

**Written Testimony of Rebecca L. Sharek
Deputy Inspector General for Audits, Evaluations,
and Special Projects
U.S. Securities and Exchange Commission
Office of Inspector General**



**Before the U.S. House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations
Wednesday, March 8, 2023**

Chairman Huizenga, Ranking Member Green, and Members of the Subcommittee:

Thank you for inviting me to testify about the efforts of the U.S. Securities and Exchange Commission (SEC) Office of Inspector General (OIG) to report on the management and performance challenges at the SEC and some of the OIG's recently completed audits and evaluations. In my testimony, I am representing the OIG, and the views I express are those of my office and myself, and do not necessarily reflect the views of the Commission or any Commissioners.

BACKGROUND

The core mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. The OIG is an independent office within the SEC that conducts audits, evaluations, and investigations of the SEC's programs and operations to detect and deter fraud, waste, and abuse, and to promote integrity, efficiency, and effectiveness. In doing so, the OIG plays a critical role in helping the SEC achieve its mission.

The OIG Office of Audits, which I manage, conducts independent audits in accordance with generally accepted government auditing standards, and evaluations that adhere to the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. To accomplish its mission, for fiscal year 2023, the Office of Audits has been authorized a staffing level of 22 full-time equivalents. Managers and staff within the Office of Audits hold a variety of degrees and many hold relevant professional certifications.

The work of the Office of Audits provides essential accountability and transparency and, where appropriate, makes recommendations for corrective action. Typically, the Office assesses whether:

- resources are safeguarded and appropriately managed;
- governing laws, regulations, and policies are complied with;
- programs are achieving their objectives and desired outcomes; and
- information provided to the public and others is reliable.

Since January 2021, the Office of Audits has issued 13 audit and evaluation reports that made 83 recommendations to SEC management, all of which were agreed to by management and more than half of which are closed as of this date. Among other things, our recommendations have sought to:

- aid the Division of Enforcement in improving communication of its capabilities and resources that may expedite investigations, addressing noted causes of delay in investigations, and making more efficient use of its limited resources;
- help further increase efficiencies in the SEC’s Whistleblower Program, better prepare for future whistleblower program growth, and improve controls over whistleblower program data and communication with external parties;
- improve strategic planning and performance management related to the SEC’s investor education and outreach;
- enhance the SEC’s processes for encouraging small business participation in agency contracting; and
- further strengthen the SEC’s contract management; information security; investment adviser/investment company examination program; tips, complaints, and referrals program; and controls over hiring actions.

The Office of Audits also has issued management letters during the same period, addressing matters that came to our attention—such as changes to the internal review process for proposed rules, and improvements that may be needed in the receipt and coordination of investor submissions—as well as a variety of other written products to assess and report on the SEC’s compliance with Digital Accountability and Transparency Act, payment integrity, and government charge card legislation.

I have attached to this testimony the executive summaries of a few of our recent audit and evaluation reports that not only highlight the impactful work we have been doing but also support our most recent annual statement on the SEC’s management and performance challenges.

SUMMARY OF RECENTLY REPORTED MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SEC

The Reports Consolidation Act of 2000 requires OIGs to identify and report annually on the most serious management and performance challenges facing agencies.¹ In deciding whether to identify an area as a challenge, the SEC OIG considers its significance in relation to the SEC’s mission; its susceptibility to fraud, waste, and abuse; and the SEC’s progress in addressing the challenge. We compile each year’s management and performance challenge report on the basis of our past and ongoing audit, evaluation, investigation, and review work; our knowledge of the SEC’s programs and operations; and information from the U.S. Government Accountability

¹ Pub. L. No. 106-531, § 3a, 114 Stat. 2537-38 (November 22, 2000).

Office and SEC management and staff. We provide a draft of each year's report to SEC officials, and we consider all comments received when finalizing the report.

In October 2022, we issued our latest report on management and performance challenges, and we identified the following as areas where the SEC faces challenges:

1. Meeting Regulatory Oversight Responsibilities
2. Protecting Systems and Data
3. Improving Contract Management
4. Ensuring Effective Human Capital Management

I have attached the full report to this testimony and will also provide a high level overview of the challenges we identified.

Challenge: Meeting Regulatory Oversight Responsibilities

With respect to meeting regulatory oversight responsibilities, our report described the challenges of managing resources while meeting the SEC's regulatory agenda, keeping pace with changing markets and innovations, and leveraging technology and analytics to meet mission requirements and respond to significant developments and trends. In part, we discussed opportunities to further strengthen cross-functional collaboration and communication during a period of increased rulemaking activities and in light of changes in the workforce, including due to attrition. We also discussed recommendations we made to the Division of Examinations, which are now closed, to help improve planning and oversight of registered investment adviser examinations.

Challenge: Protecting Systems and Data

Next, with respect to protecting SEC systems and data, we noted opportunities to evaluate and address the underlying cause(s) and impact of a material weakness related to insufficient user controls, strengthen the agency's cybersecurity posture, and continue to mature its information security program.

Challenge: Improving Contract Management

Improving contract management is an additional challenge noted in our report. As we described, a growing majority of the SEC's contract support (by dollars obligated) is concentrated in information technology services, and management of information technology acquisitions and operations is recognized as a high risk area across the executive branch. Additionally, as in prior years, we reported on the SEC's use of time-and-material contracts, noting that such contracts are considered riskier than fixed price contracts because contractors bill the government by the hour and, therefore, may lack incentives for cost control.

Challenge: Ensuring Effective Human Capital Management

The final challenge discussed in our report is ensuring effective human capital management. In this section, we provided data that demonstrates recent increases in attrition. We also discussed uncertainties that existed surrounding the plans for return-to-office and the potential for expanded telework, and an audit we completed that identified opportunities to further strengthen controls over the SEC's hiring actions.

CONCLUSION

The SEC OIG remains committed to examining important aspects of the SEC's programs and operations and to assisting agency management accomplish their important mission on behalf of American investors. For example, in separate reviews, we are currently assessing the agency's workplace safety protocols implemented in response to COVID-19, the agency's equal employment opportunity program, and the controls over public comments submitted online and agency actions taken in response to a technological error in the public comment process that was disclosed last year. We look forward to continuing our cooperative working relationship with SEC management and this Subcommittee. Thank you for the Subcommittee's support for our mission and for the opportunity to testify. I would be pleased to answer any questions you have.

Attachment 1



OFFICE OF
INSPECTOR GENERAL

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

M E M O R A N D U M

October 13, 2022

TO: Gary Gensler, Chair

FROM: Nicholas Padilla, Jr., Acting Inspector General

SUBJECT: *The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2022*

The Reports Consolidation Act of 2000 requires the U.S. Securities and Exchange Commission's (SEC or agency) Office of Inspector General to identify and report annually on the most serious management and performance challenges facing the SEC.¹ In deciding whether to identify an area as a challenge, we consider its significance in relation to the SEC's mission; its susceptibility to fraud, waste, and abuse; and the SEC's progress in addressing the challenge. We compiled the attached statement on the basis of our past and ongoing audit, evaluation, investigation, and review work; our knowledge of the SEC's programs and operations; and information from the U.S. Government Accountability Office and SEC management and staff. We reviewed the agency's response to prior years' statements, and assessed its efforts to address recommendations for corrective action related to persistent challenges. We previously provided a draft of this statement to SEC officials and considered all comments received when finalizing the statement. As we begin fiscal year 2023, we again identified the following as areas where the SEC faces management and performance challenges to varying degrees:

- Meeting Regulatory Oversight Responsibilities
- Protecting Systems and Data
- Improving Contract Management
- Ensuring Effective Human Capital Management

Information on the challenge areas and the corresponding audit, evaluation, investigation, or review work are discussed in the attachment. If you have any questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

¹ Pub. L. No. 106-531, § 3a, 114 Stat. 2537-38 (November 22, 2000).

Attachment

cc: Prashant Yerramalli, Chief of Staff, Office of Chair Gensler
Heather Slavkin Corzo, Policy Director, Office of Chair Gensler
Kevin Burris, Counselor to the Chair and Director of Legislative and Intergovernmental Affairs
Scott Schneider, Counselor to the Chair and Director of Public Affairs
Ajay Sutaria, GC Counsel, Office of Chair Gensler
Phillip Havenstein, Operations Counsel, Office of Chair Gensler
Hester M. Peirce, Commissioner
Benjamin Vetter, Counsel, Office of Commissioner Peirce
Caroline A. Crenshaw, Commissioner
Malgorzata Spangenberg, Counsel, Office of Commissioner Crenshaw
Mark T. Uyeda, Commissioner
Holly Hunter-Ceci, Counsel, Office of Commissioner Uyeda
Jaime Lizárraga, Commissioner
Laura D'Allaird, Counsel, Office of Commissioner Lizárraga
Parisa Haghshenas, Counsel, Office of Commissioner Lizárraga
Dan Berkovitz, General Counsel
Elizabeth McFadden, Deputy General Counsel, General Litigation/Acting Managing Executive
Lisa Helvin, Principal Deputy General Counsel for Adjudication and Oversight
Kenneth Johnson, Chief Operating Officer
Shelly Luisi, Chief Risk Officer
Jim Lloyd, Audit Coordinator/Assistant Chief Risk Officer, Office of Chief Risk Officer

October 13, 2022

OFFICE OF
INSPECTOR
GENERAL

The Inspector General's
Statement on the SEC's
Management and
Performance Challenges

CONTENTS

ABBREVIATIONS	ii
CHALLENGE: Meeting Regulatory Oversight Responsibilities	1
Managing Resources While Meeting the Regulatory Agenda	1
Figure 1. Number of Rulemaking Activities on the SEC’s Regulatory Agenda (Spring 2017 – Spring 2022).....	2
Figure 2. Number of New SEC Rules Proposed (2017 – August 2022).....	2
Keeping Pace With Changing Markets and Innovations.....	4
Table 1. Number of RIAs (FY 2018 – July 2022).....	5
Use of Technology and Analytics to Meet Mission Requirements and Respond to Significant Developments and Trends.....	6
Figure 3. Number of TCRs Received (2019, Quarter 2 – 2022, Quarter 3).....	7
CHALLENGE: Protecting Systems and Data	9
Evaluating and Addressing the Cause(s) and Impact of a Material Weakness Related to Insufficient User Access Controls	10
Strengthening the SEC’s Cybersecurity Posture	11
Table 2. Certain Open Cybersecurity Recommendations as of October 2022.....	11
Maturing the SEC’s Information Security Program	12
Table 3. Summary of SEC FISMA Ratings (FY 2020 and FY 2021)	13
CHALLENGE: Improving Contract Management	15
Synopsis and Trends in SEC Contracting.....	15
Figure 4. SEC Annual Contractual Services and Supplies Obligations, in Thousands, as a Percentage of Total Annual Budgetary Authority (FY 2017 – FY 2021).....	15
Figure 5. Top NAICS Codes Associated With the SEC’s FY 2022 Contract Obligations.....	16
Focus on Diversity, Equity, and Inclusion	17
T&M Contracts	18
Figure 6. Percentage of SEC T&M Award Obligations Compared to Total SEC Award Obligations (FY 2018 – FY 2022)	19
CHALLENGE: Ensuring Effective Human Capital Management	21
Retention, Attrition, Recruitment, and Hiring.....	21
Figure 7. Total SEC Attrition (in Number of Positions) and Attrition Rate (FY 2011 – FY 2022)...	22
Figure 8. SEC FY 2022 Expected Attrition by Paygrade and Position	22
Responding to COVID-19: Workforce Perspectives	25

ABBREVIATIONS

CAT	Consolidated Audit Trail
CISA	Cybersecurity and Infrastructure Security Agency
COVID-19	Coronavirus Disease 2019
Enforcement	Division of Enforcement
EXAMS	Division of Examinations
FISMA	Federal Information Security Modernization Act of 2014
FY	fiscal year
GAO	U.S. Government Accountability Office
IT	information technology
Kearney	Kearney & Company, P.C.
LH	labor-hour
NAICS	North American Industry Classification System
OA	Office of Acquisitions
OASB	Office of the Advocate for Small Business Capital Formation
OHR	Office of Human Resources
OIAD	Office of the Investor Advocate
OIG	Office of Inspector General
OIT	Office of Information Technology
OMB	Office of Management and Budget
OMWI	Office of Minority and Women Inclusion
RIA	registered investment adviser
SAM	System for Award Management
SEC, agency, or Commission	U.S. Securities and Exchange Commission
SLC	Service Level Commitment
T&M	time-and-materials
TCR	tips, complaints, and referrals
TRENDS	Tracking and Reporting Examination National Documentation System
WTTS	Workforce Transformation and Tracking System

CHALLENGE: Meeting Regulatory Oversight Responsibilities

The U.S. Securities and Exchange Commission (SEC, agency, or Commission) is charged with overseeing about \$118 trillion in annual securities trading on the United States equity markets and the activities of more than 29,000 registered entities, including investment advisers, mutual funds, exchange-traded funds, broker-dealers, municipal advisors, and transfer agents. The agency also oversees 24 national securities exchanges, 95 alternative trading systems, 10 credit rating agencies, and 7 active registered clearing agencies, as well as the Public Company Accounting Oversight Board, the Financial Industry Regulatory Authority, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, and the Financial Accounting Standards Board. In addition, the SEC is responsible for selectively reviewing the disclosures and financial statements of more than 7,900 reporting companies.

As in previous years, agency management and the Office of Inspector General (OIG) recognize that the SEC's ability to meet its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation becomes more challenging as the markets, products, and participants within the SEC's purview increase in size, number, and complexity. The SEC's strategic plan establishes goals and initiatives to ensure that the agency focuses on the needs of investors, as well as its ability to adapt to rapidly changing markets, new technology, innovation, and evolving global risks.¹

We describe below the challenges of (1) managing resources while meeting the SEC's regulatory agenda; (2) keeping pace with changing markets and innovations; and (3) leveraging technology and analytics to meet mission requirements and respond to significant developments and trends.

Managing Resources While Meeting the Regulatory Agenda

Rulemaking is the process by which federal agencies implement legislation passed by Congress and signed into law by the President and, as part of its regulatory oversight responsibilities, the SEC creates or updates rules (also referred to as "regulations"). Legislation, such as the Securities Act of 1933,² the Securities Exchange Act of 1934,³ the Investment Company Act of 1940,⁴ the Sarbanes-Oxley Act of 2002,⁵ and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank)⁶ provide the framework for the SEC's oversight of the securities markets. The rulemaking process involves several steps that are designed to give the public an opportunity to provide their opinions on whether the agency should adopt or adopt with modifications a proposed rule. According to the Administrative Procedure Act,⁷ agencies must follow an open process when issuing regulations, including publishing a

¹ On October 11, 2018, the SEC issued a strategic plan for fiscal years 2018 to 2022. On August 24, 2022, the SEC released for public comment a draft strategic plan for fiscal years 2022 to 2026. As of the date of this document, the new strategic plan had not been finalized.

² Pub. L. 73-22, 48 Stat. 74 (May 27, 1933).

³ Pub. L. 73-291, 48 Stat. 881 (June 6, 1934).

⁴ Pub. L. 76-768, 54 Stat. 789 (August 22, 1940).

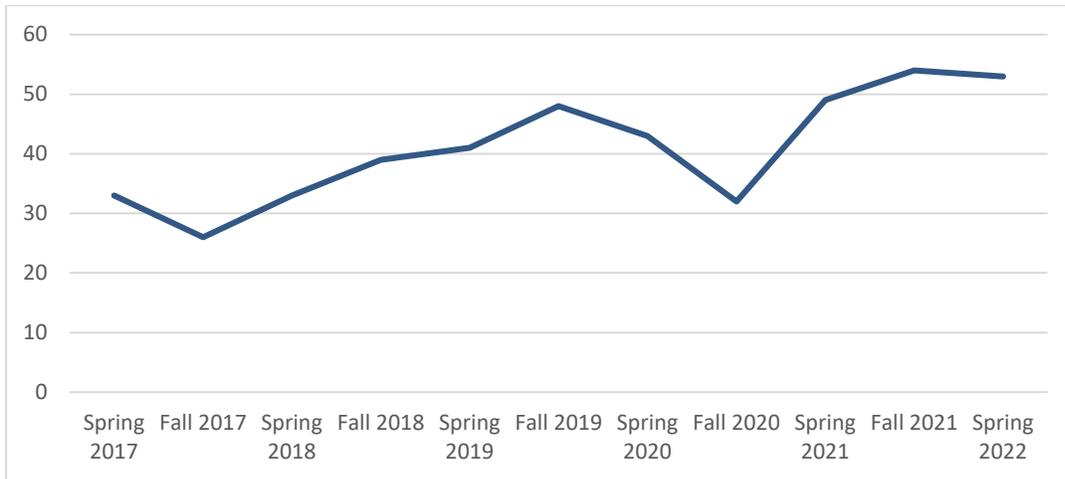
⁵ Pub. L. 107-204, 116 Stat. 745 (July 30, 2002).

⁶ Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010).

⁷ Pub. L. 79-404, 60 Stat. 237, 239 (June 11, 1946).

statement of rulemaking authority in the Federal Register for all proposed and final rules. Moreover, each fall and spring, regulatory agencies are required to publish a regulatory agenda,⁸ which is how agencies announce future rulemaking activities and update the public on pending and completed regulatory actions. As Figure 1 shows, the number of rulemaking activities on the SEC’s regulatory agenda between spring 2017 and spring 2022 increased overall.

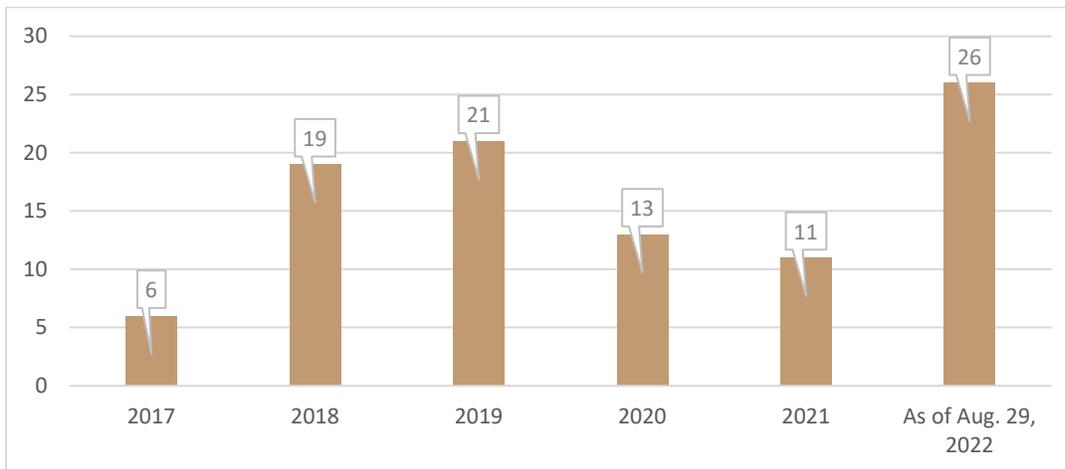
FIGURE 1. Number of Rulemaking Activities on the SEC’s Regulatory Agenda (Spring 2017 – Spring 2022)



Source: *OIG-generated based on data from the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (<https://www.reginfo.gov/public/> last accessed on September 8, 2022).*

Additionally, in only the first 8 months of 2022, the SEC proposed 26 new rules, which was more than twice as many new rules as proposed the preceding year and more than it had proposed in each of the previous 5 years. (See Figure 2.)

FIGURE 2. Number of New SEC Rules Proposed (2017 – August 2022)



Source: *OIG-generated based on data from the SEC (<https://www.sec.gov/rules/proposed.shtml>, as of August 29, 2022).*

⁸ Pub. L. 96-354, 94 Stat. 1166 (September 19, 1980).

We met with managers from the SEC's divisions of Trading and Markets, Investment Management, Corporation Finance, and Economic and Risk Analysis, some of whom raised concerns about increased risks and difficulties managing resources and other mission-related work because of the increase in the SEC's rulemaking activities. For example, some reported an overall increase in attrition (discussed further on page 21 of this document) and difficulties hiring individuals with rulemaking experience. In the interim, managers reported relying on detailees, in some cases with little or no experience in rulemaking. Others told us that they may have not received as much feedback during the rulemaking process, either as a result of shortened timelines during the drafting process or because of shortened public comment periods. Although no one we met with identified errors that had been made, some believed that the more aggressive agenda—particularly as it relates to high-profile rules that significantly impact external stakeholders—potentially (1) limits the time available for staff research and analysis, and (2) increases litigation risk. Finally, some managers noted that fewer resources have been available to complete other mission-related work, as rulemaking teams have borrowed staff from other organizational areas to assist with rulemaking activities.

Furthermore, the SEC's rulemaking function relies on coordination and collaboration amongst several agency divisions and offices and, as we reported in our October 2021 statement on the SEC's management and performance challenges, agency leaders should take measures to strengthen communication and coordination across SEC components. Indeed, the SEC's fiscal year (FY) 2021 Agency Financial Report states that the SEC values teamwork and recognizes "that success depends on a skilled, diverse, coordinated team committed to the highest standards of trust, hard work, cooperation, and communication."⁹ Additionally, the SEC's strategic plan identifies teamwork of the SEC's staff and its leaders, along with other elements, as the "foundation" of the agency.¹⁰ To support the strategic plan's Goal 3 – "Elevate the SEC's performance by enhancing our analytical capabilities and human capital development" – the SEC committed to the following initiative:

3.5 Promote collaboration within and across SEC offices to ensure we are communicating effectively across the agency, including through evaluation of key internal processes that require significant collaboration.¹¹

In response to our October 2021 statement on the SEC's management and performance challenges, agency management re-affirmed its commitment to promoting effective and collaborative information-sharing across the agency.¹² Management's continued attention to strengthening communication and coordination across divisions and offices is instrumental to (1) preventing unintentional negative impacts to divisions and offices when modifying agency-wide processes, (2) maintaining positive trends in employee views on collaboration,¹³ and (3) achieving the goals established in the SEC's strategic plan.

⁹ U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*; November 15, 2021.

¹⁰ U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*, Goal 3; October 11, 2018.

¹¹ The agency's draft strategic plan for FY 2022 to FY 2026 (Goal 3) similarly emphasizes the importance of continually strengthening and promoting collaboration within and across SEC offices.

¹² U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*; November 15, 2021.

¹³ With regards to the 2021 Federal Employee Viewpoint survey, 71 percent of agency respondents agreed that SEC managers promote communication among different work units (a 4 percentage point decrease from the previous year). In addition, 75 percent of agency respondents agreed that SEC managers support collaboration across work units to accomplish work objectives (a 3 percentage point decrease from the previous year).

Despite management's commitment to cross-functional collaboration and communication, personnel we met with (including those from the Division of Economic and Risk Analysis, the Division of Enforcement [Enforcement], and the Office of the General Counsel, among others) identified coordination and communication as a persistent challenge in the rulemaking process, particularly given potential overlaps in jurisdiction and differences in opinions. We reported on such challenges in a management letter issued in September 2022.¹⁴ Specifically, we reported that, around December 2021, the Office of the Chair modified the process for coordinating internal reviews of draft agency rules, resulting in the Office of the Advocate for Small Business Capital Formation (OASB)¹⁵ and the Office of the Investor Advocate (OIAD)¹⁶ receiving only fatal flaw drafts of proposed rules¹⁷ for a brief period of time.¹⁸ This change was not formally documented or communicated, and the then-directors of OASB and OIAD were not aware of the change until after it took effect. All parties involved acknowledged that the Office of the Chair has the authority to direct the agency's rulemaking process. Moreover, OASB and OIAD personnel stated that they were generally able to carry out their responsibilities. However, changes to internal processes likely to impact OASB's and OIAD's review and comment related to draft proposed agency rules may unintentionally limit their ability to fulfill their advocacy roles and carry out office functions, and may hinder effective collaboration and information sharing across the agency.¹⁹ Although we did not make any formal recommendations, we encouraged the Office of the Chair to consider, as a management practice, notifying OASB and OIAD before future changes to the rulemaking process, potentially impacting these offices, are implemented.

Keeping Pace With Changing Markets and Innovations

As securities markets continue to grow in size and complexity and technological advancements contribute to changes in how markets operate, the SEC's ability to remain an effective regulator requires that it continuously monitor the market environment, and as appropriate, adjust and modernize its expertise, rules, regulations, and oversight tools and activities.

Securities markets have experienced significant growth in recent years, with a record number of families holding direct and indirect stocks, and (as Table 1 shows) a record number of registered investment



Technological advancements and commercial developments continue to change how our securities markets operate and spur the development of new products.

Source: U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*, November 15, 2021.

¹⁴ U.S. Securities and Exchange Commission, Office of Inspector General, *Final Management Letter: Changes to the Internal Review Process for Proposed Rules May Impact the Office of the Advocate for Small Business Capital Formation and the Office of the Investor Advocate* (September 29, 2022).

¹⁵ The SEC Small Business Advocate Act of 2016 (Pub. L. No. 114-284, 130 Stat. 1447 [December 16, 2016]) requires OASB to advocate for small businesses and their investors by, among other things, analyzing the potential impact on small businesses and small business investors of Commission-proposed regulations that are likely to have a significant economic impact on small businesses and small business capital formation.

¹⁶ Pursuant to Section 915 of Dodd-Frank and codified at Section 4(g) of the Exchange Act of 1934, OIAD is required to analyze the potential impact on investors from proposed rules and regulations of the Commission.

¹⁷ A fatal flaw draft is the last draft circulated before the Commission votes on a proposed rule, often only a few days before the vote. It is typically the final version of the rule, to be reviewed only for critical issues, and will not incorporate policy revisions.

¹⁸ According to agency officials, the change in the rulemaking process was reversed in early 2022.

¹⁹ Other OIG work completed in FY 2022 also highlighted areas where collaboration and communication within the SEC could be improved. See U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Improve in Several Areas Related to Hiring* (Report No. 572; February 28, 2022).

TABLE 1. Number of RIAs (FY 2018 – July 2022)

Date	Number of RIAs
Beginning of FY 2018	12,616
Beginning of FY 2019	13,222
Beginning of FY 2020	13,458
Beginning of FY 2021	13,810
Beginning of FY 2022	14,719
As of July 1, 2022	15,167

Source: *OIG-generated based on data provided by EXAMS.*

advisers (RIA), which represent the largest portion of the registered firm population overseen by the SEC’s Division of Examinations (EXAMS).

In addition, as noted in a March 2022 White House fact sheet accompanying a new Executive Order, the crypto market is highly concentrated and has seen explosive growth in recent years, surpassing a \$3 trillion market cap last November, up from \$14 billion just 5 years ago.²⁰ The new Executive

Order outlines a national policy for digital assets to include protecting consumers, investors, and businesses.²¹

In recognition of the need to protect investors and respond to the changing environment, the SEC is taking steps to address the increasing risks related to the crypto market such as (1) getting platforms registered and regulated much like exchanges; (2) coordinating with the Commodity Futures Trading Commission on determining how best to regulate platforms where trading of securities and non-securities is intertwined; and (3) identifying how to work with platforms and best ensure the protection of customers’ assets. Additionally, the SEC recently announced the allocation of 20 additional positions for Enforcement’s Crypto Assets and Cyber Unit, nearly doubling its size, as the volatile and speculative crypto marketplace has attracted tens of millions of American investors and traders.²² As the SEC continues to increase its workforce and take other steps to protect investors, there is uncertainty about which agency—the SEC or the Commodity Futures Trading Commission—will have regulatory oversight responsibilities over the crypto market and what legal tools and authorities will be available. Such uncertainty can unsettle market factors and elevate risk for Main Street investors.

EXAMS also recognizes and strives to adapt to changing market factors. In its 2022 Examinations Priorities,²³ EXAMS noted significant focus areas that pose unique or emerging risks to investors or the markets, such as environmental, social, and governance investing; standards of conduct issues for broker-dealers and RIAs; and emerging technologies and crypto-assets, among others. EXAMS will continue to conduct examinations of broker-dealers and RIAs, many of which use developing financial technologies, and market participants engaged with crypto-assets, with a continued need to optimize its limited resources as it works to improve and promote compliance with regulatory requirements.

In a report we issued in January 2022, we noted steps EXAMS took to optimize its limited resources and increase efficiency and effectiveness, to include the following:

²⁰ The White House (March 9, 2022). *FACT SHEET: President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets.*

²¹ *Executive Order on Ensuring Responsible Development of Digital Assets*; March 9, 2022.

²² Gurbir S. Grewal Director, Division of Enforcement, Testimony on “Oversight of the SEC’s Division of Enforcement” Before the United States House of Representatives Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets; July 21, 2022.

²³ U.S. Securities and Exchange Commission, *Division of Examinations 2022 Examination Priorities*; March 30, 2022.

- Moved its Tracking and Reporting Examination National Documentation System (TRENDS) to a new, cloud-based platform, which is expected to improve the system's adaptability, workflow capability, and data standardization;
- Launched a new examination support service, which among other things, assists examiners with data staging, cleansing, transformation, enrichment, and analysis; and
- Advanced its centralized asset verification program, which, according to EXAMS management, has enabled growth in the number of exams involving asset verification, as well as the amount of assets verified during these exams.²⁴

Although EXAMS took these and other steps to increase efficiencies, we also reported that controls over the RIA examination planning processes needed improvement. Specifically, we found some staff commenced substantive RIA examination procedures before management approved the examination pre-fieldwork phase, and staff did not always consistently maintain key documents in TRENDS. In addition, we were unable to find documentation indicating that an examination supervisor notified registrants of non-EXAMS staff participation, as required.

We recommended that management (1) develop controls that help ensure timely supervisory approval of an examination's pre-fieldwork phase; (2) reiterate to examination staff and management the importance of and requirements for timely supervisory approval of each examination's pre-fieldwork phase; and (3) review examination documentation requirements regarding communications with registrants to ensure they are clear and examiners maintain such documentation in a consistent manner, and update examination policies as needed. Management concurred with our recommendations, which, as of the date of this document, are open and will be closed upon completion and verification of corrective action taken.

As we begin FY 2023, we will continue to monitor agency plans and actions to improve controls around supervisory approval of examinations' pre-fieldwork phase and documentation requirements regarding communications with registrants.

Use of Technology and Analytics to Meet Mission Requirements and Respond to Significant Developments and Trends

As we reported in previous years, agency management and the OIG continue to recognize the importance of technology and analytics in the SEC's ability to efficiently and effectively meet mission requirements and respond to significant developments and trends in the evolving capital markets. The SEC's strategic plan (Goals 2 and 3, and related strategic initiatives) reflects the importance of these efforts.²⁵ Additionally, according to the SEC's FY 2023 Congressional Budget Justification, the economy's reliance on the rapidly changing field of data analytics is growing, and the Commission needs to adjust by

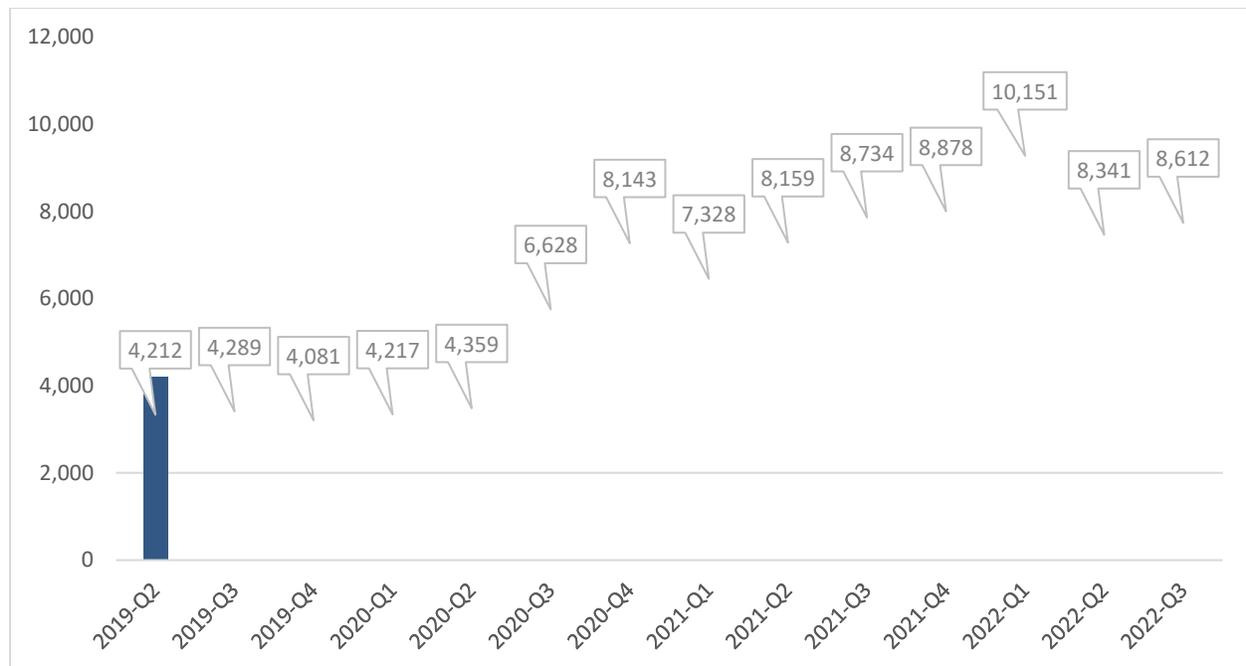
²⁴ U.S. Securities and Exchange Commission, Office of Inspector General, *Registered Investment Adviser Examinations: EXAMS Has Made Progress To Assess Risk and Optimize Limited Resources, But Could Further Improve Controls Over Some Processes* (Report No. 571, January 25, 2022).

²⁵ The agency's draft strategic plan for FY 2022 to FY 2026 (Goals 1, 2, and 3) similarly emphasizes that the SEC must effectively use technology and data.

re-evaluating how it assesses data and incorporates machine learning and deep learning into its examination and enforcement functions.²⁶

Notably, Enforcement analyzes a massive volume of data each year including thousands of tips, complaints, and referrals (TCR) related to allegations of possible violations of the federal securities laws or conduct that poses a risk of harm to investors. Enforcement receives TCRs from the public, self-regulatory organizations, other federal and local agencies, and other entities. As Figure 3 shows, the SEC received a record number of TCRs in the first quarter of 2022.

FIGURE 3. Number of TCRs Received (2019, Quarter 2 – 2022, Quarter 3)



Source: OIG-generated based on data provided by Enforcement’s Office of Market Intelligence. FY 2021 totals exclude 12,935 TCRs related to the market volatility event, and totals exclude TCRs submitted as test TCRs to validate the system.

In an evaluation report we issued in February 2021, we reported on the SEC’s process to plan and develop a future TCR system and we recommended actions to further strengthen the SEC’s TCR program and TCR system management and development.²⁷ We also encouraged management to monitor the upward trend in TCRs, and determine whether additional actions, resources, or staff allocations were needed. Management has since taken actions to address our recommendations and is working to implement a new TCR management system. According to Enforcement’s Office of Market Intelligence, the organization implemented a risk-based process to assess and triage TCRs through the use of analytics and automation, which will be incorporated into the new TCR system. In planning for the new system, the agency continues to assess the application and data, conduct market research on potential technologies, and prepare a strategic plan.

²⁶ U.S. Securities and Exchange Commission, *Fiscal Year 2023 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2021 Annual Performance Report*; March 28, 2022.

²⁷ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Further Strengthen the Tips, Complaints, and Referrals Program* (Report No. 566; February 24, 2021).

Although we acknowledge the Office of Market Intelligence's use of analytics and implementation of a new TCR system, the TCR program—along with many other critical programs and systems within the SEC—must rely on personnel to correctly input data into systems. For example, with the handling of TCRs, agency staff from divisions and offices must be sure to correctly transfer TCRs to the Office of Market Intelligence. As noted in a management letter our office issued in May 2021, we identified 2 matters of 3,303 we reviewed that were not transferred from the Office of Investor Education and Advocacy to the TCR system.²⁸ Moreover, in FY 2022, we investigated the former SEC Ombudsman and found that the former Ombudsman failed to enter TCRs on investor matters received by the Office of the Ombudsman that warranted entry, as required by the SEC's *Commission-Wide Policies and Procedures for Handling TCRs*. Specifically, the agency's policy and corresponding administrative regulation²⁹ state that all SEC staff are responsible for entering TCRs into the TCR system or forwarding them to a TCR point of contact within specified timeframes, and "when in doubt, staff should err on the side of entering a TCR." Instead, the former Ombudsman directed staff within the Office of the Ombudsman to refer investors to enter their own TCRs on matters related to alleged securities law violations or fraud. As

*Improper handling of TCRs may impede
SEC investor protection efforts*

previously noted, through the TCR program, the SEC receives and responds to credible allegations of possible violations of the federal securities laws. Improper handling of TCRs may impede the SEC's ability to timely and effectively protect investors.

Ongoing and Anticipated OIG Work. In FY 2023, we will continue to assess how well the SEC effectively and efficiently meets its regulatory oversight responsibilities. We will follow-up on open recommendations intended to improve controls around the examination program, and we will complete an ongoing audit of the SEC's whistleblower program and an evaluation of Enforcement's efforts and goals to expedite investigations, where possible and appropriate. Finally, we will initiate a review of the SEC's oversight of entity compliance with Regulation Best Interest and Form CRS.³⁰

²⁸ U.S. Securities and Exchange Commission, Office of Inspector General, *Final Management Letter: Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions* (May 24, 2021).

²⁹ U.S. Securities and Exchange Commission, SEC Administrative Regulation 3-2, *Tips, Complaints, and Referrals (TCR) Intake Policy*, November 29, 2016.

³⁰ Regulation Best Interest, the new Form CRS Relationship Summary, and two separate interpretations under the Investment Advisers Act of 1940 are part of a package of rulemakings and interpretations adopted by the Commission on June 5, 2019, to enhance and clarify the standards of conduct applicable to broker-dealers and investment advisers, help retail investors better understand and compare the services offered and make an informed choice of the relationship best suited to their needs and circumstances, and foster greater consistency in the level of protections provided by each regime, particularly at the point in time that a recommendation is made.

CHALLENGE: Protecting Systems and Data

Because the work of the SEC touches nearly every part of the nation's capital markets and advances international regulatory, supervisory, and enforcement cooperation, it is critically important to protect agency systems and data. In 2022, the Administration along with the Cybersecurity and Infrastructure Security Agency (CISA) warned that malicious cyber activity against the United States homeland could have an impact on our nation's organizations, and threats are more pronounced because of international events.³¹ The U.S. Government Accountability Office (GAO) also reported that cyber risks are growing, and cyberattacks targeting critical infrastructure—including financial services—could affect entire systems and result in catastrophic financial loss.³² Individuals or groups with malicious intentions attempt to intrude into agency systems to obtain sensitive information, commit fraud and identity theft, disrupt agency operations, or launch attacks against other systems and networks. Even in the absence of those intentions, inadequate safeguards can lead to the unauthorized disclosure, modification, use, or disruption of information that can compromise the integrity of agency operations. Therefore, the SEC must continue to take steps to safeguard the security, integrity, and availability of its information systems and sensitive data.

SEC management has recognized that “efficient, effective, and responsible use of data and information technology (IT) is a crucial focus of the agency.”³³ In its FY 2023 Congressional Budget Justification, the agency requested additional funds for IT initiatives to expand progress in key areas such as cybersecurity, secure cloud infrastructure, and data management. CISA is also continuing to publish guidance to make the federal civilian workforce more resilient to cyber threats.

The SEC's FY 2023 budget request addresses plans to hire additional personnel within the Office of Information Technology (OIT) who would provide expertise in cloud computing; strengthen security controls, policies, and procedures; and help the agency comply with requirements mandated in a recent Executive Order to move the agency toward a “zero trust” approach to cybersecurity.³⁴ Additionally, as we describe further below, opportunities exist to better protect SEC systems and data, including by evaluating and addressing the underlying cause(s) and impact of a material weakness related to insufficient user access controls, strengthening the agency's cybersecurity posture, and continuing to mature its information security program.



A critical element of the SEC's strategy is to protect the agency's two most important assets, its people and its data, both of which are vital to executing the SEC's mission.

Source: U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*; November 15, 2021.

³¹ The White House (March 21, 2022). *FACT SHEET: Act Now to Protect Against Potential Cyberattacks*; and CISA, *Shields Up* website (<https://www.cisa.gov/shields-up>), last accessed on September 9, 2022).

³² U.S. Government Accountability Office, *CYBER INSURANCE Action Needed to Assess Potential Federal Response to Catastrophic Attacks* (GAO-22-104256, June 2022).

³³ U.S. Securities and Exchange Commission, *Fiscal Year 2023 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2021 Annual Performance Report*; March 28, 2022.

³⁴ Executive Order 10460, *Improving the Nation's Cybersecurity*; May 12, 2021.

Evaluating and Addressing the Cause(s) and Impact of a Material Weakness Related to Insufficient User Access Controls

In its FY 2021 Agency Financial Report, the SEC disclosed a newly discovered material weakness associated with lack of controls related to user access to a Commission system. Specifically, the SEC reported that the information tracking and document storage system for documents related to recommendations for certain Commission actions did not include controls sufficient to prevent access by staff who should not view such documents.³⁵ This is important because, while the Commission has both investigatory and adjudicatory responsibilities, the Administrative Procedure Act contemplates the separation of those functions among the agency staff who assist the Commission in each.³⁶ Therefore, agency employees who are investigating or prosecuting an adjudicatory matter before the Commission generally may not participate in the Commission's decision-making in that or a factually related matter. However, the identified user access control deficiency did not ensure the necessary separation of the Commission's enforcement and adjudicatory functions for administrative adjudications. The SEC's FY 2021 Agency Financial Report further noted that, while a review of the affected system was underway, action had been taken to remediate the control deficiency.

Then, in April 2022, the Commission released a statement that provided additional information about the control deficiency, along with the results of the SEC's review of the impact of the control deficiency on two ongoing federal court litigations: *SEC v. Cochran*, No. 21-1239 (S. Ct.), and *Jarkesy v. SEC*, No. 20-61007 (5th Cir.). The statement reads, in part:

The Commission has determined that, for a period of time, certain databases maintained by the Commission's Office of the Secretary were not configured to restrict access by Enforcement personnel to memoranda drafted by Adjudication staff. As a result, in a number of adjudicatory matters, administrative support personnel from Enforcement, who were responsible for maintaining Enforcement's case files, accessed Adjudication memoranda via the Office of the Secretary's databases. Those individuals then emailed Adjudication memoranda to other administrative staff who in many cases uploaded the files into Enforcement databases.³⁷

With respect to these two matters, according to the Commission's statement, agency enforcement staff had access to certain adjudicatory memoranda, but this access "did not impact the actions taken by the staff investigating and prosecuting the cases or the Commission's decision-making in the matters."

The SEC is continuing to review and has not yet disclosed the full impact the internal control deficiency caused by the insufficient user access controls had on the remaining affected adjudicatory matters. The Commission's statement indicated that the agency's review team will continue to assess the remaining

³⁵ U.S. Securities and Exchange Commission, *Agency Financial Report Fiscal Year 2021*; November 15, 2021.

³⁶ Pub. L. 79-404 60 Stat. 240 (June 11, 1946).

³⁷ U.S. Securities and Exchange Commission, *Commission Statement Relating to Certain Administrative Adjudications*; April 5, 2022.

affected adjudicatory matters, and additional findings will be published “in the near future.” Furthermore, the Commission stated that, going forward, it will work to better protect the separation of adjudicatory work-product within the system for administrative adjudications, including by enhancing systems for controlling access to Adjudication memoranda.

In conjunction with the ongoing FY 2022 evaluation of the SEC’s implementation of the Federal Information Security Modernization Act of 2014 (FISMA), we assessed the SEC’s incident response related to this control deficiency, and found that the agency generally complied with applicable requirements. Nonetheless, the OIG will continue to independently review the control deficiency to understand and, as appropriate, report the full impact of this material weakness. We also will continue to monitor the agency’s progress towards redesigning or replacing the systems in question.

Strengthening the SEC’s Cybersecurity Posture

The SEC is aware that protecting information systems and data is a priority, as cyber actors may exploit poor security configurations (either misconfigured or left unsecured), weak controls, and other poor cyber hygiene practices to gain initial access or as part of other tactics to compromise a system. In FY 2022, the SEC’s OIT made progress by taking corrective action sufficient to close one cybersecurity-related recommendation from a previous OIG report.³⁸ However, as Table 2 summarizes, work remains to close other cybersecurity-related recommendations we issued before FY 2021.

TABLE 2. Certain Open Cybersecurity Recommendations as of October 2022*

Report Title	Date Issued	Recommendation(s)
<i>Opportunities Exist To Improve the SEC’s Management of Mobile Devices and Services</i> (Report No. 562)	9/30/20	Recommendations 5 and 6 Current estimated corrective action completion date: February 2023

Source: OIG-generated based on recommendation tracking and follow-up records.

* This does not include recommendations issued in connection with mandated annual information security evaluations, which we discuss on pages 13 and 14 of this document.

Recognizing there is more work to be done, in FY 2023, the SEC plans to increase efforts to:

- Support the implementation of security services within agency-selected cloud capabilities.
- Enhance identity, access, and privilege management protocols and operations across platforms.
- Modernize security operations capabilities focusing on automation, integration of shared services and experts through managed services, and proactive capabilities to identify threats.
- Continue the implementation of a secure application development structure across all agency development teams and projects.³⁹

³⁸ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can More Strategically and Securely Plan, Manage, and Implement Cloud Computing Services* (Report No. 556; Nov. 7, 2019), Recommendation 3.

³⁹ U.S. Securities and Exchange Commission, *Fiscal Year 2023 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2021 Annual Performance Report*; March 28, 2022.

The SEC also has an open recommendation from a recent GAO report on assessing security controls related to telework. The CARES Act of 2020 contains a provision for GAO to monitor the federal response to the pandemic. Specifically, GAO was asked to examine federal agencies' preparedness to support expanded telework. In September 2021, GAO issued its report, which contained two recommendations for the SEC regarding the assessment and documentation of relevant IT security controls and enhancements.⁴⁰ Although the agency's comments to the report state that the SEC expected to complete actions to remediate the recommendations by the second quarter of FY 2022, as of September 15, 2022, remediation work was still underway for the recommendation related to ensuring that the agency documents relevant IT security controls and enhancements in the security plan for the system that provides remote access for telework. GAO concluded that if agencies do not sufficiently document relevant security controls, assess the controls, and fully document remedial actions for weaknesses identified in security controls, then agencies are at increased risk that vulnerabilities in their systems that provide remote access could be exploited.

The SEC also faces cybersecurity challenges with respect to its access, use, and security of data available through the Consolidated Audit Trail (CAT). Pursuant to an SEC rule (Rule 613), self-regulatory organizations have submitted a national market system plan to create, implement, and maintain a consolidated order tracking system, or CAT, that when fully implemented will capture customer and order event information for orders in national market system securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. In its FY 2023 budget request, the SEC noted that the CAT continues to roll out functionality as the phased launch of broker-dealer reporting and regulator functionality progresses. Because CAT data is highly sensitive, the SEC must continue working to establish an environment and applications to appropriately secure the data accessed and used by the SEC as it becomes available.

Maturing the SEC's Information Security Program

Effective information security controls are essential to protecting the SEC's information systems and the data contained therein. To help the SEC establish and maintain effective information security controls and to comply with FISMA, the OIG annually evaluates the SEC's implementation of FISMA information security requirements and the effectiveness of the agency's information security program on a maturity model scale.⁴¹ The OIG contracted with Kearney & Company, P.C. (Kearney) to conduct the FY 2021 independent evaluation and, on December 21, 2021, issued the report titled, *Fiscal Year 2021 Independent Evaluation of SEC's Implementation of the Federal Information Security Modernization Act of 2014* (Report No. 570).⁴²

As stated in Report No. 570, since FY 2020, OIT improved aspects of the SEC's information security program. Among other actions taken, the SEC refined its management of security training roles and responsibilities, enhanced its security training strategy, implemented the agency's policy for specialized security training, optimized a vulnerability disclosure policy, refined its configuration management

⁴⁰ U.S. Government Accountability Office, *COVID-19: Selected Agencies Overcame Technology Challenges to Support Telework but Need to Fully Assess Security Controls* (GAO-21-583, September 2021).

⁴¹ Pub. L. No. 113-283, § 3555, 128 Stat. 3073 (2014).

⁴² As previously stated, the FY 2022 FISMA evaluation is ongoing and will be completed in the first quarter of FY 2023.

processes related to reconciliation of software code in production, improved its incident response information-sharing capabilities, and improved its contingency planning capabilities. Notably, these improvements occurred despite the unique challenges presented by Coronavirus Disease 2019 (COVID-19).

Although the SEC strengthened its program, Kearney determined for FY 2021 that the agency’s information security program did not meet annual Inspector General FISMA reporting metrics’ definition of “effective,” which requires the simple majority of domains to be rated as Level 4 (“Managed and Measurable”).⁴³ As stated in Report No. 570, the SEC’s maturity level for the five Cybersecurity Framework security functions (“identify,” “protect,” “detect,” “respond,” and “recover”) and related domains was primarily Level 3 (“Consistently Implemented”) or Level 4 (“Managed and Measurable”). Although the SEC’s program, as a whole, did not reach the level of an effective information security program, the agency showed significant improvement at the domain level. Specifically, the agency’s assessed maturity level for the Security Training domain increased from Level 2 (“Defined”) to Level 5 (“Optimized”). Table 3 shows the SEC’s FISMA ratings in FY 2020 and FY 2021.

In FY 2021, the SEC’s maturity level was primarily “Consistently Implemented” or “Managed and Measurable”

TABLE 3. Summary of SEC FISMA Ratings (FY 2020 and FY 2021)

Domain	Assessed Rating By FY	
	2021	2020
Risk Management	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
Supply Chain Risk Management	Level 1: <i>Ad Hoc</i>	<i>Not Applicable</i>
Configuration Management	Level 2: <i>Defined</i>	Level 2: <i>Defined</i>
Identity and Access Management	Level 2: <i>Defined</i>	Level 2: <i>Defined</i>
Data Protection and Privacy	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
Security Training	Level 5: <i>Optimized</i>	Level 2: <i>Defined</i>
Information Security Continuous Monitoring	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
Incident Response	Level 4: <i>Managed and Measurable</i>	Level 4: <i>Managed and Measurable</i>
Contingency Planning	Level 4: <i>Managed and Measurable</i>	Level 4: <i>Managed and Measurable</i>

Source: OIG-generated based on Exhibit 1 from Report No. 570.

Report No. 570 included eight new recommendations to strengthen the SEC’s information security program, and highlighted opportunities to improve in all nine FY 2021 Inspector General FISMA reporting metric areas. To date, the SEC has taken corrective action sufficient to close three of these eight recommendations. However, five recommendations from prior year FISMA reports remain open (two from

⁴³ FY 2021 Inspector General Federal Information Security Modernization Act of 2014 (FISMA) Reporting Metrics, Version 1.1; May 12, 2021.

FY 2017,⁴⁴ one from FY 2018,⁴⁵ and two from FY 2020⁴⁶). We commend agency management for the actions taken to date, and encourage management to promptly act on all opportunities for improvement identified in previous FISMA reports to help minimize the risk of unauthorized disclosure, modification, use, and disruption of the SEC's sensitive, non-public information, and to assist the agency's information security program reach the next maturity level.

Finally, we continue to track the agency's progress related to an audit of the SEC's enterprise architecture (*Additional Steps Are Needed For the SEC To Implement a Well-Defined Enterprise Architecture*; Report No. 568, issued September 29, 2021). In our report, we highlighted six recommendations to improve the SEC's implementation of a well-defined enterprise architecture (four of which remain open), and one recommendation to improve the SEC's oversight of enterprise architecture support services contracts (which is closed). We understand that the agency has efforts underway to develop an enterprise roadmap for future years, and the remaining four recommendations will be closed upon completion and verification of corrective action taken.

Fully implementing recommended corrective actions from these audits and evaluations may assist the SEC as it seeks to mature aspects of its information security program, generally, and its IT program and program management, specifically.

Ongoing and Anticipated OIG Work. In FY 2023, we will continue to assess the SEC's efforts to secure its systems and data and mature its information security program. Specifically, we will continue to assess the reported user access control deficiency matter, follow-up on open recommendations, complete the ongoing FY 2022 FISMA evaluation, and initiate the FY 2023 FISMA evaluation. We will also review the SEC's efforts to establish a secure environment and applications to use CAT data, determine whether the SEC implemented adequate security controls to safeguard information and IT resources during maximum telework, and assess steps the SEC has planned or taken to address "zero trust" requirements.

⁴⁴ U.S. Securities and Exchange Commission, Office of Inspector General, *Audit of the SEC's Compliance With the Federal Information Security Modernization Act for Fiscal Year 2017* (Report No. 546; March 30, 2018).

⁴⁵ U.S. Securities and Exchange Commission, Office of Inspector General, *Fiscal Year 2018 Independent Evaluation of SEC's Implementation of the Federal Information Security Modernization Act of 2014* (Report No. 552; December 17, 2018).

⁴⁶ U.S. Securities and Exchange Commission, Office of Inspector General, *Fiscal Year 2020 Independent Evaluation of SEC's Implementation of the Federal Information Security Modernization Act of 2014* (Report No. 563; December 21, 2020).

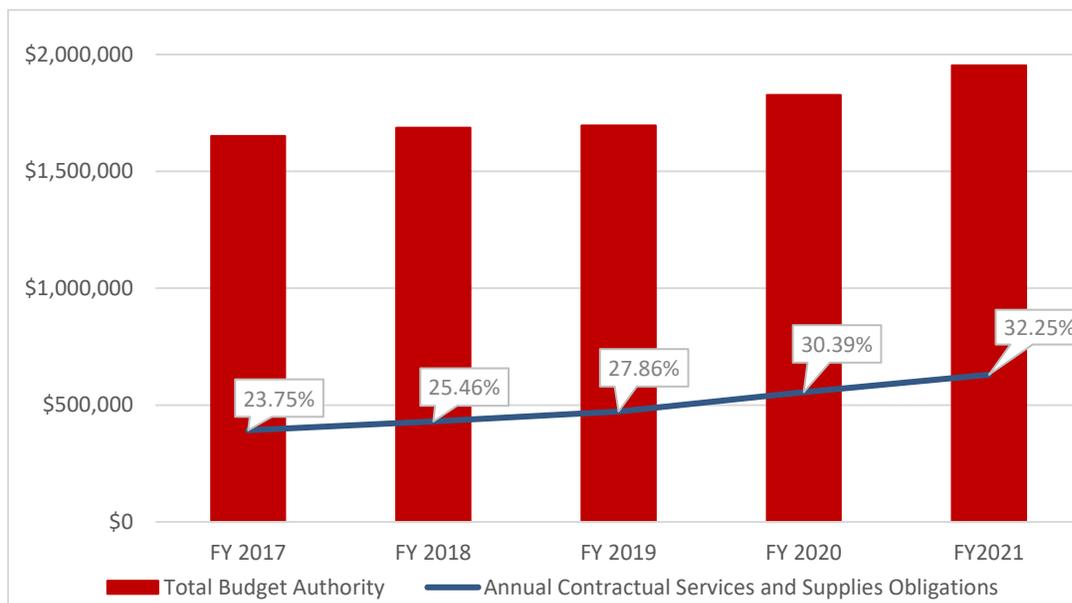
CHALLENGE: Improving Contract Management

Synopsis and Trends in SEC Contracting

The SEC substantially relies on contractor support to accomplish its mission. Contractor support is obtained through a variety of methods, including enterprise-wide contracts, U.S. General Services Administration multiple award schedule contracts, government-wide acquisition contracts, and multi-agency contracts. As markets are ever evolving and increasing in complexity, the SEC relies on contractors for technical and subject matter expertise including, but not limited to, professional legal and investigation-related services; support in areas of accounting, analytics, and examinations; and human resources support services.

To fund its contract requirements, the SEC's FY 2023 budget request included nearly \$610 million for contractual services and supplies,⁴⁷ which represents about 28 percent of the total \$2.149 billion requested for agency operations. As we reported in last year's statement on the SEC's management and performance challenges, annual obligations for contractual services and supplies, when expressed as a percentage of the SEC's total annual budget authority, has been increasing. This trend continued in FY 2021, with annual obligations for contractual services and supplies equaling about 32 percent of the SEC's total annual budget authority. (See Figure 4.)

FIGURE 4. SEC Annual Contractual Services and Supplies Obligations, in Thousands, as a Percentage of Total Annual Budgetary Authority (FY 2017 – FY 2021)

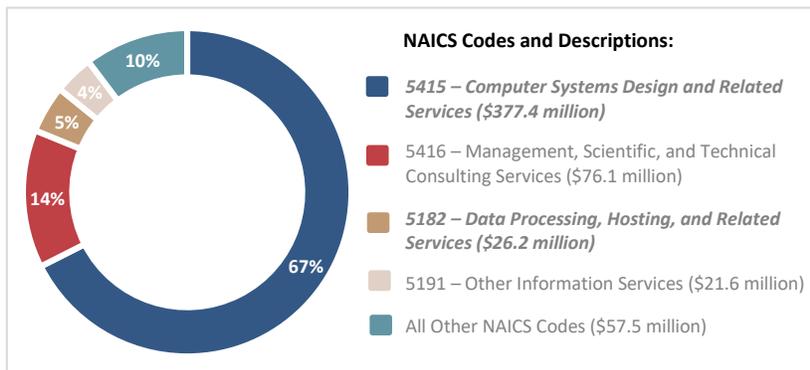


Source: OIG-generated based on annual actual obligations by object class as reported in the SEC's Congressional Budget Justifications for FY 2019 through FY 2023.

⁴⁷ According to OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget* (August 2022), the contractual services and supplies object class covers purchases in object classes 21.0 through 26.0 (Travel and transportation of persons; Transportation of things; Rent, Communications, and Utilities; Printing and reproduction; Other contractual services; and Supplies and materials).

As contract obligations are approaching nearly a third of the agency's annual budget authority, it is essential that the SEC's acquisition workforce effectively manage these resources. Government contracts continue to be an attractive target for fraudsters. In 2021, GAO issued two reports related to contract fraud schemes within the government, focusing on programs within the Department of Defense and the Department of Energy.⁴⁸ The SEC is not invulnerable to such schemes and must remain vigilant, closely monitoring areas of risk. For example, GAO identified fraudulent billing schemes as a risk to the procurement process, and the SEC OIG has participated in cross-agency investigative efforts to fight fraudsters who impersonate government officials and submit false purchase orders associated with real government contracts, the terms of which are publicly available.

FIGURE 5. Top NAICS Codes Associated With the SEC's FY 2022 Contract Obligations



Source: OIG-generated from data retrieved from [SAM.gov](https://sam.gov) on October 6, 2022.

Although the SEC procures a wide range of services and supplies, the majority of the agency's contract support by dollars obligated is for IT services. These services include, among others, application management, business solutions delivery, IT infrastructure and support services, information security, IT governance and program strategy, data management, and software

services. We reviewed the top North American Industry Classification System (NAICS) codes⁴⁹ associated with SEC contracts in FY 2022, as reported through the System for Award Management ([SAM.gov](https://sam.gov)),⁵⁰ and noted that, of the nearly \$560 million obligated to contract actions that year and included in the system, the SEC obligated about 72 percent (or about \$404 million) to vendors doing business under just two IT service-related NAICS codes: one for computer systems design and related services, and another for data processing, hosting, and related services. (See Figure 5.) This represents a slight increase over FY 2021 and a more significant increase over FY 2020 (when obligations under the same two NAICS codes totaled about \$401 million and \$351 million, respectively).⁵¹

⁴⁸ U.S. Government Accountability Office, *DOD FRAUD RISK MANAGEMENT Actions Needed to Enhance Department-Wide Approach, Focusing on Procurement Fraud Risks* (GAO-21-309, August 2021); and *DEPARTMENT OF ENERGY CONTRACTING Improvements Needed to Ensure DOE Assesses Its Full Range of Contracting Fraud Risks* (GAO-21-44, January 2021).

⁴⁹ NAICS is a comprehensive industry classification system that covers all economic activities and groups establishments into industries based on the similarity of their production processes. Among other things, U.S. statistical agencies use NAICS to provide uniformity and comparability in the presentation of statistical data describing the U.S. economy. Federal Acquisition Regulation 19.102(b) requires contracting officers to assign one NAICS code to all government solicitations, contracts, and task and delivery orders based on the product or service being acquired and its principal purpose. In this document, "top NAICS codes" refers to those codes that represent the largest amounts in terms of total annual amounts obligated.

⁵⁰ SAM is a U.S. General Services Administration Federal Government computer system that, among other things, allows users to create and run reports of detailed information on contract actions that are required to be reported by federal agencies. These are actions with an estimated value of \$10,000 or more.

⁵¹ Based on data retrieved from [SAM.gov](https://sam.gov) on October 6, 2022.

A growing majority of contract support concentrated in IT services—and, therefore, in those segments of the agency's acquisition workforce that procure, administer, and oversee contracts for such services—potentially increases the risk to the SEC. Indeed, since 2015, GAO has reported that management of IT acquisitions and operations is a high risk area needing attention by the executive branch and Congress, stating, “federal IT investments too frequently fail or incur cost overruns and schedule slippages while contributing little to mission-related outcomes. These investments often suffer from a lack of disciplined and effective management, such as project planning, requirements definition, and program oversight and governance.”⁵² We have previously reported on needed improvements in the SEC's management of IT

Management of IT acquisitions and operations is a high risk area across the executive branch

investments.⁵³ And while last July the SEC completed efforts sufficient to close our remaining recommendations for corrective action stemming from that report, the agency has also increased its investments (and, therefore, its potential risk) related to IT service contracts.

Notably, the SEC procures many of its IT services through its OneIT enterprise contract vehicle, which has a 10-year ordering period and a contract ceiling of \$2.5 billion. In September 2018, the SEC began awarding time-and-material (T&M), labor-hour (LH), and firm-fixed price task orders under the OneIT contract vehicle, which included separate pools for small businesses only (restricted) and all awardees, including large businesses (unrestricted). As of June 2022, the agency had awarded task orders to 27 companies, including 5 large businesses and 22 small businesses, obligating a total of almost \$450 million for task orders under this vehicle. The SEC's Office of Minority and Women Inclusion (OMWI) collaborated with key stakeholders to advertise to vendors opportunities and specifics of the OneIT program. This advertising included a publically available brochure targeted to minority-owned and women-owned businesses. OMWI received positive feedback and is looking to expand the concept to other large SEC contracts being awarded. As such, the SEC's Office of Acquisitions (OA) and OMWI are continuing to work collaboratively to increase outreach to minority-owned and women-owned businesses and continue efforts to increase the SEC's vendor diversity.

Focus on Diversity, Equity, and Inclusion

OA and OMWI are collaborating to voluntarily implement the requirements of Executive Order 13895, which states that the federal government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.⁵⁴ This advancing of equality includes promoting equitable delivery of government benefits and equitable opportunities, such as government contracting and procurement opportunities, which should be available on an equal basis to all eligible providers of goods and services.

⁵² U.S. Government Accountability Office, *HIGH-RISK SERIES Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas* (GAO-21-119SP, March 2021).

⁵³ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Has Processes To Manage Information Technology Investments But Improvements Are Needed* (Report No. 555; September 19, 2019).

⁵⁴ Executive Order 13895, *Advancing Racial Equity and Support for Underserved Communities through the Federal Government*, January 20, 2021. Independent agencies are strongly encouraged to comply with the provisions of this Executive Order.

Additionally, recent OMB guidance implements commitments to increase the share of contracts awarded to small disadvantaged businesses to 15 percent by 2025.⁵⁵ To do this, OMB directs federal agencies to take specific management actions, including increasing the number of new entrants to the federal marketplace and reversing the general decline in the small business supplier base.

Diversity, equity, and inclusion is a focus of OA and, in its FY 2023 budget request, OA requested two additional positions to support a number of priorities, including support for workload increases to review and expand diversity, equity, and inclusion efforts in contracting opportunities. Furthermore, OMWI continues to collaborate with OA to promote access to contracting and sub-contracting opportunities for minority-owned and women-owned businesses, through outreach activities. In March 2022, we initiated an audit to (1) assess the SEC's processes for encouraging small business participation in agency contracting, in accordance with federal laws and regulations; and (2) determine whether, in FYs 2020 and 2021, the SEC accurately reported small business awards. The audit is ongoing and will be completed in FY 2023.

T&M Contracts

Since our 2019 statement on the SEC's management and performance challenges, we have reported that T&M contracts (including LH contracts) lack incentives for contractors to control costs or use labor efficiently and, therefore, are considered higher-risk.⁵⁶ Last year, we noted again that the SEC's use of T&M contracts has continued to increase. We encouraged management to assess the SEC's use of these contracts and to formulate actions to reduce their use whenever possible. In response, agency management committed to continuing to closely monitor its use of T&M contracts and "exercise rigorous oversight of these types of contracts."⁵⁷ Management further noted that OA has made a number of improvements to better manage T&M contracts, including a new independent government cost estimate guide, contract compliance reviews, information sharing on T&M invoicing, and an automated determination and findings workflow for "more robust and consistent support for the use of T&M" contracts. To date, we have not fully assessed the effectiveness of management's reported additional controls;⁵⁸ however, the annual amount obligated to T&M contracts continues to raise concerns about risk to the SEC. As Figure 6 shows, according to data from usaspending.gov, the total amount obligated to T&M contracts increased since FY 2018 from about 40 percent to about 53 percent of all SEC contract obligations (which are declining).⁵⁹ In addition, as of October 7, 2022, 476 of the SEC's 1,055 total active contracts (or about 45 percent) were T&M contracts.

⁵⁵ Office of Management and Budget, Memorandum M-22-03, *Advancing Equity in Federal Procurement*; December 2, 2021.

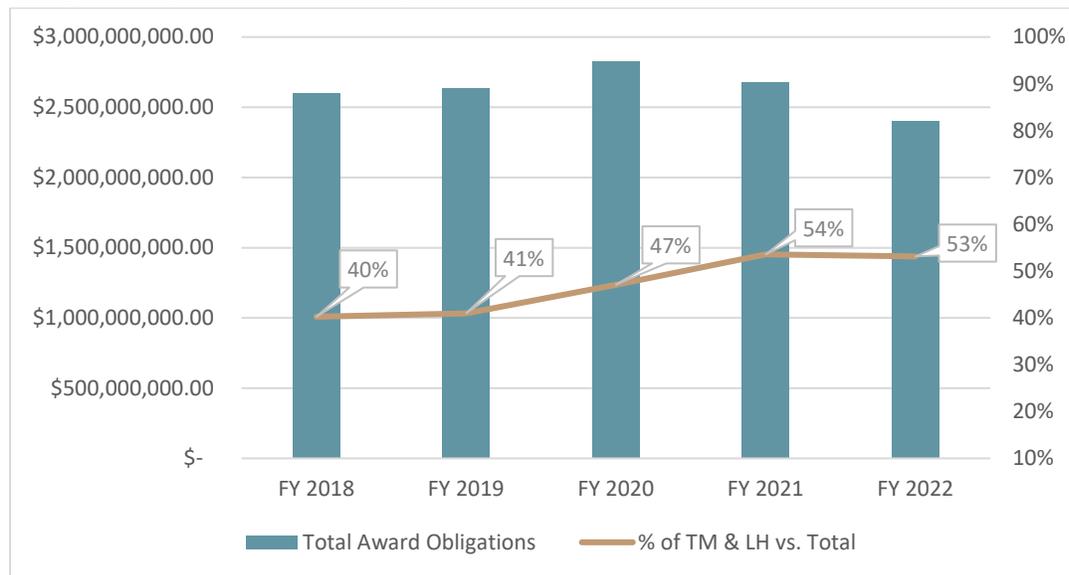
⁵⁶ As stated in Federal Acquisition Regulation 16.602, *Labor-hour contracts*, LH contracts are a variation of T&M contracts and differ only in that materials are not supplied by the contractor.

⁵⁷ U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*; November 15, 2021.

⁵⁸ We plan to initiate an audit of this issue in FY 2023.

⁵⁹ According to usaspending.gov, total (that is, cumulative) award obligations for all active SEC contracts as of October 7, 2022, was about \$2.40 billion, of which total award obligations for T&M contracts was about \$1.28 billion.

FIGURE 6. Percentage of SEC T&M Award Obligations Compared to Total SEC Award Obligations (FY 2018 – FY 2022)



Source: OIG-generated based on data retrieved from usaspending.gov on October 7, 2022.

As we have reported in prior years' statements on the SEC's management and performance challenges, Federal Acquisition Regulation Subpart 16.6, *Time-and-Materials, Labor-Hour, and Letter Contracts*, states, a T&M contract:

- “. . . provides no positive profit incentive to the contractor for cost control or labor efficiency.”
- “. . . may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.”

Furthermore, in June 2022, GAO reported that T&M and LH contracts are considered riskier than fixed price contracts because contractors bill the government by the hour and could conceivably work less efficiently so that they could charge more hours. As a result, GAO recommended that selected agencies assess steps they can take to use lower-risk contract types, and highlighted potential opportunities for agencies to assess ongoing use of T&M contracts in their acquisition portfolios.⁶⁰ Moreover, the Federal Acquisition Regulation encourages contracting officers to assess contract types periodically, after experience obtained during the performance of a T&M contract provides a basis for firmer pricing. A January 2021 OMB memorandum also discourages agency reliance on high-risk contracts, such as T&M contracts, stating that, “By managing contract types effectively, agencies have better leverage to ensure timely, efficient, and cost-effective completion of contractor work supporting critical and high priority goals.”⁶¹

⁶⁰ U.S. Government Accountability Office, *Opportunities Exist to Reduce Use of Time-and-Materials Contracts* (GAO-22-104806, June 2022). GAO included in its review four Department of Defense agencies and field activities (the Air Force, Army, Defense Finance and Accounting Service, and Washington Headquarters Services), and three civilian agencies (the Social Security Administration, the Department of Homeland Security, and the Department of State).

⁶¹ Office of Management and Budget, Memorandum M-21-11, *Increasing Attention to Federal Contract Type Decisions* (January 5, 2021).

Ongoing and Anticipated OIG Work. In FY 2023, we will continue to assess the SEC's contract management and acquisition processes through audits and evaluations and the work of our Acquisitions Working Group. We will complete an ongoing audit of the SEC's small business contracting program. In addition, we will assess the SEC's use of T&M contracts to help ensure such contracts are used only when appropriate and effective controls are in place to minimize the risk to the government. Lastly, we will report on any acquisition-related matters identified as a result of other ongoing and planned reviews of SEC programs and operations, and continue to support the SEC's efforts to train contracting officers and contracting officer's representatives about the potential for procurement-related fraud.

CHALLENGE: Ensuring Effective Human Capital Management

Although each component within the SEC is critical to achieving effective human capital management, the Office of Human Resources (OHR) is ultimately responsible for the strategic management of the SEC's human capital. OHR consults with management, establishes and administers human capital programs and policies, and ensures compliance with federal laws and regulations and negotiated agreements. It is critical that OHR develops and maintains the knowledge, skillsets, and expertise to guide the SEC through the challenges that inevitability arise in the management of a large professional workforce.

Indeed, retention, attrition, recruitment, and hiring of skilled personnel have all emerged as challenges within the SEC, along with the challenges associated with managing the agency's workforce throughout the COVID-19 pandemic.

Retention, Attrition, Recruitment, and Hiring

The SEC recognizes the importance of an effective, highly-skilled, and diverse workforce. As such, in its strategic plan, the SEC states that it "will focus on recruiting, retaining, and training staff with the right mix of skills and expertise."⁶² Moreover, Goal 1 of OHR's Human Capital Strategic Plan is to "Attract Diverse and Highly Talented People to the Agency."⁶³

OMWI also plays an important part in the agency's recruitment and retention efforts by providing leadership and guidance in ensuring diversity and inclusion with respect to the SEC workforce. In its Diversity and Inclusion Strategic Plan, the SEC highlights the importance of diversity, equity, and inclusion in the workplace, stating, "we recognize that our people are our most important asset. We also recognize that diversity, inclusion, and opportunity are essential to the agency's ability to effectively carry out its mission. These fundamental and value-enhancing tenets of our mission-oriented culture dictate that we continuously work to attract, hire, develop, and retain high-quality, diverse talent."⁶⁴

Retention and Attrition

Despite OHR's and OMWI's efforts and the SEC being recognized as one of the best places to work in the federal government,⁶⁵ the SEC seems to be facing challenges to its retention efforts. As the figures below demonstrate, the SEC has seen a significant increase in attrition over the last few years, from 3.8 percent in FY 2020 to an estimated 6.4 percent in FY 2022 (as of September 20, 2022)—the highest attrition rate in 10 years. Most concerning is the increased attrition in Senior Officer and attorney positions, expected to be about 20.8 percent and about 8.4 percent for FY 2022, respectively.



Effective management of an entity's workforce, its human capital, is essential to achieving results and an important part of internal control.

Source: U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014), Principle 10 - Design Control Activities, section 10.03.

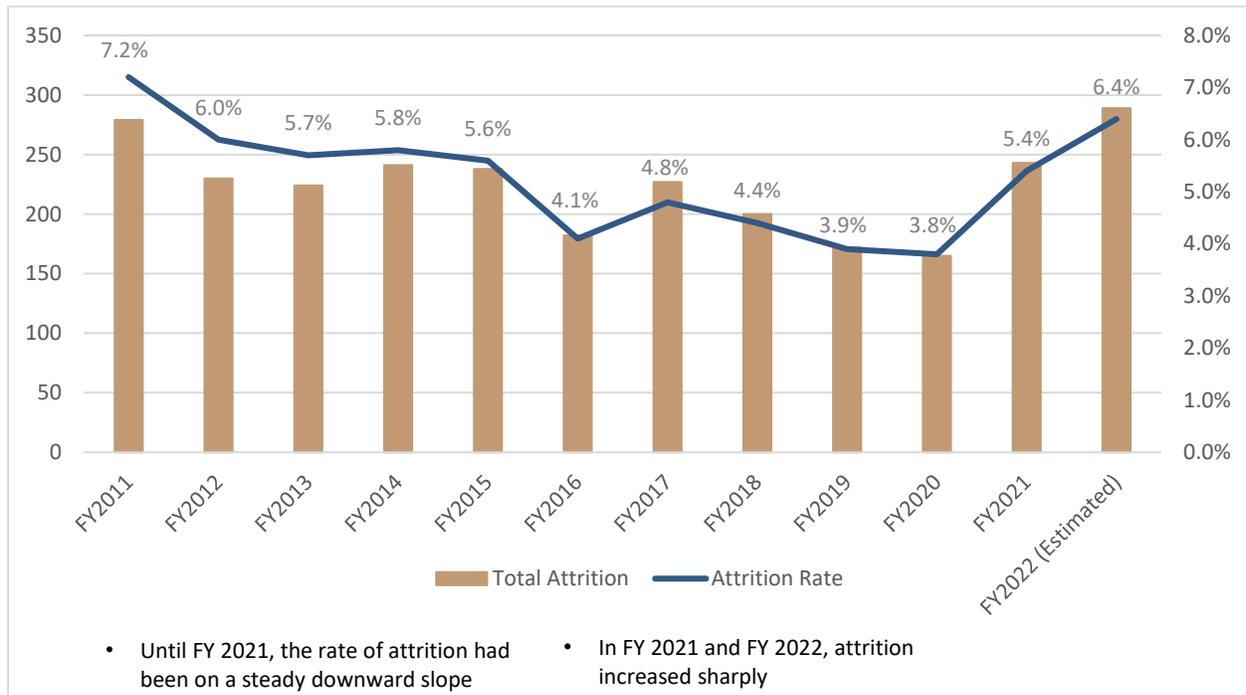
⁶² U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*, Strategic Initiative 3.1; October 11, 2018. The agency's draft strategic plan for FY 2022 to FY 2026 (Goal 3) similarly emphasizes the importance of attracting, hiring, developing, and retaining high-quality, diverse talent.

⁶³ U.S. Securities and Exchange Commission, Office of Human Resources, *FY 2020-2022 Human Capital Strategic Plan*; March 2020.

⁶⁴ U.S. Securities and Exchange Commission, *Diversity and Inclusion Strategic Plan*, Fiscal Years 2020-2022, Introduction.

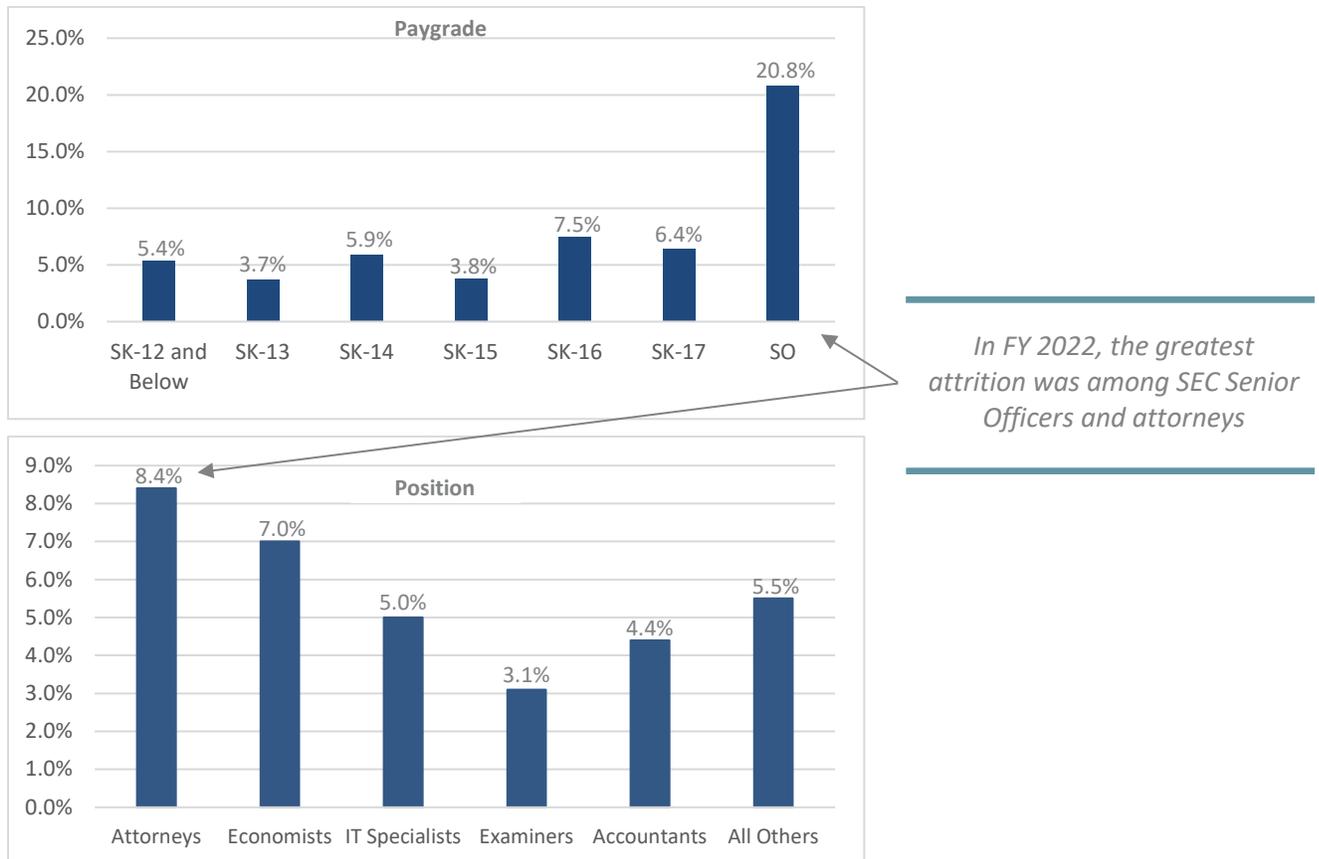
⁶⁵ Partnership for Public Service, *2021 Best Places to Work in the Federal Government Rankings*.

FIGURE 7. Total SEC Attrition (in Number of Positions) and Attrition Rate (FY 2011 – FY 2022)



Source: OIG-generated based on data provided by OHR.

FIGURE 8. SEC FY 2022 Expected Attrition by Paygrade and Position



Source: OIG-generated based on data provided by OHR.

The SEC is not alone in facing a crisis to retain mission-critical talent during what has been dubbed “The Great Resignation.” Critical elements of the federal workforce are in a state of stress. For example, according to the Partnership for Public Service, FY 2021 government-wide attrition rates averaged 6.1 percent, with certain groups experiencing even higher rates, such as women (6.4 percent) and executives (9.2 percent).⁶⁶

The SEC may be able to address some of the concerns surrounding attrition by ensuring that it provides for succession planning through robust employee development and performance management. For example, in August 2022, the SEC launched a new program called LEAD (Leadership, Evaluation, Accession, and Development) to help SEC employees develop the leadership skills necessary to apply for future Senior Officer opportunities. However, performance management remains an area of opportunity for growth. For example, the SEC has discontinued the Performance Incentive Bonus program it implemented just 1 year ago. In addition, one recommendation from our 2018 report entitled, *The SEC Made Progress But Work Remains To Address Human Capital Management Challenges and Align With the Human Capital Framework*, remains open.⁶⁷ This recommendation—for the SEC to finalize standard operating procedures for the agency’s performance management program—is an important component of the SEC’s effort to ensure effective performance management. Agency management has reported that remediation work is underway, yet limited resources and competing priorities have created delays. In FY 2023, GAO is set to issue its triennial report on personnel management within the SEC,⁶⁸ which should provide further guidance to the SEC in this area.

Recruitment and Hiring

Recruitment is a major area of interest to both OHR and OMWI. Recruitment efforts are critical to ensuring a skilled and diverse candidate pool from which to fill SEC vacancies. In its FY 2023 Congressional Budget Justification, the SEC requested a total of 5,261 positions, an increase of 454 positions from FY 2022, in which the SEC was authorized 4,807 positions. With FY 2022 attrition rates estimated to be at 6.4 percent—or about 289 positions—efforts to recruit and hire an additional 454 new positions in FY 2023 could present challenges for OHR, OMWI, and SEC management. Moreover, the federal government is facing stiff competition from the private sector as increased wages and workforce engagement make private sector positions attractive to both new and seasoned professionals. The federal government hiring process also has been cited as a detriment when attracting talent to the federal government. For example, the federal government takes on average 98 days—more than twice as long as the private sector—to hire a new employee.⁶⁹ During our recent audit of the SEC’s hiring process, discussed in more detail below, we found that of the 438 external hiring actions that we included in our analysis, nearly 50 percent took 100 business days or more to complete.⁷⁰

⁶⁶ Partnership for Public Service. “[Who Is Quitting and Retiring: Important Fiscal 2021 Trends in the Federal Government.](#)”

⁶⁷ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Made Progress But Work Remains To Address Human Capital Management Challenges and Align With the Human Capital Framework* (Report No. 549; September 11, 2018).

⁶⁸ Section 962 of Dodd-Frank includes a provision for GAO to report triennially on the SEC’s personnel management, including the competence of professional staff; the effectiveness of supervisors; and issues related to employee performance assessments, promotion, and intra-agency communication. See Pub. L. No. 111-203, 124 Stat. 1376, 1908-1909 (2010) (codified at 15 U.S.C. § 78d-7).

⁶⁹ Partnership for Public Service. “[Roadmap for Renewing Our Federal Government.](#)”

⁷⁰ U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Improve in Several Areas Related to Hiring* (Report No. 572; February 28, 2022).

To address some of these recruitment concerns, OHR recently issued its FY 2022-2024 Recruitment and Outreach Strategic Plan, which identifies strategies to attract diverse talent and to aid in filling mission critical occupations that have been deemed hard-to-fill. Such strategies include creating branding and marketing that speaks to prospective applicants; developing and implementing a multi-media recruitment and agency branding campaign that highlights the successes of current SEC employees; developing a comprehensive internal communications strategy; and creating an overarching recruitment, outreach, and engagement tool to enhance the recruitment process.

Given the importance of an effective process when recruiting and hiring new employees, and the likelihood that the SEC will be heading into an intensive hiring effort, the OIG recently reviewed the SEC's hiring process and identified areas for improvement. The OIG's audit report, *The SEC Can Improve in Several Areas Related to Hiring*, addressed a number of critical areas related to the SEC's hiring process.⁷¹ First, we determined that management can improve its controls to ensure Workforce Transformation and Tracking System (WTTS) data fields are accurate, consistent, and complete. We found that:

- 83 of the 91 hiring actions sampled (or about 91 percent) had at least one data entry issue in the WTTS data fields we reviewed, and almost 9 percent of the WTTS data entries we reviewed were either inaccurate, inconsistent, or incomplete;
- the SEC's WTTS data continued to include unannotated anomalies; and
- certain hiring actions were not consistently identified in WTTS.

These conditions occurred because (1) OHR's WTTS job aid did not include sufficient instructions regarding the dates and information expected in key WTTS data fields, and (2) some data fields were not included on the WTTS reports used by OHR staff to ensure the SEC's hiring action data was accurate, complete, and consistently recorded. As a result, OHR can further improve the reliability of the SEC's WTTS data to assist in workforce management and internal and external reporting of agency hiring information.

In addition, our assessment of OHR's quarterly Service Level Commitment (SLC) reviews found that (1) OHR did not perform SLC reviews in a consistent manner, (2) the review process was inefficient and prone to inaccuracies, and (3) SLC reviews did not align with the SLC presented to and agreed upon by the other SEC divisions and offices. This occurred because OHR did not establish clear guidance, including in the SLC itself, for the variety of hiring types and scenarios that can occur, or how to measure each one. The organization also did not ensure it could measure the SLC steps, as presented, in WTTS and did not effectively use the WTTS reporting capabilities in its SLC reviews. As a result, OHR limited its ability to rely on the SLC and SLC reviews as key controls for efficiently and effectively identifying areas of needed improvement in the SEC's hiring process, and for collaborating with the divisions and offices OHR serves.

Furthermore, we found that the SEC's pay-setting guidance needed improvement and OHR could clarify the new hire pay-setting information shared both internally and externally. Specifically, (1) the pay-setting

⁷¹ Id.

information available to SEC employees and hiring officials was not comprehensive, (2) the internally published pay matrices were outdated, and (3) publicly advertised SEC salary information was misleading for new hires. We also identified inaccuracies in some of the underlying pay band information included in the 2021 pay matrices, and other pay-setting concerns. Incomplete, outdated, and misleading new hire pay-setting guidance and information have caused confusion and may have limited hiring officials' ability to review and respond to pay-setting requests. Although it does not appear that inaccurate information in the 2021 pay matrices impacted any newly hired SEC employee's pay, it could have had certain hiring scenarios occurred. We also concluded that OHR generally complied with the key hiring authority requirements tested; however, staffing case files for 18 of 32 attorney hiring actions we reviewed (about 56 percent) lacked supporting documentation, including proof of law degrees and/or bar membership. This occurred because OHR did not clarify review processes and documentation requirements for attorney qualifications. In addition, OHR's internal reviews of staffing case files needed improvement. As a result, the SEC risked hiring attorneys who did not meet all qualifications required for their position.

Lastly, we identified a matter that did not warrant recommendations related to (1) the SEC's SLC as compared to the Office of Personnel Management's end-to-end hiring process model timelines, and (2) feedback from the SEC divisions and offices OHR serves. We discussed this matter with agency management for their consideration.

We made 11 recommendations to further strengthen the SEC's controls over hiring actions, including recommendations to improve (1) the reliability of WTTS data, (2) assessments of the agency's hiring timelines, (3) the agency's compensation program, and (4) staffing case file documentation requirements. Management concurred with all 11 of our recommendations and, as of the date of this document, had taken action sufficient to close 5 of them. The remaining recommendations are open and will be closed by the OIG upon completion and verification of corrective action.

Responding to COVID-19: Workforce Perspectives

Responding to the COVID-19 pandemic has been a central concern of the SEC, and the federal government as a whole, throughout FY 2022. Since the outset of the national public health crisis and economic threats caused by COVID-19, the SEC's operational efforts have centered, first and foremost, on the health and safety of its employees, the employees and customers of its registrants, and individuals generally. From March 2020 through August 8, 2021, the SEC was in a mandatory telework posture, which aligned with other federal government agencies. Indeed, the federal government workforce quickly increased from 3 percent of employees teleworking every day to nearly 60 percent, as the 2020 Office of Personnel Management Federal Employee Viewpoint Survey shows.⁷² However, as vaccines became more widely available, the SEC shifted its focus to how to best and most safely allow employees to return to the workplace.

⁷² Office of Personnel Management, *Government-wide Management Report: Results from the 2020 OPM Federal Employee Viewpoint Survey*; April 26, 2021.

Safety remains a top priority when planning for employee return to the workplace

On August 9, 2021, the agency began to allow vaccinated employees to voluntarily return to the workplace. In calendar year 2022, peak occupancy across all SEC building locations has averaged around 7 percent. The SEC has not yet mandated that its employees return to the office in pre-COVID-

19 levels. On July 25, 2022, the agency announced that, because of the recent uptick in COVID-19 community levels, the planned return-to-office date was shifted from September 6, 2022, to January 9, 2023. Occurring alongside the agency's monitoring of community levels, the SEC is also negotiating a new collective bargaining agreement with the National Treasury Employees Union, which will include updated provisions related to telework and remote work. The parties are also engaged in bargaining related to the mandatory return-to-office plan. While these negotiations are ongoing, both the National Treasury Employees Union and SEC leadership make regular announcements to staff and management, respectively, about their progress. At this point, further negotiations require assistance from the Federal Mediation and Conciliation Service as the parties endeavor to avoid invoking the Federal Services Impasse Panel for a final decision on the terms of the new collective bargaining agreement and return-to-office plan. The uncertainty surrounding the plans for return-to-office and the potential for expanded telework and/or workplace flexibilities makes it more difficult to plan for future human capital management solutions.

Ongoing and Anticipated OIG Work. In FY 2023, we plan to evaluate the agency's workplace safety protocols developed in response to the COVID-19 pandemic, including the COVID-19 workplace safety plan and related measures, such as those established pursuant to OMB Memorandum M-21-15, Executive Order 13991, and other applicable guidance. We also will complete a review of the agency's upward mobility program. Furthermore, we will monitor the SEC's progress in addressing prior open audit recommendations related to human capital management. To assess the SEC's efforts to promote diversity, equity, inclusion, accessibility, and opportunity, we will complete an ongoing audit of the agency's small business contracting. We will also assess the operations and controls over the agency's equal employment opportunity program.

EMPLOYEE SUGGESTION PROGRAM

The OIG SEC Employee Suggestion Program, established under the Dodd-Frank Wall Street Reform and Consumer Protection Act, welcomes suggestions by all SEC employees for improvements in the SEC's work efficiency, effectiveness, productivity, and use of resources. The OIG evaluates all suggestions received and forwards them to agency management for implementation, as appropriate. SEC employees may submit suggestions by calling (202) 551-6062 or sending an e-mail to OIGESProgram@sec.gov.

COMMENTS AND IDEAS

The SEC OIG also seeks ideas for possible future audits, evaluations, or reviews. We will focus on high-risk programs, operations, and areas where substantial economies and efficiencies can be achieved. Please send your input to AUDPlanning@sec.gov.

TO REPORT

fraud, waste, and abuse

Involving SEC programs, operations, employees,
or contractors

FILE A COMPLAINT ONLINE AT
www.sec.gov/oig



CALL THE 24/7 TOLL-FREE OIG HOTLINE
833-SEC-OIG1

CONTACT US BY MAIL AT
U.S. Securities and Exchange Commission
Office of Inspector General
100 F Street, N.E.
Washington, DC 20549





OFFICE OF
INSPECTOR GENERAL

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

M E M O R A N D U M

October 13, 2022

TO: Gary Gensler, Chair

FROM: Nicholas Padilla, Jr., Acting Inspector General

SUBJECT: *The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2022*

The Reports Consolidation Act of 2000 requires the U.S. Securities and Exchange Commission's (SEC or agency) Office of Inspector General to identify and report annually on the most serious management and performance challenges facing the SEC.¹ In deciding whether to identify an area as a challenge, we consider its significance in relation to the SEC's mission; its susceptibility to fraud, waste, and abuse; and the SEC's progress in addressing the challenge. We compiled the attached statement on the basis of our past and ongoing audit, evaluation, investigation, and review work; our knowledge of the SEC's programs and operations; and information from the U.S. Government Accountability Office and SEC management and staff. We reviewed the agency's response to prior years' statements, and assessed its efforts to address recommendations for corrective action related to persistent challenges. We previously provided a draft of this statement to SEC officials and considered all comments received when finalizing the statement. As we begin fiscal year 2023, we again identified the following as areas where the SEC faces management and performance challenges to varying degrees:

- Meeting Regulatory Oversight Responsibilities
- Protecting Systems and Data
- Improving Contract Management
- Ensuring Effective Human Capital Management

Information on the challenge areas and the corresponding audit, evaluation, investigation, or review work are discussed in the attachment. If you have any questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

¹ Pub. L. No. 106-531, § 3a, 114 Stat. 2537-38 (November 22, 2000).

Attachment 2



EXECUTIVE SUMMARY

The SEC Supported Federal Small Business Contracting Objectives, Yet Could Make Better Use of Data and Take Other Actions To Further Promote Small Business Contracting

REPORT NO. 577 | FEBRUARY 28, 2023

WHY WE DID THIS AUDIT

The Small Business Act seeks to improve small businesses' access to federal procurement contracts and establishes government-wide statutory small business contracting goals, including goals for socioeconomic subgroups. Within the U.S. Securities and Exchange Commission (SEC or agency), the Office of Acquisitions (OA) develops and executes programs for the agency's acquisitions policy and contract administration. The Director of OA has been designated as the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) and, in that capacity, is responsible for implementing and executing programs to assist small businesses at the SEC.

Our objectives were to (1) assess the SEC's processes for encouraging small business participation in agency contracting, in accordance with federal laws and regulations; and (2) determine whether, in fiscal year (FY) 2020 and FY 2021, the SEC accurately reported small business awards.

WHAT WE RECOMMENDED

We made eight recommendations to (1) enhance the SEC's processes for encouraging small business participation in agency contracting, (2) better leverage the role of the OSDBU, and (3) ensure the SEC accurately reports small business awards and consistently maintains reliable small business contracting data. Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions. This report contains non-public information about the SEC's small business contracting. We redacted the non-public information to create this public version.

WHAT WE FOUND

The SEC has committed to maximizing small business participation in agency contracting and to advancing diversity and inclusion in the SEC's supplier base. During the period we reviewed, the SEC (1) exceeded government-wide statutory small business contracting goals for prime contract awards; (2) took steps to encourage small business contracting and supplier diversity and inclusion, such as hosting monthly vendor outreach days and maintaining a supplier diversity business management system (SDBMS); and (3) maintained a designated OSDBU Director responsible for implementing and executing programs to assist small businesses at the SEC. However, the SEC can better identify and, as appropriate, respond to trends in its small business contracting activities by:

- analyzing its small business contracting data at the transaction level;
- leveraging SDBMS data, as appropriate;
- evaluating the effectiveness of vendor outreach events and data collected from such events; and
- monitoring and reporting subcontracting achievements for socioeconomic subgroups.

In addition, we reviewed select Small Business Act and Federal Acquisition Regulation requirements applicable to OSDBUs and OSDBU Directors. Generally, the SEC's OSDBU functioned as intended; yet, opportunities exist to better leverage the role of the OSDBU. Specifically, the Director could better perform certain activities including annually assessing aspects of the SEC's small business contracting and providing relevant training reports to appropriate authorities; in addition, some agency contracting officials were unaware of the SEC's OSDBU. Improvements in these areas may help the OSDBU further ensure small businesses with various socioeconomic statuses have a fair opportunity to compete and be selected for SEC contract dollars. We also noted that the SEC's OSDBU Director reports to the SEC's Chief Operating Officer and not the SEC Chair. The OSDBU reporting to the Chief Operating Officer is a matter under review by the agency's Office of the General Counsel.

Lastly, we found that OA could maintain better records to support and enhance the accuracy of the SEC's reported small business awards, and improve the completeness of contract files. Specifically, OA did not maintain sufficient documentation to support the SEC's small business achievements reported to the U.S. Small Business Administration in FY 2020 and FY 2021, or identify some inaccuracies in SEC reported small business information in the Federal Procurement Data System-Next Generation (FPDS). As a result, OA may not be able to identify, explain, or correct discrepancies in various external reports containing SEC small business contracting information, or inaccuracies in the SEC's small business contracting data in FPDS. Such inaccuracies potentially decrease the reliability of the reported information, although we determined they did not significantly impact the SEC's achievement of statutory small business contracting goals. In addition, OA did not consistently include documents describing the acquisition history and demonstrating contracting officials' validation of vendors' small business size status in the SEC's contract files, which increases the risk that key processes and regulations may not be followed.

Attachment 3



EXECUTIVE SUMMARY

Enforcement Investigations: Measures of Timeliness Showed Some Improvement But Enforcement Can Better Communicate Capabilities for Expediting Investigations and Improve Internal Processes

REPORT NO. 576 | FEBRUARY 15, 2023

WHY WE DID THIS EVALUATION

The U.S. Securities and Exchange Commission's (SEC, Commission, or agency) Division of Enforcement (Division or Enforcement) is responsible for civil enforcement of the federal securities laws. Each year, Enforcement advances the Commission's mission by investigating and bringing hundreds of actions against individuals and entities for fraud and other misconduct, and by securing remedies that protect investors and the markets. In conducting investigations, Enforcement strives to balance the need for complete, effective, and fair investigations with the need to file enforcement actions in as timely a manner as possible.

We conducted this evaluation to (1) assess Enforcement's efforts to expedite and accelerate the pace of investigations, where possible and appropriate, and (2) review Enforcement's performance goal-setting and monitoring processes related to the pace of investigations.

WHAT WE RECOMMENDED

We recommended that Enforcement (1) review processes for communicating across the Division information on existing capabilities and resources that help expedite investigations, (2) develop a plan to address causes of investigative delays noted in our survey of Enforcement personnel, and (3) review Division-wide procedures for timely processing matters under inquiry and controls that ensure investigations are timely closed to identify and disseminate best practices. Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions.

WHAT WE FOUND

During the period we reviewed (fiscal year [FY] 2016 to FY 2021), Enforcement's efforts aligned with federal and agency requirements for performance goal-setting and monitoring as part of annual performance planning and reporting. Enforcement supported the SEC's efforts to develop performance plans and goals, and provided reliable data to support such goals and reporting requirements. We reviewed and tested data supporting two prior SEC performance goals, for which Enforcement was responsible, and noted no concerns with respect to completeness and accuracy. Metrics associated with these goals measured (1) the pace of investigations that lead to the filing of enforcement actions, and (2) the average number of months between the opening of an investigation and the filing of the first enforcement action arising from that investigation. As of October 2018, Enforcement no longer reports at the agency level on these performance goals. Nonetheless, the Division actively monitored the pace of investigations through regular reports, mandatory quarterly case review meetings, and other routine meetings.

Our analysis of case data from FY 2016 to FY 2021 found that two measures of timeliness showed some improvement. Specifically, the average time from opening an investigation to the first filed enforcement action decreased from 24.1 months to 22.8 months, and the percentage of first filed enforcement actions filed within 2 years improved from 53 percent to 54 percent. However, some respondents to a survey we conducted of Enforcement personnel disagreed that Enforcement management had sufficiently taken actions to expedite investigations. For example, out of about 320 staff-level respondents:

- 70 (or about 22 percent) disagreed or strongly disagreed that Enforcement management promoted best practices regarding efficiencies in various phases of Enforcement investigations;
- 63 (or about 20 percent) disagreed or strongly disagreed that Enforcement management effectively promoted opportunities to leverage data analytics capabilities; and
- 65 (or about 20 percent) disagreed or strongly disagreed that Enforcement management provided training on tools that help staff expedite investigations.

Management provided us examples of actions taken to expedite investigations, but can better communicate across the Division its capabilities for expediting investigations.

Additionally, although about 87 percent of all respondents to our survey (managers and staff) agreed or strongly agreed that Enforcement management emphasizes the importance of expediting investigations, some respondents reported that improvements to internal processes (including the action memo process), systems, and Division staffing and workload may help expedite investigations.

Lastly, we found significant differences in the processing times for matters under inquiry handled by different SEC regional offices and, overall, personnel expressed concerns about the timely closing of investigations as soon as it becomes apparent that no enforcement action will be recommended. Timely action in these respects can help Enforcement make more efficient use of its limited resources and focus on those matters that warrant further attention and investigation.

Attachment 4



EXECUTIVE SUMMARY

SEC's Whistleblower Program: Additional Actions Are Needed To Better Prepare for Future Program Growth, Increase Efficiencies, and Enhance Program Management

REPORT NO. 575 | DECEMBER 19, 2022

WHY WE DID THIS AUDIT

According to the U.S. Securities and Exchange Commission's (SEC, Commission, or agency) Office of the Whistleblower (OWB), assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal of the SEC. Since the inception of the SEC whistleblower program in 2011, the Commission has awarded more than \$1.3 billion to over 300 individuals. In fiscal year 2021, the SEC awarded more than it ever had (about \$564 million) to the largest number of whistleblowers (108) in a single year.

We conducted this audit to assess the growth of the SEC's whistleblower program and the functioning of key program controls. The engagement scope period was from fiscal years 2017 to 2021 and included whistleblower hotline calls, award claims, and awards that took place before and after the SEC's September 2020 adoption of amended whistleblower program rules.

WHAT WE RECOMMENDED

We made eight recommendations to help further increase efficiencies in the SEC's whistleblower program, better prepare for future whistleblower program growth, reduce risk, and improve controls over whistleblower program data and communication with external parties. Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions. This report contains non-public information about the SEC's whistleblower program. We redacted the non-public information to create this public version.

WHAT WE FOUND

We reviewed whistleblower payments for a sample of Final Orders issued in fiscal year 2021 and determined that, in those instances, whistleblowers were paid in accordance with applicable rules and Final Orders. In addition, payments were approved before issuance, in accordance with OWB's policies and procedures. Moreover, the SEC took steps to improve whistleblower claims processing and tracking procedures, including (1) implementing an initiative to more efficiently develop the initial drafts of attorney declarations, (2) adopting certain rule amendments, and (3) implementing a modernized claims tracking system. However, before these efforts, OWB was experiencing a significant backlog in processing whistleblower claims, which increased the amount of time whistleblowers waited before receiving the Commission's Final Order. In addition, aspects of some improvements were not consistently implemented or fully leveraged. As a result, opportunities remain for OWB to further improve as the whistleblower program continues to grow.

We also reviewed a sample of claims packages and supporting artifacts and determined that some Claims Review Staff (CRS) determinations were approved when more than half of the CRS members were absent or recused. This occurred because the CRS did not implement an operating agreement detailing certain processes or control activities, such as the number of CRS members required to approve a claims package. Because the Commission relies on the CRS with respect to whistleblower awards, including denials and approvals of multi-million dollar awards, we believe a lack of guidelines, rules, and standards governing CRS actions and decisions increases the risk to the Commission's Final Orders.

When reviewing OWB's internal data management, we identified some inaccurate or incomplete data. These deficiencies occurred, at least in part, because OWB did not establish effective controls over manually inputted data entries used to track whistleblower claims and manage the whistleblower program. Without such controls, OWB continues to risk inaccurate and incomplete reporting of claims tracking data and, in some cases, delays in key whistleblower program processes.

We also found that OWB took steps to effectively communicate with external parties and promote awareness of the program. However, OWB did not always (1) timely respond to whistleblower hotline voicemails or maintain information to assess the timeliness of responses; (2) notify helpful whistleblowers that a time-sensitive opportunity to file a whistleblower claim was available, as instructed by OWB policy; and (3) post to its webpage the Commission's Final Orders. These conditions occurred, in part, because OWB policies and procedures did not sufficiently address these issues, creating opportunities for OWB to improve aspects of whistleblower program communication.

Lastly, we identified two matters that did not warrant recommendations. We discussed these matters with agency management, and encourage management to consider any actions needed in response.

Attachment 5



OFFICE OF
INSPECTOR GENERAL

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

September 29, 2022

TO: Gary Gensler, Chair

FROM: Nicholas Padilla Jr., Acting Inspector General 

SUBJECT: *Final Management Letter: Changes to the Internal Review Process for Proposed Rules May Impact the Office of the Advocate for Small Business Capital Formation and the Office of the Investor Advocate*

The Office of Inspector General (OIG) recently completed an evaluation of the U.S. Securities and Exchange Commission's (SEC, agency, or Commission) Office of the Advocate for Small Business Capital Formation (OASB).¹ The overall objective was to assess the design and implementation of OASB's operations, policies, and controls—including coordination and collaboration with other SEC divisions and offices and external stakeholders—to determine whether OASB met applicable statutory requirements and strategic goals and objectives.

During the evaluation, we identified a matter related to the agency's internal communication and coordination specific to the rulemaking process. We previously identified an opportunity to strengthen communication and coordination across the SEC's divisions and offices as an emerging theme in our October 2021 statement on SEC's management and performance challenges.² Our observations in the course of conducting the OASB evaluation demonstrate that strengthening communication and coordination remains a growth area for the SEC. Because the matter we identified was outside the scope and objectives of the evaluation, we did not fully assess the matter in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*, nor did we conduct an audit pursuant to generally accepted government auditing standards. However, based on the work performed, the OIG is providing this management letter to bring to your attention this matter, which we further describe below.

Executive Summary

OASB and the SEC's Office of the Investor Advocate (OIAD) were established pursuant to Congressional mandates involving a measure of independence. Among other things, these offices are statutorily required to help ensure that the concerns of specific SEC stakeholders (namely, small businesses and investors) are appropriately considered as decisions are being made and policies are being adopted at the Commission, at self-regulatory organizations, and in Congress. With respect to agency rulemaking, OASB and OIAD rely on the SEC's

¹ U.S. Securities and Exchange Commission, Office of Inspector General, *OASB Complied With Statutory Requirements But Can Improve As It Matures* (Report No. 573; August 30, 2022).

² U.S. Securities and Exchange Commission, Office of Inspector General, *The Inspector General's Statement on the SEC's Management and Performance Challenges October 2021* (October 8, 2021).

rulemaking divisions and offices³ to timely provide drafts of proposed rules for review and comment.

Around December 2021, the Office of the Chair modified the process for coordinating internal reviews of draft agency rules, resulting in OASB and OIAD receiving only fatal flaw drafts⁴ of proposed rules for a brief period of time.⁵ This change was neither formally documented nor communicated to those offices, and, according to the former directors of OASB and OIAD, they were not aware of the change until after it took effect. Although OASB and OIAD personnel stated that they generally were able to carry out their responsibilities during this period, changes to internal processes likely to impact their review and comment related to draft proposed agency rules may unintentionally limit OASB's and OIAD's ability to fulfill their advocacy roles and carry out office functions, and could hinder effective collaboration and information sharing across the agency.

Background

As stated in a 2015 SEC investor bulletin,⁶ rulemaking is the process by which federal agencies implement legislation passed by Congress and signed into law by the President. Legislation, such as the Securities Act of 1933,⁷ the Securities Exchange Act of 1934 (Exchange Act),⁸ the Investment Company Act of 1940,⁹ the Sarbanes-Oxley Act of 2002,¹⁰ and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank),¹¹ provides the framework for the SEC's oversight of the securities markets, and the SEC creates or updates rules (also called regulations) under these and other laws as part of its regulatory oversight responsibilities. Specifically, the agency's rulemaking divisions and offices draft a rule proposal, which typically contains the text of the proposed new or amended rule along with a discussion of the issue, or problem the proposal is designed to address, and the likely economic impacts of the proposal. The proposal is then circulated internally for review and comment, as applicable. The Commission then votes on the proposed rule and, if approved, the proposal is published in the Federal Register for public comment for a period of 30 to 60 days.

The SEC Small Business Advocate Act of 2016 (Advocate Act)¹² requires OASB to advocate for small businesses and their investors by, among other things, analyzing the potential impact

³ According to the SEC's rulemaking index, since 2008 rulemaking divisions and offices have included the divisions of Corporation Finance, Economic and Risk Analysis, Investment Management, and Trading and Markets; and the offices of the Chief Accountant, General Counsel, Information Technology, Freedom of Information Act Services, and Municipal Securities.

⁴ A fatal flaw draft is the last draft circulated before the Commission votes on a proposed rule, often only a few days before the vote. It is typically the final version of the rule, to be reviewed only for critical issues, and will not incorporate policy revisions.

⁵ According to agency officials, the change in the rulemaking process was reversed in early 2022.

⁶ Investor Bulletin: *An Introduction to The U.S. Securities and Exchange Commission – Rulemaking and Laws* (August 20, 2015).

⁷ Pub. L. No. 73-22, 48 Stat. 74 (May 27, 1933).

⁸ Pub. L. No. 73-291, 48 Stat. 881 (June 6, 1934).

⁹ Pub. L. No. 76-768, 54 Stat. 789 (August 22, 1940).

¹⁰ Pub. L. No. 107-204, 116 Stat. 745 (July 30, 2002).

¹¹ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

¹² Pub. L. No. 114-284, 130 Stat. 1447 (December 16, 2016).

on small businesses and small business investors of Commission-proposed regulations that are likely to have a significant economic impact on small businesses and small business capital formation.¹³ Furthermore, the Advocate Act states, “The Commission shall ensure that the [Director of OASB] has full access to the documents and information of the Commission and any self-regulatory organization, as necessary, to carry out the functions of the Office.”¹⁴ Established pursuant to Section 915 of Dodd-Frank and codified at Section 4(g) of the Exchange Act, OIAD is similarly required to analyze the potential impact on investors from proposed rules and regulations.¹⁵ Moreover, the Exchange Act also states, “The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.”

To carry out their office functions, OASB and OIAD rely on the SEC’s rulemaking divisions and offices to timely provide drafts of proposed rules for review and comment. If a proposed rule is determined to have a significant impact on small businesses, their investors, and small business capital formation, OASB will provide comments on the proposed rule to the rulemaking division or office, and in some cases, OASB will develop educational resources, such as videos, to help stakeholders understand how rules may affect small businesses. OIAD strives to review every rule and, if applicable, provides comments to the rulemaking division and office. Both offices are also required to deliver periodic reports to Congress describing actions taken to advocate on behalf of their respective SEC stakeholder groups, including discussions on rulemakings and their potential impact on stakeholder groups.

Results

To address the objectives of our evaluation of OASB, among other work performed, we evaluated OASB’s rulemaking feedback process to determine how OASB identified relevant SEC proposed rules, analyzed proposed rules, and provided comments during the period we reviewed. Furthermore, we interviewed OASB personnel and employees of other SEC divisions and offices to assess rulemaking coordination efforts relevant to our objectives. During the course of our work, SEC personnel stated that, around December 2021, the Office of the Chair modified the process for coordinating internal reviews of draft agency rules, resulting in OASB and OIAD receiving only fatal flaw drafts of proposed rules for review and comment for a brief period of time, and not the 30-day draft¹⁶ or any subsequent drafts. This change was not formally documented or communicated, and, according to the former directors of OASB and OIAD, they were not aware of the change until after it took effect.

Although the Advocate Act and the Exchange Act do not explicitly specify requirements of the agency to provide OASB and OIAD drafts of proposed rules, it has been past practice to involve these offices at the time of the 30-day draft, if not before. Before the change in process, OASB and OIAD received from the SEC’s rulemaking divisions and offices the 30-day

¹³ Although the Director of OASB reports directly to the Commission, the Advocate Act established OASB in January 2019 with some measure of independence.

¹⁴ 15 U.S.C. § 78d(j)(5).

¹⁵ OIAD was established in February 2014. Although the Investor Advocate reports directly to the Chair of the SEC, OIAD is intended to remain somewhat independent.

¹⁶ The 30-day draft is circulated to the Commissioners, for their comment, 30 days before the Commission is expected to vote on a proposed rule.

drafts, subsequent drafts, and fatal flaw drafts of proposed SEC rules for review and comment. The 30-day drafts allowed OASB and OIAD to provide comments, if appropriate, before the rule reached the Commission for voting. When asked about the change in process, personnel from the Office of the Chair explained that providing OASB and OIAD earlier versions of proposed rules was not explicitly required and, because OASB and OIAD do not have the same authority as Commissioners, it was unnecessary for those offices to receive earlier drafts. Following the change in the agency's rulemaking process, OIAD raised concerns and, in early 2022, the change was reversed.

OASB and OIAD acknowledged that the Office of the Chair has the authority to direct the agency's rulemaking process; however, the opportunity to comment on 30-day and subsequent draft rules provides these offices with meaningful opportunities to carry out their office functions early in the process. Although OASB personnel raised concerns about the temporary change in the rulemaking process, they told us that they were nonetheless able to review, as warranted, all rule proposals likely to have a significant impact on small businesses and their investors. OIAD personnel informed us that, during the time the process change was in effect, they received two fatal flaw drafts (but not the corresponding 30-day drafts); they provided comments to the Commission on one of the proposed rules and determined that no comments were needed for the other. However, personnel reported to us that, had the change in the rulemaking process remained in effect, it would have significantly shortened the review and comment period and rendered OIAD's involvement in rulemaking largely ineffective because fatal flaw drafts are typically provided as a courtesy and only comments on perceived fatal errors are accepted at that stage.¹⁷ Generally, we concluded that changes to the SEC's rulemaking process, particularly without notice to the offices likely to be impacted, may unintentionally limit the ability of those offices to carry out their functions, and could hinder effective collaboration and information sharing across the agency.

Notably, the SEC's strategic plan identifies the teamwork of the SEC's staff and its leaders, along with other elements, as the "foundation" of the agency, and acknowledges that "effective and efficient partnership of staff across the agency" is critical to the SEC's ability to carry out its mission.¹⁸ As reported in our October 2021 statement on the SEC's management and performance challenges, opportunities exist to strengthen communication and coordination across divisions and offices. Specifically, we stated, "management's early attention, as needed in response to this emerging theme can be instrumental to (1) prevent the development of systematic and significant challenges, such as potential siloing or duplicative functioning, in the future, (2) continue positive trends in employees views on collaboration, and (3) achieve the goals established in the SEC's most recent strategic plan."¹⁹ Furthermore, federal internal control standards state that effective information and communication are vital for an entity to achieve its objectives, and management should internally communicate the necessary quality information to enable personnel to perform key roles in achieving objectives.²⁰

¹⁷ We acknowledge that, in this scenario, OASB and OIAD could still comment on SEC proposed rules through the public comment process.

¹⁸ U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*; Goal 3 and Strategic Goal 3.5; October 11, 2018.

¹⁹ U.S. Securities and Exchange Commission, Office of Inspector General, *The Inspector General's Statement on the SEC's Management and Performance Challenges October 2021* (October 8, 2021).

²⁰ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G; September 10, 2014), Information and Communication Component, Principle 14, *Communicate Internally*.

We commend management's commitment to promoting effective and collaborative information sharing across the SEC's divisions and offices, as expressed in your response to our October 2021 statement on the SEC's management and performance challenges. Although we are not making any formal recommendations, we encourage the Office of the Chair to consider, as a management practice, notifying OASB and OIAD before future changes to the rulemaking process, potentially impacting these offices, are implemented.

On September 16, 2022, we provided SEC management with a draft of our management letter for review and comment. On September 28, 2022, the SEC indicated it would not be providing a written response.

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

cc: Prashant Yerramalli, Chief of Staff, Office of Chair Gensler
Heather Slavkin Corzo, Policy Director, Office of Chair Gensler
Kevin Burris, Counselor to the Chair and Director of Legislative and Intergovernmental Affairs
Scott Schneider, Counselor to the Chair and Director of Public Affairs
Phillipp Havenstein, Operations Counsel, Office of Chair Gensler
Ajay Sutaria, GC Counsel, Office of Chair Gensler
Hester M. Peirce, Commissioner
Benjamin Vetter, Counsel, Office of Commissioner Peirce
Caroline A. Crenshaw, Commissioner
Malgorzata Spangenberg, Counsel, Office of Commissioner Crenshaw
Mark T. Uyeda, Commissioner
Holly Hunter-Ceci, Counsel, Office of Commissioner Uyeda
Jaime Lizárraga, Commissioner
Parisa Haghshenas, Counsel; Office of Commissioner Lizárraga
Laura D'Allaird, Counsel; Office of Commissioner Lizárraga
Dan Berkovitz, General Counsel
Elizabeth McFadden, Deputy General Counsel, General Litigation/Acting Managing Executive
Lisa Helvin, Principal Deputy General Counsel for Adjudication and Oversight
Shelly Luisi, Chief Risk Officer
Jim Lloyd, Audit Coordinator/Assistant Chief Risk Officer, Office of Chief Risk Officer
Marc Sharma, Chief Counsel, Office of the Investor Advocate
Sebastian Gomez Abero, Deputy Director, Office of the Advocate for Small Business Capital Formation

Attachment 6



EXECUTIVE SUMMARY

The SEC Can Improve in Several Areas Related to Hiring

REPORT NO. 572 | FEBRUARY 28, 2022

WHY WE DID THIS AUDIT

According to the U.S. Government Accountability Office (GAO), effective management of an entity's workforce, its human capital, is essential to achieving results and an important part of internal control. In its fiscal year (FY) 2018-2022 strategic plan, the U.S. Securities and Exchange Commission (SEC or agency) also recognized that its success is dependent on an effective, highly skilled workforce.

At the SEC, the Office of Human Resources (OHR) provides leadership for the agency's strategic human capital management by administering programs, establishing policies, and ensuring compliance with federal regulations.

We conducted this audit to assess OHR's controls over the SEC's hiring actions. Specifically, we sought to determine whether OHR's controls ensured that the SEC's hiring actions complied with applicable requirements in all material respects; and that OHR assessed the timeliness of agency hiring actions based on reliable data.

WHAT WE RECOMMENDED

We made 11 recommendations to further strengthen the SEC's controls over hiring actions, including recommendations to improve (1) the reliability of WTTS data, (2) assessments of the agency's hiring timelines, (3) the agency's compensation program, and (4) staffing case file documentation requirements.

Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions.

WHAT WE FOUND

We determined that the SEC can improve in several areas related to hiring. First, management can improve its controls to ensure Workforce Transformation and Tracking System (WTTS) data fields are accurate, consistent, and complete. We found that:

- 83 of the 91 hiring actions sampled (or about 91 percent) had at least one data entry issue in the WTTS data fields we reviewed, and almost 9 percent of the WTTS data entries we reviewed were either inaccurate, inconsistent, or incomplete;
- the SEC's WTTS data continued to include unannotated anomalies; and
- certain hiring actions were not consistently identified in WTTS.

These conditions occurred because (1) OHR's WTTS job aid did not include sufficient instructions regarding the dates and information expected in key WTTS data fields, and (2) some data fields were not included on the WTTS reports used by OHR staff to ensure the SEC's hiring action data was accurate, complete, and consistently recorded. As a result, OHR can further improve the reliability of the SEC's WTTS data to assist in workforce management and internal and external reporting of agency hiring information.

In addition, our assessment of OHR's quarterly Service Level Commitment (SLC) reviews found that (1) OHR did not perform SLC reviews in a consistent manner, (2) the review process was inefficient and prone to inaccuracies, and (3) SLC reviews did not align with the SLC presented to and agreed upon by the other SEC divisions and offices. This occurred because OHR did not establish clear guidance, including in the SLC itself, for the variety of hiring types and scenarios that can occur, or how to measure each one. The organization also did not ensure it could measure the SLC steps, as presented, in WTTS and did not effectively use the WTTS reporting capabilities in its SLC reviews. As a result, OHR limited its ability to rely on the SLC and SLC reviews as key controls for efficiently and effectively identifying areas of needed improvement in the SEC's hiring process, and for collaborating with the divisions and offices OHR serves.

Furthermore, we found that the SEC's pay-setting guidance needs improvement and OHR can clarify the new hire pay-setting information shared both internally and externally. Specifically, (1) the pay-setting information available to SEC employees and hiring officials was not comprehensive, (2) the internally published pay matrices were outdated, and (3) publicly advertised SEC salary information was misleading for new hires. We also identified inaccuracies in some of the underlying pay band information included in the 2021 pay matrices, and other pay-setting concerns. Incomplete, outdated, and misleading new hire pay-setting guidance and information have caused confusion and may have limited hiring officials' ability to review and respond to pay-setting requests. Although it does not appear that inaccurate information in the 2021 pay matrices impacted any newly hired SEC employee's pay, it could have had certain hiring scenarios occurred.

We also concluded that OHR generally complied with the key hiring authority requirements tested; however, staffing case files for 18 of 32 attorney hiring actions we reviewed (about 56 percent) lacked supporting documentation, including proof of law degrees and/or bar membership. This occurred because OHR did not clarify review processes and documentation requirements for attorney qualifications. In addition, OHR's internal reviews of staffing case files needed improvement. As a result, the SEC risked hiring attorneys who did not meet all qualifications required for their position.

Lastly, we identified a matter that did not warrant recommendations related to (1) the SEC's SLC as compared to the Office of Personnel Management's end-to-end hiring process model timelines, and (2) feedback from the SEC divisions and offices OHR serves. We discussed this matter with agency management for their consideration.

Attachment 7



EXECUTIVE SUMMARY

The SEC Can Further Strengthen the Tips, Complaints, and Referrals Program

REPORT NO. 566 | FEBRUARY 24, 2021

WHY WE DID THIS EVALUATION

The U.S. Securities and Exchange Commission (SEC or agency) encourages the public to file complaints or submit tips related to possible securities law violations, broker or firm misconduct, or any unfair practices in the securities industry that pose a risk of harm to investors, collectively referred to as tips, complaints, and referrals (TCRs). Between fiscal year 2018 and quarter 1 of fiscal year 2020, the SEC received more than 40,000 TCRs, which are maintained in the agency's TCR system. Since 2012, the SEC's TCR Oversight Board has governed the TCR program.

We conducted this evaluation to assess the SEC's management of the TCR program. Specifically, we sought to determine whether (1) the SEC established an effective internal control system for collecting, triaging, and responding to credible allegations of violations of the federal securities laws; (2) the SEC safeguarded and maintained TCR source materials, as required; and (3) the TCR Oversight Board used effective tools, such as a risk management framework, to evaluate, respond to, and monitor TCR program risks and trends.

WHAT WE RECOMMENDED

We made five recommendations to further strengthen the SEC's TCR program. Management concurred with our recommendations, which will be closed upon completion and verification of corrective actions. This report contains non-public information about the SEC's tips, complaints, and referrals program. We redacted the non-public information to create this public version.

WHAT WE FOUND

Overall, the SEC's TCR program has established an effective internal control system for collecting, triaging, and responding to credible allegations of violations of the federal securities laws. Safeguards to maintain TCR source materials are in place, as well as a risk management framework to evaluate, respond to, and monitor TCR program risks and trends. Policies, procedures, and training are available to SEC staff, and generally, TCR Points of Contact are satisfied with the work performed by the current TCR business owner (the Office of Market Intelligence within the agency's Division of Enforcement). However, the TCR program could be strengthened by better ensuring compliance with established requirements.

For example, we found that some TCRs exceeded the prescribed number of business days for entry into the TCR system. Delays in this process could delay the identification and investigation of allegations of wrongdoing. Moreover, we determined that, for TCRs open 90 business days or more, required notes explaining the circumstances preventing timely resolution of these TCRs did not always exist or include sufficient detail. Ensuring that staff enter into the TCR system required notes explaining the circumstances preventing timely resolution of TCRs could help inform management of TCRs requiring additional work and could assist management in better monitoring the status of TCRs.

We also identified opportunities for improving communication within the TCR program. This includes communication related to policies and procedures for assigning TCRs to Points of Contact, the handling of certain TCRs, and work performed during early stage triage within the Office of Market Intelligence.

In addition, we found that the SEC has initiated a process to plan and develop a future TCR system. As the SEC engages in this planning process, we recommend that it:

- incorporate lessons learned from the existing system's development history, and consider end-user recommendations when gathering system requirements; and
- assess the benefits of a reporting function, available to end-users, within the TCR system and, if needed, include this reporting function in the requirements for the new TCR system.

Lastly, we identified two matters that did not warrant recommendations. The first matter involved TCR system downtime, and the second matter related to a consistent upward trend in the volume of TCRs submitted to the agency. We discussed these matters with agency management for their consideration.

Attachment 8



EXECUTIVE SUMMARY

Registered Investment Adviser Examinations: EXAMS Has Made Progress To Assess Risk and Optimize Limited Resources, But Could Further Improve Controls Over Some Processes

REPORT NO. 571 | JANUARY 25, 2022

WHY WE DID THIS AUDIT

Within the U.S. Securities and Exchange Commission's (SEC or agency) Division of Examinations (EXAMS or Division), the investment adviser/investment company (IA/IC) examination program assesses whether, among other things, registered investment advisers (RIAs) and investment companies comply with federal securities laws. RIAs are among the variety of financial professionals that provide services to help individuals manage their investments. Generally, RIAs include firms or individuals that, for compensation, advise others as to the value of securities, or as to the advisability of investing in, purchasing, or selling securities. RIAs represent the largest portion of the registered firm population overseen by EXAMS, and the majority of the Division's examinations are of RIAs.

The overall objective of this audit was to determine whether EXAMS has established effective controls over its RIA examination planning processes to foster compliance with federal securities laws and ensure efficient allocation of its limited RIA examination resources. We also followed up on the implementation of corrective actions in response to recommendations from our 2016 evaluation.

WHAT WE RECOMMENDED

We made three recommendations to further strengthen the SEC's IA/IC examination program. Management concurred with our recommendations, which will be closed upon completion and verification of corrective actions. This report contains non-public information about the SEC's examination program. We redacted the non-public information to create this public version.

WHAT WE FOUND

We verified that, in response to the two recommendations from the prior Office of Inspector General (OIG) evaluation (*Office of Compliance Inspections and Examinations' Management of Investment Adviser Examination Coverage Goals*; OIG Report No. 533; March 10, 2016), EXAMS worked to:

- optimize its limited resources and increase its efficiency and effectiveness;
- improve its IA/IC examination program's examination candidate selection processes; and
- implement the U.S. Government Accountability Office's risk-management framework, specifically, within the IA/IC examination program.

OIG Report No. 533 noted that, in fiscal year (FY) 2015, the average number of IA/IC examinations completed per examiner was about three. That number nearly doubled in FY 2021. Additionally, in FY 2015, EXAMS met its annual goal of examining 10 percent of RIAs. Notably, the percentage of RIAs examined improved to 15 percent in FY 2020 and 16 percent in FY 2021.

To meet our objectives, we selected and reviewed a nonstatistical, random sample of 501 RIA examinations from the audit universe of 4,993 RIA examinations approved and closed between FY 2019 and FY 2021, quarter 2. For each examination in our sample, we tested key examination planning processes and controls and found that, although 23 of 26 operated effectively, controls over the remaining RIA examination planning processes need improvement.

For example, for 81 of the 501 RIA examinations we reviewed (or about 16 percent), staff commenced substantive RIA examination procedures before management reviewed and approved key examination planning and scoping processes as part of the examination pre-fieldwork phase. In some cases, staff failed to first request management's approval before commencing substantive examination procedures. In other cases, management failed to provide timely approval when requested. As a result, pre-fieldwork approval—a primary control for ensuring, among other things, that staff execute examinations in accordance with Division policies and procedures—occurred between 1 and 391 days late (or an average of 54 days late) for the 81 RIA examinations in question.

Additionally, for 70 of the 501 RIA examinations we reviewed (or about 14 percent), staff either did not (1) ensure the EXAMS system of record included evidence of required communications with examined registrants, or (2) maintain documents in the Communications section of the system, as required. Inconsistent documentation of examination communications may lead to difficulties in reviewing and supervising examinations.

Lastly, we identified a matter that did not warrant a recommendation, but that we discussed with agency management for their consideration. Specifically, 8 of the 501 examinations we reviewed included non-Division staff participation. However, we were unable to find evidence that an examination supervisor notified registrants of non-Division staff participation for seven of these eight RIA examinations.