reliable information about operations, and complies with applicable laws and regulations. Additionally, the FMCS's internal control system provides reasonable assurance that:

- Employees have access to the information they need in order to make sound decisions.
- Obligations and costs are in compliance with applicable laws.
- Assets are safeguarded against waste, loss, and unauthorized use of appropriations.
- Revenues and expenditures applicable to Agency operations are properly recorded and accounted for, permitting accurate accounts, reliable financial reports, and full accountability for assets.
- Programs are efficiently and effectively carried out in accordance with applicable laws and management policy.

During 2023, the FMCS used a managers' questionnaire to review the effectiveness of its internal control systems in accordance with FMFIA and GAO requirements, OMB guidance, and general best practices. The FMCS substantially revised its questionnaire in 2017 to include ERM-related elements and issues and to create a consistent and simplified analysis framework.

The 2023 FMFIA management questionnaire contained 28 questions in a "Yes"- "No" format or on a scale of "Not at all Effective", "Slightly Effective", "Moderately Effective", "Very Effective" or "Extremely Effective."

In all, 23 FMCS managers and supervisors (100 percent of managers/supervisors were determined eligible by the General Counsel's office) responded to the questionnaire. Questionnaire results are tabulated below. For questions of effectiveness, a higher average score indicates that respondents felt the FMCS was more effective in the area of concern. Yes/No question results are expressed as a percentage which indicates the percentage of "Yes" answers.

While the overall result of the questionnaire indicates that the FMCS is very to extremely effective in most areas, responses to several questions suggest room for improvement. Some concerns were centered around the ability for offices or regions to carry out its work if an employee was unexpectedly absent for 10 consecutive days or longer, financial resources allocated to help meet performance goals and/or objectives, and emergency COOP plans that are documented and communicated. The response concerning financial resources to support goals may be indicative of possible limited availability of federal funding.

The FMCS questionnaire also provided respondents with an opportunity to expand upon provided answers or to address other areas of concern. Seven respondents provided additional comments. One respondent commented about the need for additional staffing to meet the FMCS's mission. Another respondent commented that there is ongoing concern about gaps in their coordination of activities across units and the lack of tools for creating, managing, and using SOPs. A repeated concern in the additional comments was for better communication regarding COOP.

## Results of FMFIA Manager Questionnaire, 2023

<b>Mission and Employee Performance</b>	<b>2023</b>
Organizational Clarity Maintained	100%
Performance Goals Written	91%
Supervisor Reviews Performance Goals	96%
Subordinates Review Performance Goals	100%
Goals Support FMCS Mission	4.4
<b>Operational Issues</b>	
Business Processes Written	91%
Subordinates Review Business Processes	96%
Business Processes Support Operations	4.2
Subordinates Follow Business Processes	4.1
Standard Operating Procedures Written	87%
Subordinates Follow SOPs	4.2
Operations Sustainable During Extended Absence	3.5
Position Description Matched to Job Duties	4.3
Subordinates Perform Duties	4.5
Subordinates Effectuate Improvements	4.1
Financial Resources Support Goals	3.8
Material Resources Support Goals	4.1
<b>Compliance Issues</b>	
Procedures Protect Against Fraud & Abuse	4.0
Capital Assets Safeguarded	4.1
Improper Travel Reimbursements Prevented	4.3
Improper Procurement Card Purchases Prevented	4.1
Accurate Time & Attendance Ensured	4.0
Practices Prevent Workplace Discrimination	4.2
Prevent Ethics Violations	4.0
Communication Systems Help Meet Goals	4.3
Computer Access Rules Protect Agency Data	4.2
Emergency Plans Documented	3.6
Emergency Plans Communicated	3.4

The FMCS evaluated its management control systems for operations for the fiscal year ended September 30, 2023. The result is that the FMCS can provide reasonable assurance that internal controls over operations were operating effectively as of September 30, 2023.

## Statement of Assurance

Section 2 of FMFIA requires that Federal agencies report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal controls.

Based on its annual assessment of the adequacy of its internal controls, the FMCS is able to provide an unmodified statement of assurance that its internal controls met the objectives of FMFIA as of September 30, 2023.<sup>1</sup>

In making this assessment, the FMCS relies upon evaluations in the following areas:

### **Training**

The FMCS requires its employees to complete a variety of trainings to ensure its workforce meets IT security, ethics, and procurement standards. Highlights from 2023 include:

- 91% of all employees completed annual IT security awareness training.
- 100% of all new employees completed ethics training during onboarding.
- 82% of all employees required to file an Office of Government Ethics (OGE) Form 450 completed annual ethics training.
- 94% of all 17 Contracting Officer Representative (COR)s have completed (re)certification within the past two years.
- 100% of all 26 procurement card holders have completed (re)training within the past three years.

### **Federal Employment Viewpoint Survey (FEVS)**

The Office of Personnel Management administers the annual FEVS to help measure employees' perceptions of whether, and to what extent, conditions characterizing successful organizations are present in their agencies. Survey results provide valuable insight into the challenges agency leaders face in ensuring that they maintain an effective and motivated workforce. The FMCS has consistently scored as one of the best places to work in the Federal Government, including #1 rankings among small agencies in 2017 and 2018.

A few highlights from the 2023 FEVS results for the FMCS:

- 60.8% Response rate overall.
- 100% responded positively that *“My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals.”*
- 90% responded positively to *“My agency is successful at accomplishing its mission.”*
- 86% responded positively that *“I know how my work relates to the agency's goals.”*
- 100% responded positively that *“Employees are protected from health and safety hazards on the job.”*

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<sup>1</sup> An “unmodified” opinion is equivalent to a “clean” or “unqualified” opinion under American Institute of Certified Public Accountants (AICPA) standards.



## **Federal Information Security Management Act (FISMA)**

As mandated by FISMA, the FMCS continues to maintain an information security program to support the confidentiality, integrity, and availability of agency information and information systems. The FMCS has been working diligently throughout FY 2023 to protect agency information systems, electronic assets and the information contained on them. The agency has performed routine IT security and maintenance operations, as well as implementing programmatic and technological improvements to reduce agency cybersecurity risks.

The FMCS IT accomplishments for FY 2023 related to FISMA include the following: continued participation in the CDM Defend F dashboard enabling Okta based Multi-Factor Authentication (MFA) for all employees using Qualys agents aligned with DHS CISA's distributed and automated CDM initiatives, 100 percent implementation for all FMCS's users to require PIV for computer login and MFA access to all Office 365 and Azure based applications and services, 99.9 percent network migration from physical on premises network to MS Azure cloud based infrastructure, greatly increasing our flexibility and COOP capabilities, successful launch of a web based notice submission and service request portal to eliminate paper forms (F-7, IAA, Requests for Mediation Services) and reduce repetitive and error prone data input by private, public, and other federal customers. Implementation of Microsoft Intune for all GFE devices. Discontinuance of Bring Your Own Device (BYOD) access for all FMCS employees and contractors. Implementation of Zscaler suite to manage cloud based security and remote access.

FISMA requires that the FMCS maintain a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets. Within this framework the FMCS must provide information security controls proportionate with the risk and potential harm of not having these controls in place. Furthermore, FISMA requires that the FMCS report "significant deficiencies" found under FISMA as material weaknesses under FMFIA.

*Multi-Factor Authentication* – In FY 2023 the FMCS has fully implemented PIV based security for computer login and MFA based authentication to all Office 365 and azure-based applications for all users. The FMCS has configured secure cross-agency VPN based connection paths utilizing Zscaler agents for OPM, Treasury and USDA sites requiring PIV access from defined points.

*Cloud First* – In FY 2023 the FMCS has completed the migration of the critical physical network infrastructure to Microsoft Azure based networking, including our COOP environment, leaving only a basic physical network for local end users to provide secure internet access and work-suite physical security capabilities. The FMCS continues to leverage OneDrive and SharePoint for file storage and shared information for all users. Information on traditional servers has been migrated to azure based virtual servers. All file shares, directories and shared data stores have been migrated to azure based virtual servers or SharePoint based Teams sites and all physical on-site servers have been virtualized and retired.

*Secure Configurations* – In FY 2023 the FMCS has continued the practice of updated baseline computer imaging so all computers are created with the same initial image, to include automated Hardware Asset Management (HWAM), Software Asset Management (SWAM), remote patch and update installation capabilities using Endpoint Central, Carbon Black, AlienVault, Microsoft Intune and Azure MS Defender agents. The FMCS has continued to expand the Continuous Diagnostics and Mitigation (CDM) capabilities by fully participating in DHS Shared Services Defend F project installing Qualys agents on all computers

and sharing the collected data with DHS CISA. The FMCS currently employes several Multi-Factor Authentication methods, including Microsoft Authenticator, Google Authenticator, Okta Authenticator, Duo authenticator, OMB Max PIV authentication and Login.gov for the various security configurations throughout the partially integrated federal workspace.

In FY 2023 the FMCS implemented Zscaler agents on all computers and mobile devices to allow for the sundown of the physical VPN appliances. The FMCS has fully implemented Microsoft Intune for device management of all GFE issued laptops and mobile devices to control software and hardware installation and customization and successful sunset of connections of all BYOD devices for the FMCS users in federal workspace.

*Continuity of Operations (COOP) and Disaster Recovery* – The FMCS participated in the executive branch 2023 COOP exercise, which tested the Agency communications capabilities between normal operating locations and alternate operating facilities. The FMCS physical COOP network environment has been fully virtualized. The FMCS maintains a COOP and alternate work/disaster recovery site. In the event of a national or local emergency, the FMCS believes that it will be able to maintain core operations without significant disruption. Zscaler agents allow for the FMCS security controls to be pushed to the user endpoint device so regardless of location or network connection, FMCS electronic assets are operating in a controlled and secure manner.

### **Biennial Fee Reviews**

OMB Circular A-25 requires that agencies conduct a biennial review to determine whether user fees should be charged for government goods or services and, if so, to establish charges that accurately reflect market conditions.

The FMCS sets two different user fees. On an annual basis the FMCS reviews its payroll costs and establishes an Economy Act [31 U.S.C. § 1535] rate for the FMCS mediator-provided training and mediation. The rate in 2023 reflected agency costs of \$130/hour, including wages and benefit costs of \$90, administrative support of \$27, and \$13 for overhead.

Biennially, The FMCS also reviews the fees that it charges for its arbitrator listing and arbitration panel request fees. As a result of this review, the FMCS increased its arbitration service fees in 2023. In addition, the FMCS Institute for Conflict Management uses the Economy Act rate, private instructor fees, and direct facility costs to set prices for each training course it offers.

### **Improper Payments Information Act (IPIA) of 2002**

The Improper Payments Information Act of 2002 (IPIA) requires each executive branch agency to annually review all programs and activities it administers and identify those that may be susceptible to significant improper payments. Significant improper payments are defined as annual improper payments in a program exceeding both 2.5 percent of program payments and \$10 million. For programs susceptible to significant improper payments, the Act requires agencies to report the estimate of improper payments and actions to reduce them. OMB Circular A-123, Appendix C, Requirements for Effective Measurement and Remediation of Improper Payments, issued in August 2006, provides guidance to implement the requirements of the Act and clarifies and updates the requirements in order to support government-wide IPIA compliance.

In accordance with IPFA, the FMCS reviewed its programs and activities for susceptibility to significant improper payments. Approximately 85 percent of the FMCS's 2023 appropriations were dedicated to employee pay and benefits, rent, and reimbursement for employee travel. The remainder of agency expenses consists of vendor payments for goods and services provided to the agency. Thus, the FMCS is not susceptible to and has not identified any significant problems with improper payments. The Agency is nonetheless committed to continuous improvement in the overall accuracy of its accounts payable process.

## Statement of Assurance for Internal Control over Financial Reporting

Section 4 of FMFIA requires that Federal agencies also report on the basis of annual assessments, any material weaknesses that have been identified in connection with their controls over financial reporting.

Based on its annual assessment of the adequacy of its internal controls over financial reporting, the FMCS is able to provide an unmodified statement of assurance that its internal controls met the objectives of FMFIA as of September 30, 2023.<sup>2</sup>

In making this assessment, the FMCS relies upon evaluations in the following areas:

### **Financial Management Systems**

The Federal Financial Management Improvement Act of 1996 (FFMIA) requires agencies to implement and maintain financial management systems that substantially comply with the following three FFMIA Section 803(a) requirements:<sup>3</sup> (1) Federal Financial Management Systems Requirements, (2) applicable Federal accounting standards, and (3) the US Standard General Ledger (USSGL) at the transaction level.

Based on reviews conducted by its independent auditors, the FMCS remained in compliance with FFMIA and the FMCS financial system through its shared service provider Treasury-ARC continues to comply with GAO principles and requirements.

### **Annual Financial Statement Audit**

Although the independent audit of the FMCS's annual financial statements does not test all controls relevant to the operating objectives broadly defined by FMFIA, an unmodified audit provides additional and strong evidence that the FMCS is meeting FMFIA requirements.

In 2023, the FMCS received an unmodified opinion from its independent auditors. This marks the 23rd consecutive year that the FMCS has received a “clean” audit opinion.

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<sup>2</sup> An “unmodified” opinion is equivalent to a “clean” or “unqualified” opinion under American Institute of Certified Public Accountants (AICPA) standards.

<sup>3</sup> FFMIA, Pub. L. No. 104-208, div. A., § 101(f), title VIII, 110 Stat. 3009, 3009-389 (Sept. 30, 1996), *reprinted in* 31 U.S.C. § 3512, Statutory Note.

## Appendix A – Statistical Summary of Performance

### Section 2: Internal Control Systems

Overall Compliance: Yes

Year Achieved: 1993

Pending Material Weaknesses: None

**Table 1: Internal Control Material Weaknesses**

<b>Fiscal Year</b>	<b>Number Reported</b>	<b>Number Corrected</b>	<b>Number Pending</b>
1998	2	2	None
1999	None	N/A	N/A
2000	None	N/A	N/A
2001	None	N/A	N/A
2002	None	N/A	N/A
2003	None	N/A	N/A
2004	None	N/A	N/A
2005	None	N/A	N/A
2006	None	N/A	N/A
2007	None	N/A	N/A
2008	None	N/A	N/A
2009	None	N/A	N/A
2010	None	N/A	N/A
2011	None	N/A	N/A
2012	None	N/A	N/A
2013	None	N/A	N/A
2014	None	N/A	N/A
2015	None	N/A	N/A
2016	None	N/A	N/A
2017	None	N/A	N/A
2018	2	0	2
2019	2	0	2
2020	None	2	0
2021	None	N/A	N/A
2022	None	N/A	N/A
2023	None	N/A	N/A

**Section 4: Financial Management Systems**

Overall Compliance: Yes

Year of Compliance with Financial Information Standards: 1993

Year of Compliance with Systems Functional Standards: 1993

Pending Material non-Compliance: None

**Table 2: Financial Management Systems Material Non-Compliance**

<b>Fiscal Year</b>	<b>Number Reported</b>	<b>Number Corrected</b>	<b>Number Pending</b>
1998	None	N/A	N/A
1999	None	N/A	N/A
2000	None	N/A	N/A
2001	None	N/A	N/A
2002	None	N/A	N/A
2003	None	N/A	N/A
2004	None	N/A	N/A
2005	None	N/A	N/A
2006	None	N/A	N/A
2007	None	N/A	N/A
2008	None	N/A	N/A
2009	None	N/A	N/A
2010	None	N/A	N/A
2011	None	N/A	N/A
2012	None	N/A	N/A
2013	None	N/A	N/A
2014	None	N/A	N/A
2015	None	N/A	N/A
2016	None	N/A	N/A
2017	None	N/A	N/A
2018	None	N/A	N/A
2019	None	N/A	N/A
2020	None	N/A	N/A
2021	None	N/A	N/A
2022	None	N/A	N/A
2023	None	N/A	N/A

## Appendix B – Review Process

### Assessable Units

Number of assessable units: 10

Number of alternative reviews planned: 1; conducted: 1

Percentage of assessable units reviewed in-depth: 60%

In FY 2023, the FMCS created an Operational Security and Emergency Management (OSEM) office within the COO Office. This change was in response to the Presidential release of the National Security Presidential Memorandum-28 (NSPM-28), mandating that every Executive Branch agency implement operational security measures by December 31, 2022. In December 2022, the FMCS released Directive 5812: Operational Security Program, which lists several actions that FMCS must take to meet the requirements of NSPM-28. Prior to the new FMCS OSEM, the FMCS had employees with duties focused on personnel and physical security in the Offices of Human Resources and Procurement and Operational Support (Procurement). It also had employees with secondary duties focused on Continuity of Operations (COOP) in the Offices of Procurement and Information Technology. The new OSEM consolidated all security, emergency management, and operational programs within the agency to meet the requirements of NSPM-28. The FMCS is also hopeful that the new OSEM will address the concerns expressed in the 2023 FMFIA questionnaire regarding emergency plans that are documented and communicated.

## **Appendix C – Progress Report of High Risk Areas**

Not Applicable



## **Appendix D – Material Weaknesses in Internal Controls**

None Reported