

REPORT NO. 567  
SEPTEMBER 17, 2021

OFFICE OF  
**INSPECTOR  
GENERAL**

OFFICE OF AUDITS

**DERA STAFF RESEARCH AND  
PUBLICATIONS SUPPORT THE SEC'S  
MISSION, BUT RELATED CONTROLS AND  
AGENCY-WIDE COMMUNICATION AND  
COORDINATION COULD BE IMPROVED**



OFFICE OF  
INSPECTOR GENERAL

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

**M E M O R A N D U M**

September 17, 2021

**TO:** Jessica Wachter, Director and Chief Economist, Division of Economic and Risk Analysis

**FROM:** Carl W. Hoecker, Inspector General 

**SUBJECT:** *DERA Staff Research and Publications Support the SEC's Mission, But Related Controls and Agency-wide Communication and Coordination Could Be Improved, Report No. 567*

Attached is the Office of Inspector General (OIG) final report detailing the results of our evaluation of Division of Economic and Risk Analysis (DERA) staff research and publication activities. The report contains four recommendations that should help improve DERA's related internal controls and better communicate and coordinate with other U.S. Securities and Exchange Commission divisions and offices regarding such activities.

On August 19, 2021, we provided management with a draft of our report for review and comment. In its September 9, 2021 response, management concurred with our recommendations. We have included management's response as Appendix II in the final report.

Within the next 45 days, please provide the OIG with a written corrective action plan that addresses the recommendations. The corrective action plan should include information such as the responsible official/point of contact, timeframe for completing required actions, and milestones identifying how management will address the recommendations.

We appreciate the courtesies and cooperation extended to us during the evaluation. If you have questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

Attachment

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# EXECUTIVE SUMMARY

## DERA Staff Research and Publications Support the SEC's Mission, But Related Controls and Agency-wide Communication and Coordination Could Be Improved

REPORT NO. 567 | SEPTEMBER 17, 2021

### WHY WE DID THIS EVALUATION

Staff from the U.S. Securities and Exchange Commission's (SEC or agency) Division of Economic and Risk Analysis (DERA or the Division) develop and implement novel research on a variety of topics germane to the SEC's mission and publish the results of that research in a wide range of academic and practitioner journals, conference volumes, and scholarly books. Staff may complete research products as part of their official work or during their personal time. According to agency officials, between fiscal year 2018 and fiscal year 2020, DERA staff submitted 116 working papers and items of personal research for review and clearance for public release.

We conducted this evaluation to evaluate the role DERA staff's research and publications—including working papers, academic publications, and other published research—play in furthering the mission of the SEC; and to determine whether effective controls exist to (a) review and approve staff research and publications, and (b) safeguard SEC nonpublic or other sensitive information used for such activities.

### WHAT WE RECOMMENDED

We made four recommendations to further strengthen internal controls over staff research and publications activities, as well as communication and coordination with internal stakeholders. Management concurred with our recommendations, which will be closed upon completion and verification of corrective actions.

### WHAT WE FOUND

DERA provides, among other things, insights from scientific research in support of the SEC's mission, including its rulemaking, enforcement, and examinations functions. As such, management has recognized the importance of staff research and publication activities, and established procedures to address common issues that arise, including issues related to data usage and outside activities. Nonetheless, management can improve its internal control over staff's research and publication activities. Specifically, we found that DERA does not:

- formally track working papers and refereed reports, or how staff research and publications advance a subpart of the SEC's mission;
- review working papers and personal research before staff submit them to the SEC Office of Ethics Counsel for the Office of General Counsel's review and clearance for public release; or
- centrally maintain records related to staff research and publication activities.

Implementing these or similar control activities would provide the organization with greater assurance that it is achieving its objectives in this area and effectively mitigating related risks. Without such control activities, management may not have a complete picture of how organizational resources are used (when applicable), how staff research advances a subpart of the SEC's mission, and whether research is addressing agency needs across mission areas. In addition, management may lack assurance that working papers, personal research, and supporting documents submitted to the SEC's Office of Ethics Counsel and reviewed by the Office of General Counsel are complete, accurate, and ready for review and clearance. Finally, the lack of complete, centralized records could present challenges over time, particularly if key personnel have separated from the agency.

Additionally, to ensure other SEC divisions and offices are aware of research in progress and to obtain information on any relevant rulemaking or pending litigation, DERA e-mails various SEC management and staff a quarterly communication known as *DERA's Research Pipeline*. We surveyed personnel from 13 SEC divisions and offices that received the *Research Pipeline*, and they generally found DERA's research to be useful and an effective recruitment tool for hiring economists. However, a third of respondents felt that DERA could better communicate and coordinate staff research and publication activities. Specifically, we found DERA has not clearly identified and communicated its expectations to other divisions and offices. In addition, DERA has not established controls to ensure (1) all pending staff research and publications are timely listed in *DERA's Research Pipeline* before research is made public; (2) the quarterly e-mails are released timely and consistently; and (3) stakeholders in other divisions or offices have sufficient information to understand the significance of the research that is included. Through improved communication and coordination, SEC divisions and offices could better assess and comment on DERA staff research in progress, thereby better meeting the needs of all divisions and offices, including DERA.

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# Abbreviations

|                                   |   |
|-----------------------------------|---|
| <b>DERA or the Division</b>       | Division of Economic and Risk Analysis  |
| <b>FY</b>                         | fiscal year                             |
| <b>GAO</b>                        | U.S. Government Accountability Office   |
| <b>OEC</b>                        | Office of Ethics Counsel                |
| <b>OGC</b>                        | Office of the General Counsel           |
| <b>OIG</b>                        | Office of Inspector General             |
| <b>SEC, agency, or Commission</b> | U.S. Securities and Exchange Commission |
| <b>SSRN</b>                       | Social Science Research Network         |

# Background and Objective

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## BACKGROUND

The U.S. Securities and Exchange Commission (SEC, agency, or Commission) regulations encourage agency staff to “engage in teaching, lecturing, and writing activities with or without compensation.” However, when conducting these activities, Commission employees shall not (1) use confidential or nonpublic information without formal Commission approval on the basis of public interest; (2) make comments on pending litigation in which the Commission is participating as a party or *amicus curiae*;<sup>1</sup> or (3) make comments on rulemaking proceedings pending before the Commission that would adversely affect the operations of the Commission.<sup>2</sup> Historically, SEC management has recognized the importance of staff research and publication activities. For example, a stated agency priority for fiscal year (FY) 2017 was to “Further promote public dialogue and stimulate academic debate on matters impacting the financial markets through increased publication of white papers and working papers on a variety of topics that are not the subject of current SEC rulemaking priorities.”<sup>3</sup> Furthermore, at the SEC’s annual awards ceremony, management has previously honored individuals and teams in the agency’s Division of Economic and Risk Analysis (DERA or the Division) who display “outstanding leadership in research that furthers the Commission’s knowledge of economics and finance.”<sup>4</sup>

Within the SEC, DERA provides impartial quantitative and qualitative economic analyses, accurate and reliable data, and insights from scientific research in support of the agency’s mission, including its rulemaking, enforcement, and examinations functions. DERA staff (primarily, economists) produce a variety of reports and publications including white papers, working papers, personal research, academic publications, refereed reports, and other work products. Staff may complete these research products, which we further describe below, as part of their official work or, if applicable, during their personal time. In addition, working papers, personal research, academic publications, and other work products may be published or released publicly outside the agency and may include staff’s personal by-line. However, these papers should include a disclaimer that the paper reflects the views of the author(s) and not necessarily those of the Commission, the Commissioners, or other members of the staff.<sup>5</sup>

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<sup>1</sup> “Amicus curiae” is defined as one (such as a professional person or organization) that is not a party to a particular litigation but that is permitted by the court to advise it in respect to some matter of law that directly affects the case in question.

<sup>2</sup> 17 C.F.R. § 200.735-4 – *Outside employment and activities*.

<sup>3</sup> U.S. Securities and Exchange Commission, *FY 2016 Agency Financial Report*; November 14, 2016.

<sup>4</sup> Economic Research Award citation, last awarded at the 65<sup>th</sup> Annual SEC Awards Ceremony (held in November 2020).

<sup>5</sup> The Commission requires that all work products released publicly while staff are employed by the Commission (including but not limited to white papers, working papers, economic notes, presentations, and personal research), include the following standard SEC disclaimer: “The Securities and Exchange Commission disclaims responsibility for any private publication or statement of any SEC employee or Commissioner. This [article, outline, speech, chapter] expresses the author’s views and does not necessarily reflect those of the Commission, the [other] Commissioners, or [other] members of the staff.” This requirement applies even if staff never used any SEC resources or SEC time to complete the work or the work was created before staff’s employment with the Commission.

- **White papers** address a particular issue or topic of interest to the Commission and reach a broader audience beyond academics. If made public, white papers are published solely on the SEC's website and may not be published in an academic journal or other independent venue outside the agency. We did not include white papers as part of our review, as they are SEC products and, as page 7 of this report states, the focus of our evaluation was research and publications completed by individual staff.
- **DERA working papers** (referred to within this report as working papers) are research papers disseminated to stimulate discussion and critical comment that investigate a broad range of issues relevant to the SEC's mission. DERA staff can author or co-author working papers using SEC resources—including data, computers, and/or software—during official duty hours. In addition to having access to more resources, such working papers involve more input and discussion with management. Generally, working papers are released as part of the SEC's DERA Working Paper Series;<sup>6</sup> however, working papers are not approved by the Commission, reflect only the views of the author(s), and include additional disclaimer language to make this clear.<sup>7</sup> If staff write a working paper with an outside co-author, they must comply with certain requirements before public release.
- **Personal research** is similar to working papers but drafted on staff's personal time without SEC resources. Personal research contains the standard SEC disclaimer but should not include the additional disclaimer for DERA working papers.
- **Academic publications** are papers that may be published in a wide range of academic and practitioner journals, conference volumes, and scholarly books. Staff may publish working papers and personal research as academic publications.
- **Refereed reports** are peer reviews completed by DERA staff of an outside author's paper<sup>8</sup> and completed as part of staff members' official duties or in their personal time (and, in the latter case, may be done for a small stipend).
- **Other work products** include slides, speeches, or outlines.

To ensure other SEC divisions and offices are aware of research in progress and to obtain information on any relevant rulemaking or pending litigation before working papers or personal research are made public, DERA e-mails various SEC management and staff a quarterly communication known as *DERA's Research Pipeline*, or *Research Pipeline*. This communication, which DERA initiated in June 2019, primarily focuses on working papers intended for external distribution but may include staff's personal

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<sup>6</sup> Working papers in the series can be accessed at <https://www.sec.gov/dera/staff-papers>. They may also be published in academic or financial journals.

<sup>7</sup> Along with the standard SEC disclaimer, staff must also include the following disclaimer in any paper for which staff used SEC resources or SEC time: "This paper is part of the Division of Economic and Risk Analysis' Working Paper Series. Papers in this series are the work of the authors and not the work of the Division or the Commission. Inclusion of a paper in this series does not indicate a Division or Commission determination to take any particular action or position. References to this paper should indicate that the paper is a 'DERA Working Paper.'"

<sup>8</sup> A paper submitted to others in their field of expertise for a peer review, or "referee." The referee, in part, controls the dissemination of research data to ensure that unwarranted claims, unacceptable interpretations or personal views are not published without prior expert review.

research. The *Research Pipeline* typically includes the title of each research project, the author's name, high-level summary information, the SEC subpart mission focus, the status of the work, and estimated timelines. Although recipients of *DERA's Research Pipeline* are subject to change, as of January 2021, they typically include staff from (1) the Commissioners' offices; (2) the divisions of Corporation Finance, Enforcement, Examinations, Investment Management, and Trading and Markets; and (3) the offices of the Chief Accountant, Credit Ratings, Municipal Securities, and Public Affairs.

Periodically, agency officials have raised concerns about the role DERA staff working papers, personal research, and academic publications play in the SEC's overall mission, and how such research and publications may impact agency activities, including rulemaking. Other concerns have been raised about safeguarding nonpublic SEC information and data sets used in staff research, and whether the agency can guard against reputational and other risks if a DERA staff member publishes nonpublic information after the DERA staff member leaves the SEC. Conversely, DERA management and other officials have stated that authoring, co-authoring, and publishing research is critical to the SEC's ability to recruit and retain talented economists. DERA management and other officials have also stated that DERA staff research and publications support the SEC's mission, as well as the missions of other agency divisions and offices.

**Federal Regulations and SEC Controls Over Outside Activity and Protecting Nonpublic Information.** Although we did not identify any specific federal regulations governing research and publications, there are requirements for federal employees that are applicable to DERA staff and their research and publication activities. These include requirements relating to seeking outside employment, compensation for outside activities, use of official title, use of nonpublic information, and disclosure of confidential information. As previously stated, the Commission encourages employees to engage in teaching, lecturing, and writing activities unless prohibited by law, Executive Order, or Office of Government Ethics regulations. Additionally, such activities may not publicly disseminate nonpublic information filed with the Commission, obtained by the Commission, or generated within the Commission unless the Commission gives formal approval for the use of such information on the basis of public interest.<sup>9</sup> Moreover, a federal employee:

- shall not receive compensation from any source other than the Government for teaching (with limited exceptions), speaking, or writing that relates to the employee's official duties; and
- may use, or permit the use of, his or her title in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States.<sup>10</sup>

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<sup>9</sup> The SEC defines "nonpublic information" as including, but not limited to, "SEC Information that is protected from disclosure by law, or any information that the loss, misuse, unauthorized access or modification of which could adversely affect national interests, the conduct of SEC programs, or the privacy to which individuals are entitled under the Privacy Act." In addition, "SEC Information" includes all data, physical or otherwise, that is created, developed, processed, managed, owned, and/or received by or on behalf of the SEC (SEC Administrative Regulation 23-2 *Safeguarding Nonpublic Information*, September 19, 2018).

<sup>10</sup> 5 C.F.R. § 2635.807 – *Teaching, speaking and writing*.

SEC Administrative Regulation 6-69, *Advance Approval of Outside Employment and Activities*, establishes additional requirements staff must follow, and stipulates that staff must receive pre-approval for eligible outside employment—including serving as a teacher, writer, or speaker, whether paid or not—before such activity commences.

In addition, a federal employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.<sup>11</sup> To mitigate the unauthorized access or release of nonpublic data or other nonpublic information, including release through staff research and publication activities, the SEC has developed internal regulations, guidance, procedures, and required staff training. For example:

- SEC Administrative Regulation 23-2, *Safeguarding Nonpublic Information*, provides guidance for how staff should protect nonpublic information, guidance staff should follow when disclosing nonpublic information, and how to report a loss, damage, or unauthorized disclosure.
- SEC Administrative Regulation 2-1, *Data Access, Use, and Internal Sharing Policy*, establishes uniform policies, authorities, responsibilities, and procedures for data handling within the SEC.
- The SEC's Office of the Ethics Counsel (OEC) Handbook notes that staff may not divulge nonpublic information to any unauthorized person and that nonpublic information may include any information that staff members access in the performance of official duties that they know, or reasonably should know, has not been made available to the public.
- OEC and the SEC's Office of the General Counsel (OGC) provide guidance for staff on handling and protecting nonpublic information through new employee orientation training. DERA management also requires new staff to complete additional training related to research, data resources, and usage.
- All SEC staff are subject to annual training requirements that address protecting nonpublic information, as well as annual ethics reviews.
- Data sets owned by SEC divisions or offices may require dataset-specific training or debriefs before staff are allowed access.
- Exit procedures require that supervisors confirm that an employee is not removing nonpublic or sensitive information from the SEC when an employee separates from the agency.

Furthermore, the SEC's Office of Information Technology, Information Security Branch, has processes in place to reduce the likelihood that staff transmit nonpublic or sensitive information outside the SEC, and monitors all SEC systems for attempts to access systems without appropriate permissions, although there are limitations to these processes.

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<sup>11</sup> 5 CFR § 2635.703 – *Use of nonpublic information*.

**The DERA Guidelines.** To establish standard operating procedures and provide general information on common issues and frequently asked questions related to data usage, research, and outside activities that arise during staff research and publication activities, in December 2019, DERA management issued *Guidelines on Data Usage, Research, and Outside Activities* (the DERA Guidelines).<sup>12</sup> Among other things, the DERA Guidelines establish procedures staff must follow—including coordinating as needed with DERA’s Office of the Chief Counsel, OEC, and OGC—when staff develop, work on, and publish research; complete a working paper or personal research; and referee an outside author’s paper. Management further updated the DERA Guidelines in December 2020. Table 1 summarizes certain DERA Guideline requirements.

**TABLE 1. Summary of Certain DERA Guideline Requirements**

| DERA Guideline Requirements  | Working Papers | Personal Research | Refereed Reports |
|--|----------------|-------------------|------------------|
| <i>Staff must . . .</i>  |                |                   |                  |
| Notify supervisor of intent to begin research and publication activities or receive supervisory approval before peer reviewing outside publications as part of staff’s official duties.  | Yes            | No                | Yes              |
| Request approval in advance (via the agency’s Outside Employment Module) if work will be conducted during staff’s personal time regardless of compensation.  | Not Applicable | No <sup>13</sup>  | Yes              |
| Consult with DERA’s Office of the Chief Counsel, as early as possible, to confirm that the intended use of any data sets available to staff (including data from non-SEC websites and data provided by co-authors) is permitted. Request the Office of the Chief Counsel’s permission to use certain data sets subject to additional conditions by completing a Data Use Request Form. | Yes            | Not Applicable*   | Not Applicable*  |
| Obtain authorization (via a Commission vote) to use or release SEC nonpublic data, or release any analysis using SEC nonpublic data, if applicable.  | Yes            | Not Applicable*   | Not Applicable*  |
| Obtain a written acknowledgment from any outside co-author(s), if applicable, that their work is being provided gratuitously.  | Yes            | No                | Not Applicable   |
| Complete a one-page research summary template for <i>DERA’s Research Pipeline</i> to share summary information about the project with other SEC divisions and offices.   | Yes            | Optional          | Not Applicable   |
| Submit the completed paper to OEC (via SEC Form 2432, <i>Publication and Speech Clearance Request</i> ) for review and clearance by OGC before public release.   | Yes            | Yes               | No               |
| Ensure the completed paper includes the appropriate disclaimer language.   | Yes            | Yes               | No               |

Source: SEC Office of the Inspector General (OIG)-generated summary of DERA’s Guidelines on Data Usage, Research, and Outside Activities.

\*Personal research and refereed reports are prohibited from using data sets available to staff, SEC nonpublic data, or analysis using SEC nonpublic data.

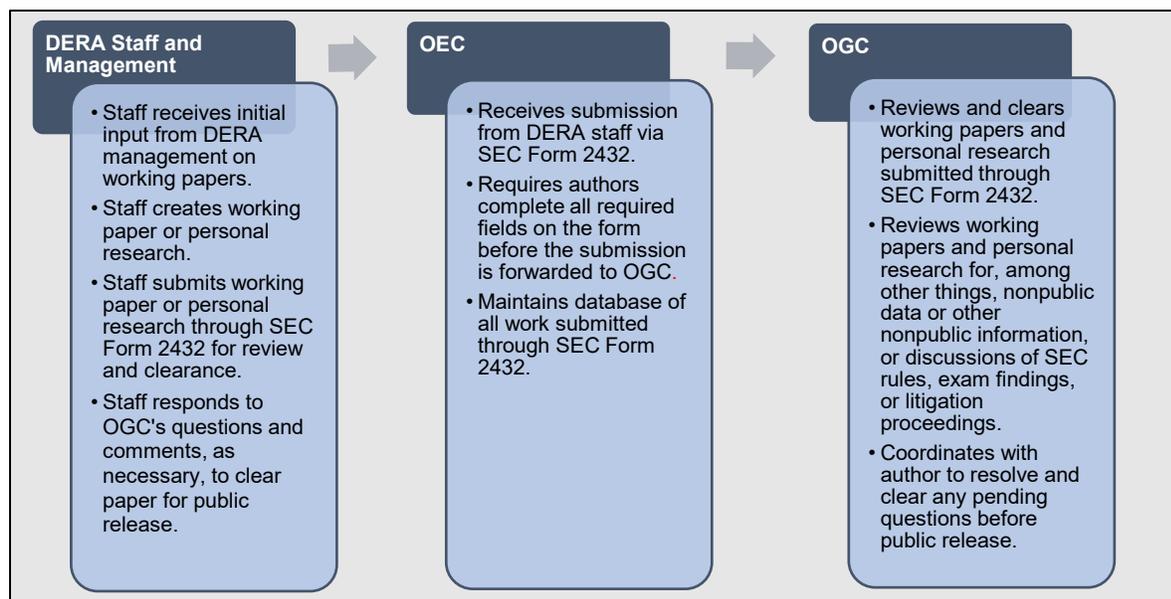
<sup>12</sup> DERA’s prior guidance on these topics included *DERA Standard Operating Procedures for Conducting Research and Using Data for Research*, dated June 13, 2016.

<sup>13</sup> Unless the personal research meets the definition of employment—for example, the author is compensated or is provided the work as a personal service—which would require prior approval through the OEC Outside Employment Module.

**SEC Roles and Responsibilities.** As Table 1 notes, before DERA staff publish any working paper or personal research that relates to the Commission or the statutes or rules it administers, staff must submit the proposed work (via SEC Form 2432, *Publication and Speech Clearance Request*) to the SEC’s OEC for review and clearance by OGC. As part of this process, staff must indicate, among other things, whether their written materials include nonpublic data or other nonpublic information; comment on pending litigation; comment on pending rulemaking proceedings; and include the appropriate disclaimer(s).

OEC requires authors complete SEC Form 2432 to submit materials for publication clearance. All required fields must be completed by the author before the automated Form will forward the materials to OGC. OGC reviews the author’s work to verify that (1) nonpublic data or other nonpublic information is not published or shared, and (2) information presented conforms to SEC regulations.<sup>14</sup> If necessary, the reviewing OGC attorney will contact the author for additional information or clarification. Once OGC clears a working paper or personal research, the author may publish it (See Figure 1).<sup>15</sup> According to DERA officials, once a staff member starts a working paper, management may or may not review the paper before the staff member submits the paper through the SEC’s clearance process. We further discuss this process on page 10 of this report.

**FIGURE 1. Roles and Responsibilities for Submitting, Reviewing, and Clearing a Working Paper or Personal Research for Public Release**



Source: OIG-generated based on analysis of relevant DERA, OEC, and OGC processes.

<sup>14</sup> As set out by SEC regulation 17 C.F.R. § 200.735-4.

<sup>15</sup> If a working paper contains nonpublic data, the Commission must vote to release the data before OGC will clear the working paper.

According to OEC and OGC officials, between FY 2018 and FY 2020, DERA staff submitted 116 working papers and items of personal research for review and clearance, and 4 DERA employees submitted 8 requests to referee (or peer review) papers, for a total stipend amount of \$2,150.<sup>16</sup>

In addition to conducting their own research and publication activities, DERA staff can co-author papers with person(s) outside of the SEC. This requires varying levels of additional approval, depending on factors such as whether the paper is prepared as part of SEC work and whether the DERA staff member wants to use nonpublic data. When staff work with outside co-authors using SEC resources or time, the co-authors must acknowledge, in writing, that they are working on a publication with DERA staff, that the working paper will likely benefit the United States Government, and that the co-authors' assistance is being provided gratuitously with no expectation of reimbursement. Additional requirements exist if staff want to co-author a paper with non-SEC staff and use nonpublic data to ensure the data is protected and not shared. According to DERA policy, staff may be able to share some data, such as publicly available data from regulatory filings and "insubstantial amounts" of aggregated and anonymized data from commercial vendors that have been cleared for publication (if the co-author does not have access to that publicly available dataset). However, staff generally cannot share nonpublic data with an external co-author, including merging nonpublic data with other data already in the co-author's possession.

## OBJECTIVE

Our overall objective was to evaluate the role DERA staff's research and publications<sup>17</sup>—including working papers, academic publications, and other published research—play in furthering the mission of the SEC; and to determine whether effective controls exist to (a) review and approve staff research and publications, and (b) safeguard SEC nonpublic or other sensitive information used for such activities. We primarily focused on controls over working papers and personal research, as the focus of our evaluation was research and publications completed by individual staff. We performed limited reviews related to academic publications and other published research that we identified during testing. Our evaluation covered DERA staff working papers, personal research, and academic publications reviewed and published during FY 2018 through FY 2020 (that is, between October 1, 2017, and September 30, 2020).

To address our objective, among other work performed, we (1) surveyed staff from Commissioners' offices, each of the SEC's divisions (including DERA), and many of the SEC's offices; (2) reviewed relevant laws, regulations, policies, and procedures, as well as internal controls; (3) conducted a walkthrough of the DERA publication process with the author of one working paper; (4) surveyed recipients of *DERA's Research Pipeline*; and (5) contacted other federal agencies, entities, and non-federal organizations that conduct similar economic research and publication efforts and, in some cases, make staff research and academic publications publicly available. As appropriate, we also followed up on specific papers and circumstances that came to our attention as potentially noncompliant with applicable requirements. Appendix I includes additional information about our scope and methodology, including our review of internal controls and prior coverage.

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<sup>16</sup> During this same period, DERA staff also submitted for review and clearance 208 speeches, slides, and "other" products related to speaking events.

<sup>17</sup> Our objective notes examples of research and publications we considered as part of our evaluation. As noted in our background section, we also included personal research—work similar to working papers but done during staff's personal time—in our scope.

# Results

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## **FINDING 1. DERA CAN IMPROVE ITS INTERNAL CONTROL OVER STAFF'S RESEARCH AND PUBLICATION ACTIVITIES**

According to the U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (federal internal control standards), the plans, methods, policies, and procedures used to fulfill an entity's mission, strategic plan, goals, and objectives comprise internal control.

Moreover, management should design control activities to achieve objectives and respond to risks.<sup>18</sup> DERA supports and values the production of research authored by individual members of the Division, including research intended for outside academic publication. Management has already identified objectives for this work, assessed the risks, and communicated the DERA Guidelines to address those risks. However, management can improve its internal control over staff's research and publication activities. This condition exists because management has not implemented effective control activities. For example, DERA does not:

- formally track working papers and refereed reports, or how staff research and publications advance a subpart of the SEC's mission;
- review working papers and personal research before staff submit them to OEC for OGC's review and clearance; or
- centrally maintain records related to staff research and publication activities.

Although these specific actions are not strictly required by law or regulation, implementing these or similar control activities would provide the organization with greater assurance that its objectives in this area are achieved and related risks are effectively mitigated. Without such control activities, management may not have a complete picture of how organizational resources are used (when applicable) and how staff research advances a subpart of the SEC's mission. In addition, management may lack assurance that working papers, personal research, and supporting documents submitted to OEC and reviewed by OGC are complete, accurate, and ready for review and clearance, which, among other things, ensures that staff cleared data for its intended use and properly identified and safeguarded nonpublic or sensitive information. Finally, the lack of complete, centralized records could present challenges over time if SEC officials or others needed to re-create the circumstances around any working paper or personal research, particularly if key personnel have separated from the agency.

We further describe each of these issues in the sections that follow.

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<sup>18</sup> U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); OV1.03 and 10.01.

## DERA Does Not Formally Track Working Papers and Refereed Reports, or How Staff Research and Publications Advances a Subpart of the SEC's Mission

As previously stated, management should design control activities that provide appropriate coverage of objectives and risks.<sup>19</sup> The DERA Guidelines state that the subject of working papers completed as part of staff's official duties "should advance an aspect of the SEC's three-part mission"<sup>20</sup> and should be discussed at the beginning of the project with staff's immediate supervisor, the Chief Economist, or DERA Deputy Director. Additionally, the Division encourages economists to referee papers and permits staff to do so on time credited to the SEC (in other words, as part of staff's work portfolio), provided such activities are approved in advance by a supervisor. According to DERA's former Director, management and supervisors meet with staff to discuss their research and determine on a case-by-case basis whether staff may pursue their research as part of their official duties. However, DERA management does not formally track research, working papers, and refereed reports, or how staff research advances a subpart of the SEC's mission.

When asked about formal tracking mechanisms, DERA management did not identify any such mechanisms. However, they asserted that, as economists with an understanding of what may be useful areas to explore, staff naturally develop research ideas that support the SEC's mission, which staff document through their summaries in *DERA's Research Pipeline*. In addition, management relies on the OEC and OGC listing of cleared papers to document staff working papers and research products, and believes the infrequency with which staff referee papers does not warrant formal tracking.

Although DERA does not formally track how staff research advances a subpart of the SEC's mission, the DERA Guidelines require authors to submit working papers to *DERA's Research Pipeline* using a standardized template.<sup>21</sup> The template requests authors to summarize each working paper and identify which part of the SEC's three-part mission each paper supports. In addition, staff may, but are not required to, include their personal research in the *Research Pipeline*. In some instances, working papers or personal research support more than one subpart of the SEC's mission. We reviewed information about the 79 working papers and other research included in *DERA's Research Pipeline*

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*About 75 percent of all staff research from the period we reviewed focused on one subpart of the SEC's mission that relates to maintaining fair, orderly, and efficient markets.*

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since the inception of the quarterly communication in June 2019 through the end of FY 2020 (that is, September 30, 2020). As Figure 2 shows, we determined that one part of the SEC's three-part mission received more research attention. Specifically, about 75 percent (or 59 of 79) of all staff research from the period we reviewed focused on one subpart of the SEC's mission that relates to maintaining fair, orderly,

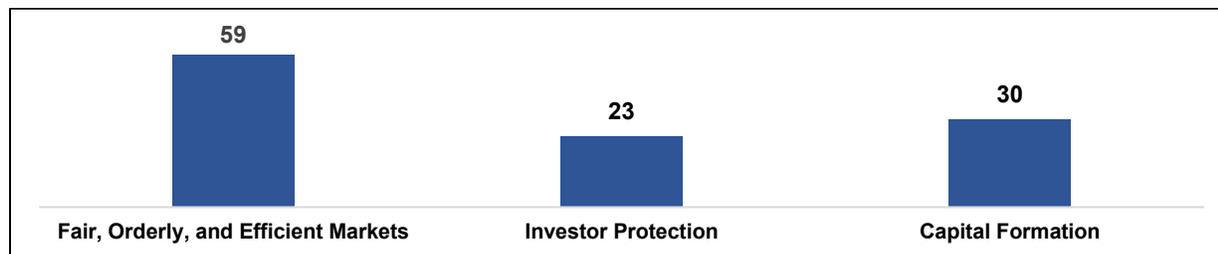
<sup>19</sup> In implementing federal internal control standards, management is responsible for designing policies and procedures that fit its program's circumstances and using internal controls to achieve its objectives. This includes determining what constitutes appropriate coverage to meet program objectives and, as applicable, any associated risks. (GAO-14-704G; OV2.02 and 10.08).

<sup>20</sup> The SEC's three-part mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

<sup>21</sup> The author of the working paper determines when to share their work outside of the Division and sharing personal research is voluntary. DERA asks that the author make sure that their working paper is included in *DERA's Research Pipeline* at or before the time the author submits the paper to OEC for review and clearance by OGC.

and efficient markets, which included papers that covered multiple parts of the mission. Furthermore, almost half of the publications (or 38 of 79) exclusively addressed this mission area.

**FIGURE 2. Summary of Staff Research, by SEC Mission Subpart, Included in *DERA's Research Pipeline* Between June 2019 and September 2020**



Source: SEC OIG-generated based on analysis of *DERA's Research Pipeline* documents from the period specified, which showed that *DERA* staff shared information about 79 unique working papers and other research, 27 of which addressed more than one subpart of the SEC's mission.

By not establishing control activities—such as those for meeting program objectives—to formally track working papers, refereed reports, or how staff research advances a subpart of the SEC's mission (as needed), management may not have a complete picture of how organizational resources are used (when applicable). Moreover, management may miss opportunities to help ensure that staff research—conducted during official duty hours and using SEC resources—advances the SEC's three-part mission and addresses agency needs across mission areas.

### **DERA Does Not Review Working Papers and Personal Research Before Staff Submit Them to OEC for OGC's Review and Clearance**

Federal internal control standards state that common control activities to achieve organizational objectives and respond to risks include reviews by management at the functional or activity level.<sup>22</sup> All written work products, including working papers, that relate to the SEC or the statutes or rules it administers and that will be publicly released during staff's employment with the agency must be cleared before public dissemination. According to the *DERA* Guidelines, authors must also take the following three steps before publishing or publicly releasing working papers:

1. Consult with one's supervisor to determine whether it is appropriate to provide interested parties in other SEC divisions or offices a draft of the working paper and an opportunity to provide feedback.
2. Submit the paper to OEC for review and clearance by OGC.
3. Submit the research for inclusion in *DERA's Research Pipeline*.

<sup>22</sup> Management compares actual performance to planned or expected results throughout the organization and analyzes significant differences. (GAO-14-704G; 10.03).

Although staff must have an initial discussion with DERA management prior to beginning a new research project that will be completed during official duty hours, as of 2018, staff are no longer required to submit the final version of their research or publication to their supervisor or DERA management before submitting it to OEC for OGC's review and clearance.<sup>23</sup> DERA management and OGC also rely on staff to determine whether staff made "substantive changes" to previously reviewed and cleared publications and to papers published before the author's employment at the SEC, which would trigger a new review and clearance process. As we further describe below, there are potential limitations and corresponding risks associated with each of these practices. In addition, other federal agencies, entities, and non-federal organizations we contacted that conduct research similar to DERA and that require staff research be provided to the requisite Economics/Research department before publication identified specific benefits to doing so, which DERA management should consider.

**Potential Limitations of OGC's Review and Corresponding Risks.** According to OGC staff, their review and clearance process is intended to ensure that publicly released work products conform to SEC regulations.<sup>24</sup> Moreover, to the extent that an OGC reviewer believes nonpublic or sensitive information may be included in a working paper or personal research, the reviewer will contact the author for clarification. If the author can provide reasonable assurance and support to clear the material, OGC will approve it for release. However, it is unclear the amount of evidence or support OGC reviewers require to clear their concerns. For example, during a walkthrough of one working paper with DERA personnel, the publishing economist stated that an OGC reviewer asked for confirmation that neither nonpublic nor sensitive information was used to produce the paper. According to the economist, simply responding to the reviewer's e-mail and confirming that neither nonpublic nor sensitive information was used was sufficient for OGC to clear the working paper for public release.

Based on the highly technical nature of DERA's work and in the absence of DERA management's review before submission, OGC risks overly relying on DERA staff who author working papers and personal research to ensure compliance with submission requirements. Notably, staff errors on the SEC Form 2432 submissions for the 116 working papers and items of personal research submitted to OEC and cleared by OGC between FY 2018 and FY 2020 included:

- 3 instances in which staff erroneously reported that their working papers included nonpublic or sensitive information when they did not;

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<sup>23</sup> Prior guidance, *DERA Standard Operating Procedures for Conducting Research and Using Data for Research* (June 13, 2016), required an internal pre-clearance before staff could submit their working papers to OEC for OGC review. Staff were required to highlight in their report where they believed it discussed SEC regulations, rulemaking, and/or pending litigation. Then, an internal supervisor would review the paper before staff submitted it to OGC for further review. According to DERA management, DERA ended this process in 2018, after consultation with OGC, because it slowed down the overall working paper review and clearance process and did not have a meaningful impact on OGC's review. However, DERA proposed to instead have (1) authors highlight any sections of their working paper that included nonpublic information or discussed pending rulemaking or litigation before submitting to OGC; (2) staff discuss pre-clearance with managers; and (3) DERA management have regular meetings with managers about clearance and research policies. The DERA Guidelines state staff should flag for OGC any discussion of SEC rules or relevant statutes or legal authority, as well as use of nonpublic data. However, the guidance does not specify pre-clearance discussions with managers or regular meetings with managers about clearance.

<sup>24</sup> OGC reviews are completed under the parameters of 17 C.F.R. § 200.735-4.

- 1 instance in which a staff member reported that their working paper did not include nonpublic or sensitive information when it did;<sup>25</sup> and
- 3 instances in which staff erroneously reported that their working papers commented on pending litigation or rulemaking when they did not.

In addition to these errors, staff did not ensure that 13 of the 116 submitted papers included the required disclaimers at the time of submission to OGC. Requiring reviews by DERA management (such as first-line supervisors) may reduce repeated instances of these errors, thereby better ensuring the SEC Form 2432 submitted through OEC and reviewed by OGC is complete and accurate, and, working papers and personal research are ready for review and clearance. Furthermore, responsible officials in OGC generally felt that management reviews of staff's SEC Form 2432 submissions and supporting documents before staff submit these materials to OGC would not impact OGC's review and clearance process, and at least two OGC reviewers thought a pre-review by DERA management would be beneficial.

**Risks Associated With Revised Working Papers and Personal Research.** According to the DERA Guidelines, substantive changes (defined as "changes that are not ministerial"<sup>26</sup>) made to either previously cleared working papers or personal research made public before staff's employment at the SEC may require staff to resubmit their research for additional review and clearance by OGC. Yet, the DERA Guidelines make clear that "whether resubmission is warranted or recommended for a given revision should be evaluated on a case-by-case basis *by the author [emphasis added]*," because review of these issues by a supervisor or DERA management is not required. Furthermore, staff may revise papers they wrote and published before joining the SEC to add their affiliation to the SEC as an aspect of biographical information without triggering the review and clearance requirement, but staff must also add to the paper the standard SEC disclaimer and the following statement: "*This paper was initially released prior to the author joining the Commission.*" However, because these changes alone would not be considered "substantive" and there is no requirement for review by a supervisor or DERA management, there is no independent verification in these instances that the author included the appropriate disclaimers.

**Benefits of Managerial Review Identified by Other Federal Agencies, Entities, and Non-Federal Organizations.** As part of our evaluation, we surveyed seven federal agencies, entities, and non-federal organizations that conduct research and publication efforts similar to DERA.<sup>27</sup> We interviewed responsible officials and/or received written responses to a questionnaire regarding their staff work products, review processes, safeguarding of nonpublic or sensitive information, employee training, and whether or how

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<sup>25</sup> DERA management provided documentation to demonstrate that OGC and Commission review and approval processes were followed before the working paper was publicly released.

<sup>26</sup> The DERA Guidelines state that such changes include, but are not limited to, the addition of significant new information or data, significant changes in methodology, changes to conclusions, and revisions that specifically discuss the laws or regulations administered by the SEC or otherwise comment on current activities of the Commission.

<sup>27</sup> The federal agencies, entities, and non-federal organizations were the: (1) Commodities Futures Trading Commission, (2) Federal Deposit Insurance Corporation, (3) Federal Reserve Board, (4) Federal Reserve Bank of New York, (5) Financial Industry Regulatory Authority, (6) Federal Trade Commission, and (7) Department of the Treasury.

staff work products relate to their organization's mission. We also reviewed public websites to determine whether the agencies and organizations permit staff to conduct and publish their research, including white papers, working papers, personal research, and academic papers.<sup>28</sup>

Like DERA, six of the seven agencies and organizations we surveyed permit staff to conduct and publish research. We note five of those six agencies and organizations require that staff research (both official and personal) be provided to the requisite Economics/Research department before publication or public release. According to the agencies and organizations surveyed, this allows the Economics/Research department to:

- assess how staff are using organizational resources, if applicable;
- determine whether affiliation with the research in question benefits the agency or organization;
- verify compliance with data and confidential or sensitive information protection procedures; and
- inform senior organizational management or other affected departments of forthcoming publications.

Although DERA has some similar processes outlined in their guidance, DERA could improve management's internal control in this area. Specifically, DERA management could review the SEC Form 2432 associated with staff's working papers or personal research to ensure the author correctly identifies whether the papers include nonpublic information, discuss pending litigation or rulemaking, and include the appropriate SEC disclaimers. We are unaware of any requirements that would prohibit a DERA supervisor from reviewing staff's working papers, whether considered official SEC products or personal research. The review would be limited by ethical and legal requirements and may require coordination with OGC.

## **DERA Does Not Centrally Maintain Records Related to Staff Research and Publication Activities**

Federal internal control standards state that common control activities to achieve organizational objectives and respond to risks include managing and maintaining appropriate documentation and records.<sup>29</sup> Although the DERA Guidelines outline numerous requirements that staff must follow before initiating, completing, and publishing research—particularly if the research is conducted as a part of staff's official duties—the document does not address DERA's maintenance of related records. Rather, if needed, management requests supporting documents from authors and their supervisors, and may rely on OGC's records from the review and clearance process. Yet when staff submit research for review and clearance, OGC reviewers do not formally maintain records of each review, including their questions and comments for authors and how those questions and comments were resolved. Over time, the lack of centralized records could present challenges in recreating, if needed, the circumstances around any one

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<sup>28</sup> Some agencies we contacted referred to this work as "independent research." For the purposes of our evaluation, we considered this to be the same as DERA working papers or personal research.

<sup>29</sup> Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. (GAO-14-704G; 10.03).

paper, particularly if key personnel have separated from the agency. In fact, during our evaluation, DERA did not have access to records needed to ensure that 27 working papers or items of personal research found in the public domain—but not included on the OGC cleared list—were properly reviewed and cleared by OGC, and could not answer the following important questions about 26 of the 116 working papers and items of personal research submitted to and cleared by OGC between FY 2018 and FY 2020:

- Has the author made the paper publicly available?
- If published, where was the paper published, how can it be publicly accessed, and did it include the appropriate disclaimer(s)?<sup>30</sup>

We also identified on DERA's public-facing website and the Social Science Research Network (SSRN)<sup>31</sup> 114 working papers and items of personal research that were not on the list of papers submitted to and cleared by OGC between FY 2018 and FY 2020. We requested that DERA management provide additional information to address these matters. By relying, in part, on information maintained by staff, management determined that 87 of these papers were previously cleared by OGC, were written by the author either before or after their tenure at the SEC, or contained minor updates that did not require a full OGC review. Of the 27 remaining papers, we found 24 on the SSRN and confirmed that 10 included the standard SEC disclaimer. However, we could not confirm the disclaimer for the other 14 papers because we could not access them and the authors are no longer employed at the SEC. With respect to the three remaining papers we identified on DERA's public-facing website, management stated that they were most likely cleared before FY 2018 or were written before the authors were employed at the SEC.

DERA management contacted former employees who authored papers we identified on DERA's public-facing website and the SSRN but could not confirm were cleared or included the SEC disclaimer. They received responses for 13 papers where the authors stated that they either wrote the paper before joining the SEC or the paper cleared OGC prior to FY 2018. Although the former employee e-mails provide testimonial evidence that applicable requirements were followed, DERA did not maintain supporting records and management could not definitively state whether 27 papers were properly reviewed and cleared.

## **RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE**

To improve DERA's internal control over staff's research and publication activities, thereby achieving greater assurance that management's objectives in this area are achieved and that related risks are effectively mitigated, we recommend that DERA:

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<sup>30</sup> As previously stated, we reviewed the list of 116 working papers and items of personal research submitted to OEC and cleared by OGC between FY 2018 and FY 2020. We assessed the list's completeness by (1) searching public websites to determine whether DERA staff published papers that were not submitted to OEC and cleared by OGC; and (2) verifying that the papers published during the same period on DERA's website were submitted to OEC and cleared by OGC. In these 26 instances, we could not find the papers in the public domain.

<sup>31</sup> The SSRN is a searchable online library and platform for the dissemination of early-stage research that enables authors to post their papers and abstracts easily and free of charge.

## Recommendation 1:

Consider developing processes that will allow management to:

- a. track how staff research and working papers support a subpart of the SEC's mission, and, as appropriate, ensure such activities—when conducted during official duty hours and using SEC resources—address agency needs across mission areas;
- b. quantify over time the total number of working papers and refereed reports completed by staff during official duty hours to ensure management has a complete picture of how organizational resources are used;
- c. ensure that information staff provide on SEC Form 2432 is complete, accurate, and ready for review before staff submit working papers and personal research to OEC for OGC's review and clearance; and
- d. review revised working papers and personal research (including those made public before the author was employed at the SEC) to determine whether the revisions are substantive changes, as defined in the DERA Guidelines, and staff should submit/re-submit the paper for OGC's review and clearance.

**Management's Response.** Management concurred with the recommendation, stating DERA is committed to establishing and maintaining robust processes to ensure that research produced by staff during official duty hours and using Commission resources supports the SEC's mission and that research is appropriately submitted to the clearance process and reviewed by OGC. DERA management will review existing policies to determine where improvements to current processes may be warranted and will consult with relevant counsel regarding applicability of these recommendations to personal research. Management's complete response is reprinted in Appendix II.

**OIG's Evaluation of Management's Response.** Management's proposed actions are responsive; therefore, the recommendation is resolved and will be closed upon verification of the action taken.

## Recommendation 2:

Maintain complete and centralized records related to staff research and publication activities, including how working papers advance a subpart of the SEC mission.

**Management's Response.** Management concurred with the recommendation to the extent permissible under applicable law and regulations. DERA recognizes the benefits of maintaining centralized records of DERA Working Papers to the extent practicable. DERA management will assess its existing record-keeping policies concerning staff's research and publication activities to identify and implement strategic improvements. Management's complete response is reprinted in Appendix II.

**OIG's Evaluation of Management's Response.** Management's proposed actions are responsive; therefore, the recommendation is resolved and will be closed upon verification of the action taken.

## FINDING 2. DERA COULD BETTER COMMUNICATE AND COORDINATE STAFF RESEARCH AND PUBLICATION ACTIVITIES WITH OTHER SEC DIVISIONS AND OFFICES

According to federal internal control standards, effective information and communication are vital for an entity to achieve its objectives. Moreover, entity management needs access to relevant and reliable communication related to internal as well as external events.<sup>32</sup> As previously discussed, each quarter, DERA e-mails various SEC management and staff from across the agency *DERA's Research Pipeline*, which includes the title of each pending staff research project, the author's name, high-level summary information, the SEC mission subpart area of focus, the status of the work, and estimated timelines. In the e-mail distributing the *Research Pipeline*, DERA invites discussion of these papers from SEC management and staff.<sup>33</sup> By providing this information, DERA hopes to ensure other SEC divisions and offices are aware of research in progress, and to obtain information on any relevant rulemaking or pending litigation before staff working papers are made public.

We surveyed personnel from 13 divisions and offices that received the *Research Pipeline* and they generally found DERA's research to be useful and an effective recruitment tool for hiring economists. However, a third of respondents felt that DERA could better communicate and coordinate staff research and publication activities with other SEC divisions and offices by providing more information, including the type of:

- research and work DERA staff are completing;
- work completed for or with other divisions and offices; and
- data being used in staff's research.

Overall, we concluded that, as a communication tool, *DERA's Research Pipeline* may not be as effective as intended because DERA has not clearly identified and communicated its expectations to other SEC divisions and offices that receive the *Research Pipeline* e-mails. In addition, DERA has not established controls to ensure (1) all pending staff research and publications are timely listed in the *Research Pipeline* before research is made public; (2) the quarterly e-mails are released timely and consistently; and (3) stakeholders in other offices or divisions have sufficient information to understand the significance of the research that is included.

As federal internal control standards note, communicating quality information down, across, up, and around reporting lines enables personnel to perform key roles in achieving organizational objectives, addressing risk, and supporting the organization's internal control system.<sup>34</sup> DERA's internal stakeholders who reported to us that improvements are needed in this area reasoned that, through improved

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<sup>32</sup> GAO-14-704G; Information and Communication Overview.

<sup>33</sup> In June 2019, DERA provided a memo to recipients of the first *Research Pipeline* outlining its purpose and expectations for feedback. According to DERA management, DERA's director has also requested feedback during personal meetings with other directors. However, the recipient list has changed over time and DERA management stated that they have not always provided the memo to new recipients since the initial memo in June 2019.

<sup>34</sup> GAO-14-704G; 14.02 and 14.03.

communication and coordination, they could better assess and comment on DERA staff research in progress, thereby better meeting the needs of all SEC divisions and offices, including DERA.

### **DERA Has Not Outlined Its Expectations for Other Divisions and Offices That Receive *DERA's Research Pipeline***

In June 2019, DERA initiated the *DERA Research Pipeline* to educate internal stakeholders from across the agency about DERA staff research and publication activities and in response to other SEC divisions' and offices' requests for more notice of DERA staff research before publication. DERA also intended the quarterly communication to be a mechanism to solicit feedback from agency officials who could alert DERA management of any potential rulemaking or litigation issues relevant to ongoing staff research.

To understand and assess how and whether internal agency stakeholders use DERA staff research and *the Research Pipeline*, we surveyed management and staff from 13 divisions and offices that received the quarterly e-mails. Specifically, among other things, we asked about:

- how they (or others in their division or office) use the *Research Pipeline*; and
- what potential improvements, if any, could be made to the *Research Pipeline*.

Based on our interviews and correspondence with these stakeholders, it was not always clear that recipients of *DERA's Research Pipeline* were aware that they were part of a process to alert DERA management of any potential rulemaking or litigation issues relevant to ongoing research. In fact, representatives from 5 of the 13 divisions and offices that received the *Research Pipeline*, as of January 2021, have never received or only recently started receiving a copy of the document. Furthermore, six respondents indicated that they provided feedback to DERA concerning a research publication, and three respondents indicated that it would be helpful if DERA offered an opportunity for staff in other divisions and offices to provide suggestions for research topics.

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*As a communication tool,  
DERA's Research Pipeline may  
not be as effective as intended.*

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*DERA's Research Pipeline* may not be as effective as intended, in part, because DERA has not clearly identified and communicated its expectations for other SEC divisions and offices that receive it. Specifically, the e-mail communication does not clearly identify what is being requested or

consistently solicit feedback. Without more robust communication and coordination efforts, DERA risks losing the opportunity to build support for staff's research efforts and enhancing beneficial partnerships with other SEC divisions and offices. Furthermore, DERA risks releasing staff research or publications that may not conform to SEC regulations or take into account meaningful feedback from internal agency stakeholders. We note that other federal agencies, entities, and non-federal organizations we contacted have established robust internal communication and coordination processes to mitigate these types of risks.

## DERA Could Improve Its Processes for Ensuring Other Divisions and Offices Have Sufficient Time and Information To Comment on Staff Research

According to federal internal control standards, management should internally communicate the necessary quality information to achieve the entity’s objectives and should select the appropriate methods to communicate information based on a variety of factors such as the audience, the nature of the information, and the availability of information.<sup>35</sup> As we describe below, some internal agency stakeholders reported to us concerns about having insufficient time and information to comment on DERA staff research before such research is made public.

### Other Divisions and Offices May Not Have Sufficient Opportunity or Time To Comment.

Communication is effective when it is readily available and reaches its intended audience. According to the DERA Guidelines, the *Research Pipeline* is transmitted quarterly and working paper authors determine when papers are ready to be shared outside of the Division. That said, DERA asks staff to make sure their papers are included in the *Research Pipeline* “at or before the time when the author submits the paper to Ethics for clearance by OGC.” Additionally, the DERA Guidelines state that OGC reviews can take 30 days or longer to clear a paper. Therefore, although DERA management relies, in part, on the expertise of other divisions and offices before staff publish or publicly release research, it is possible for a working paper to be included in the *Research Pipeline* yet already be public. In fact, our analysis confirmed that in April 2020 a working paper was included in the *Research Pipeline* after the working paper’s public release in March 2020. In short, as a result of the current process, knowledgeable staff in other SEC divisions and offices may not always have sufficient time to comment on working papers before public release.

In addition, DERA has not consistently and timely released the *DERA Research Pipeline* each quarter. As Table 2 shows, the number of days between each release of the e-mail communication between June 2019 and September 2020 ranged from 57 to 119. As a result, information about DERA staff working papers was not always provided to other SEC divisions and offices in a timely or consistent manner.

**TABLE 2. Time Elapsed Between the First Six Releases of DERA’s Research Pipeline**

| Release No./Quarter            | Release Date | Days Between Each Release |
|--------------------------------|--------------|---------------------------|
| Release 1 - Quarter 3, FY 2019 | 6/19/2019    | N/A – First release       |
| Release 2 - Quarter 4, FY 2019 | 10/16/2019   | 119                       |
| Release 3 - Quarter 1, FY 2020 | 1/13/2020    | 89                        |
| Release 4 - Quarter 2, FY 2020 | 4/28/2020    | 106                       |
| Release 5 - Quarter 3, FY 2020 | 6/24/2020    | 57                        |
| Release 6 - Quarter 4, FY 2020 | 9/18/2020    | 86                        |

Source: SEC OIG-generated based on analysis of DERA’s Research Pipeline publications.

<sup>35</sup> GAO-14-704G; 14.07.

**Other Divisions and Office May Not Have Sufficient Information To Comment.** Although there are no official requirements for the amount of information DERA should share with other divisions and offices related to staff research, as previously stated, sharing quality information internally—part of the DERA’s reason for developing the *Research Pipeline*—can help DERA achieve its objectives. Yet, we noted that the amount and quality of information shared in *DERA’s Research Pipeline* varies considerably by submission. For example, some authors provide detailed abstracts that directly tie the paper to the SEC’s mission, whereas others provide only a one- or two-sentence summary. According to users we surveyed, the limited summary information reduced their ability to make inquiries or provide quality feedback because of a lack of understanding of the working paper’s focus. Additionally, although DERA requires staff to submit working papers to the *Research Pipeline*, there are no requirements for staff to submit personal research. As a result, other divisions and offices may not have enough information to provide meaningful comments in response, including comments about relevant pending litigation or rulemaking.

## RECOMMENDATIONS, MANAGEMENT’S RESPONSE, AND EVALUATION OF MANAGEMENT’S RESPONSE

To help DERA better communicate and coordinate with other SEC divisions and offices about DERA’s staff research and publications activities, we recommend that DERA management:

### Recommendation 3:

Clearly identify and communicate to other SEC divisions and offices the purpose of *DERA’s Research Pipeline*, and develop a process to actively solicit and obtain divisions’ and offices’ feedback on staff research including, as appropriate, suggested research topics for DERA’s consideration.

**Management’s Response.** Management concurred with the recommendation, stating DERA appreciates the feedback and suggestions for research that it receives and welcomes the opportunity to increase engagement with other Divisions and Offices. DERA will review and modify its existing process to more actively solicit feedback on staff research and suggested research topics. Management’s complete response is reprinted in Appendix II.

**OIG’s Evaluation of Management’s Response.** Management’s proposed actions are responsive; therefore, the recommendation is resolved and will be closed upon verification of the action taken.

### Recommendation 4:

Coordinate with other SEC divisions and offices to determine the optimal timing and content of *DERA’s Research Pipeline* to ensure internal agency stakeholders have both sufficient time and information to provide meaningful comments on staff research before research is made public.

**Management’s Response.** Management concurred with the recommendation, stating DERA values the input provided by other Divisions and Offices. DERA management will review and update its processes for distributing the *Research Pipeline* to ensure stakeholders have an opportunity to provide meaningful comments on staff research before it is made public. Management’s complete response is reprinted in Appendix II.

**OIG’s Evaluation of Management’s Response.** Management’s proposed actions are responsive; therefore, the recommendation is resolved and will be closed upon verification of the action taken.

## Appendix I. Scope and Methodology

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We conducted this evaluation from November 2020 through September 2021 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform the evaluation to obtain sufficient, competent, and relevant evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objective. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objective.

### Objective and Scope

Our overall objective was to evaluate the role DERA staff's research and publications—including working papers, academic publications, and other published research—play in furthering the mission of the SEC; and to determine whether effective controls exist to (a) review and approve staff research and publications, and (b) safeguard SEC nonpublic or other sensitive information used for such activities.

Our evaluation covered DERA staff research and publications reviewed and published during FY 2018 through FY 2020 (that is, between October 1, 2018, and September 30, 2020). We primarily focused on controls over working papers and personal research, as the focus of our evaluation was research and work completed by individual staff. We performed limited reviews related to academic publications and other published research that we identified during testing. Additionally, we reviewed specific papers and circumstances that came to our attention as potentially noncompliant. Based on our review, we determined that those papers and circumstances fell outside the scope of our work.

### Methodology

To address our objective, among other work performed, we:

- surveyed staff from Commissioners' offices, each of the SEC's divisions (including DERA), and many of the SEC's offices at the SEC's Headquarters in Washington, DC;
- reviewed relevant laws, regulations, policies, and procedures, as well as internal controls, including those related to outside employment and protection of nonpublic or sensitive information;
- conducted a walkthrough of the DERA publication process with the author of one working paper; and
- reviewed and tested for completeness and accuracy the list of 116 working papers and items of personal research submitted to OEC and cleared by OGC between FY 2018 and FY 2020.

Using SEC Form 2432 and the DERA Guidelines, we also tested certain characteristics of the 116 working papers and items of personal research we reviewed. As necessary, we requested supporting documentation to determine whether each paper contained nonpublic information, commented on pending litigation or rulemaking proceedings, and/or included the required disclaimer(s).

In addition, we identified and contacted seven federal agencies, entities, and non-federal organizations that conduct similar economic research and publication efforts and, in some cases, make staff research and academic publications publicly available. We sought to understand their comparable processes and procedures, particularly for safeguarding nonpublic or sensitive information, employee training, and assessing whether or how staff research relates to their organization's mission.

To determine the completeness of the SEC Form 2432 submission and cleared list between FY 2018 and FY 2020, we reviewed external sources for any additional working papers and personal research. Specifically, we searched DERA's public-facing website—including the Economist Bios, Staff Papers and Analyses, and Academic Publications tabs—to identify any work completed by staff that fell within our testing timeframe. We also searched the SSRN to identify any working papers or personal research either written, posted, or revised by DERA staff between FY 2018 and FY 2020. We identified 66 papers from DERA's public-facing website and 48 from the SSRN, totaling 114 papers. To determine the status of the 114 papers, we requested supporting documentation from DERA management and, as available, the author of a paper. We determined that 87 of the 114 papers were outside the scope of our review (FY 2018 – FY 2020), as they were previously cleared by OGC, were written by the author either before or after their tenure at the SEC, or contained minor updates that did not require a full OGC review. DERA management did not have supporting documentation to confirm if the remaining 27 papers should have gone through the SEC review and clearance process.

Finally, we surveyed management and staff in other SEC divisions and offices regarding their experiences with *DERA's Research Pipeline*, how DERA could improve its communication regarding staff research and publication activities, and how they felt DERA's research and publication efforts supported the SEC's mission. We identified divisions and offices based on prior recipient lists and DERA management's input on those employees who receive the *Research Pipeline*.

## Internal Controls

We identified and assessed internal controls, applicable internal control components, and underlying principles significant to our objective, as we describe below.

**Control Environment.** We assessed the control environment established by DERA management. We determined which control environment principles related to our evaluation and, to assess those principles, reviewed relevant SEC regulations, OEC requirements, and the leadership and organizational structure for DERA, OGC, and OEC. We also met with management and staff from DERA, OGC, and OEC to understand the overall process for initiating, completing, and publishing DERA staff's research and publications.

**Risk Assessment.** We obtained and reviewed the DERA FY 2020 risk control matrix for risks and controls related to DERA staff's research and publication activities, and assessed four risks in the matrix identified by the SEC related to our evaluation. We also reviewed DERA's FY 2020 management assurance statement, which noted that DERA did not identify any deficiencies during the management assurance process for that fiscal year. Finally, we assessed the likelihood of fraud occurring within the context of our objective and determined it to be low. As applicable, we requested further clarification from

DERA officials about the Division's identified risks and potential for fraud within the context of our objective.

**Control Activities.** We reviewed applicable federal guidance, SEC-wide policies and procedures, DERA guidelines, OEC and OGC requirements, and DERA's risk and control matrix to identify and test key control activities. We reviewed control activities for initiating, submitting, reviewing, and clearing a research project for publication, as established in the DERA Guidelines and OEC and OGC requirements. Based on our review, we determined that DERA could improve its control activities. We also surveyed federal agencies, entities, and non-federal organizations to determine the processes they follow for staff's economic research and publications. We identified potential best practices that DERA could consider related to management tracking and review efforts. (See Finding 1.)

**Information and Communication.** We reviewed how DERA management and staff internally communicate and track information within the Division. We also reviewed the quarterly communication, *DERA's Research Pipeline*, which DERA transmits to other SEC divisions and offices to inform them of pending staff research and publication activities. Within the context of this set of internal controls, we found that DERA could improve the quality and timeliness of information shared with other divisions and offices. (See Finding 2.)

**Monitoring.** We reviewed DERA, OEC, and OGC processes and procedures for monitoring working papers and personal research submitted for clearance. We determined that, while DERA does not monitor or review staff working papers or personal research before submission to OEC for OGC's review and clearance, OEC maintains an accurate database of all submitted clearance requests and OGC completes and tracks its reviews and cleared working papers and personal research. We also found that DERA could improve its internal control by monitoring and tracking staff working papers and personal research, rather than relying solely on OEC and OGC to ensure compliance. (See Finding 1.)

As noted in this report, we identified areas for potential improvement in DERA's internal controls for reviewing and approving staff research and publications, and monitoring for compliance with requirements intended to safeguard the SEC's nonpublic or other sensitive information used for such activities. Our recommendations, if implemented, should help strengthen controls over DERA's staff research and publications.

## Data Reliability

GAO's *Assessing Data Reliability* (GAO-20-283G, December 2019) states reliability of data means that data are applicable for audit purpose and are sufficiently complete and accurate. Data primarily pertains to information that is entered, processed, or maintained in a data system and is generally organized in, or derived from, structured computer files. Furthermore, GAO-20-283G defines "applicability for audit purpose," "completeness," and "accuracy" as follows:

"Applicability for audit purpose" refers to whether the data, as collected, are valid measures of the underlying concepts being addressed in the audit's research objectives.

"Completeness" refers to the extent that relevant data records and fields are present and sufficiently populated.

“Accuracy” refers to the extent that recorded data reflect the actual underlying information.

To address our objective, we relied on computer-processed data collected through SEC Form 2432 (which is stored in SharePoint), as well as data from the SEC’s Outside Employment Module (which is managed through an Office of Human Resources system). To assess the reliability of data we:

- interviewed appropriate staff in DERA, OGC, OEC, and the Office of Human Resources;
- completed initial data testing, such as reviewing spreadsheets provided for completeness, accuracy, and obvious errors;
- compared source documents (submitted through the SEC Form 2432 process) and the spreadsheet of raw data provided to us; and
- reviewed data documentation processes for DERA and OGC.

Although not computer-processed data, we determined that the initial list of working papers and personal research reviewed and cleared by OGC between FYs 2018 and 2020 and provided by OEC from SharePoint did not encompass all publications written or updated by DERA staff during that timeframe. To determine whether additional papers existed, we (1) reviewed DERA’s public-facing website under staff biographies, working papers, and academic publications; and (2) searched the SSRN by authors’ names as they appeared on OEC’s list of papers cleared by OGC. From this review, we identified 114 additional working papers or personal research. Although we identified more papers than those on the cleared list, as we discuss in Finding 1, DERA generally provided support to address our concerns. For the purposes of how we used the information from OEC to meet our objective, we believe OEC’s list was sufficiently reliable.

We did not identify any errors or discrepancies with the computer-processed data we relied upon that indicated the data would not be sufficiently reliable for the purposes of this evaluation.

## Prior Coverage

In 2019, the SEC OIG issued the following report of particular relevance to this evaluation:

SEC OIG:

- *Although Highly Valued by End Users, DERA Could Improve Its Analytics Support by Formally Measuring Impact, Where Possible* (Report No. 553; April 29, 2019).

This report can be accessed at <https://www.sec.gov/oig>.

## Appendix II. Management Comments

### MEMORANDUM

To: Rebecca L. Sharek  
Deputy Inspector General for Audits, Evaluations, and Special Projects  
Office of the Inspector General

From: Jessica Wachter *Jessica Wachter*  
Director and Chief Economist  
Division of Economic and Risk Analysis

Date: September 9, 2021

Subject: Management Response to Draft OIG Report, *DERA Staff Research And Publications Support The SEC's Mission, But Related Controls And Agency-Wide Communication And Coordination Could Be Improved*

The Division of Economic and Risk Analysis (DERA) submits this memorandum in response to the Office of the Inspector General (OIG) draft report titled, *DERA Staff Research And Publications Support The SEC's Mission, But Related Controls And Agency-Wide Communication And Coordination Could Be Improved*.

DERA's research program directly advances the SEC's mission by providing objective, scientific information and feedback about market performance, investor outcomes, investor decision-making, capital formation, and the role and effectiveness of financial intermediaries. Rigorous research enables us to inform, support, and analyze the agency's regulatory and enforcement actions. The peer review publication process plays an essential role in the research process and is universally accepted, across disciplines, as the means for advancing knowledge.

In addition, peer reviewed research sets an important benchmark for generally accepted methods in the economics profession. This standard guides our economic analysis, including work in support of policy, rulemaking, enforcement, and examinations. DERA staff rely on this external standard for research in many contexts such as building economic models, studying current research, and analyzing data using appropriate empirical methods.

In light of its importance, DERA is committed to expanding its research program. DERA respects the independence of its authors, the integrity of research findings, and the need for staff to have freedom to design their own research projects. At the same time, we recognize the importance of ensuring compliance with applicable laws and regulations as well as enhancing communication with others in the agency, particularly when our research may touch on issues of current interest to the Commission.

To further these objectives, DERA has developed a robust process for staff engaging in research activities, which includes consulting at various points with the author's supervisor, the Chief Economist, and the Office of the Chief Counsel. DERA provides specific guidance and direction for its staff in a comprehensive document called the *Guidelines on Data Usage, Research, and Outside Activities*. Moreover, to coordinate its research activities with other Divisions and

Offices in the agency, DERA takes active steps to solicit feedback on research projects, including circulating its *Research Pipeline* and hosting brown bag seminars.

DERA appreciates the OIG's recommendations to improve its processes surrounding research development and tracking as well as coordination with internal agency stakeholders to increase the impact of DERA's research. We hope that these recommendations will ultimately strengthen the agency's culture of mutual trust and respect for economic research. Our responses to the recommendations are below.

**Recommendation 1:** Consider developing processes that will allow management to:

- a. track how staff research and publication activities support a subpart of the SEC's mission, and, as appropriate, ensure such activities when conducted during official duty hours and using SEC resources address agency needs across mission areas;
- b. quantify over time the total number of working papers and referee reports completed by staff during official duty hours to ensure management has a complete picture of how organizational resources are used;
- c. ensure that information staff provide on SEC Form 2432 is complete, accurate, and ready for review before staff submit DERA working papers and personal research to OEC for OGC's review and clearance; and
- d. review revised working papers (including those made public before the author was employed at the SEC) to determine whether the revisions are substantive changes, as defined in the DERA Guidelines, and staff should submit/re-submit the paper for OGC's review and clearance.

**Management Response:** The Division concurs with this recommendation. As noted, DERA is committed to establishing and maintaining robust processes to ensure that research produced by staff during official duty hours and using Commission resources supports the SEC's mission and that research is appropriately submitted to the clearance process and reviewed by the Office of the General Counsel. We will review our existing policies to determine where improvements to our current processes may be warranted and will consult with relevant counsel concerning the potential applicability of these recommendations to personal research.

**Recommendation 2:** Maintain complete and centralized records related to staff research and publication activities, including how working papers advance a subpart of the SEC mission.

**Management Response:** The Division concurs with this recommendation to the extent permissible under applicable law and regulations. DERA recognizes the benefits of maintaining centralized records of DERA Working Papers to the extent practicable. The Division will assess its existing record-keeping policies concerning staff's research and publication activities to identify and implement strategic improvements.

**Recommendation 3:** Clearly identify and communicate to other SEC divisions and offices the purpose of DERA's Research Pipeline, and develop a process to actively solicit and obtain

divisions' and offices' feedback on staff research including, as appropriate, suggested research topics for DERA's consideration.

*Management Response:* The Division concurs with this recommendation. DERA appreciates the feedback and suggestions for research that it receives under the current process and welcomes the opportunity to increase engagement with other Divisions and Offices to further enhance our research program. DERA will review and modify its existing process to more actively solicit feedback on staff research and suggested research topics.

**Recommendation 4:** Coordinate with other SEC divisions and offices to determine the optimal timing and content of DERA's Research Pipeline to ensure internal agency stakeholders have both sufficient time and information to provide meaningful comments on staff research before research is made public.

*Management Response:* The Division concurs with this recommendation. DERA values the input provided by other Divisions and Offices, and its goal for the *Pipeline* is to communicate DERA's current projects and provide an opportunity for feedback. DERA will review its existing processes for distributing the Pipeline and will update its processes to ensure that stakeholders have an opportunity to provide meaningful comments on staff research before it is made public.

Thank you for the opportunity to review and comment on draft report. Please contact Chyhe Becker, Deputy Director, or Lauren Moore, Chief Counsel, if you have any questions.

## Major Contributors to the Report

Carrie Fleming, Audit Manager

Suzanne Heimbach, Auditor

Sharice Cole, Auditor

## Comments and Suggestions

If you wish to comment on the quality or usefulness of this report or suggest ideas for future audits, evaluations, or reviews, please send an e-mail to OIG Audit Planning at [AUDplanning@sec.gov](mailto:AUDplanning@sec.gov).

Comments and requests can also be mailed to the attention of the Deputy Inspector General for Audits, Evaluations, and Special Projects at the address listed below.

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