



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

May 1, 2023

TO: Kenneth Johnson, Chief Operating Officer
FROM: Katherine H. Reilly, Acting Inspector General
Katherine H. Reilly
SUBJECT: *Final Management Letter: Review of Upward Mobility Program*

Executive Summary

In April 2022, the U.S. Securities and Exchange Commission (SEC or Agency) Office of Inspector General (OIG) initiated a review¹ of the SEC's Upward Mobility Program (UMP) after receiving information indicating that UMP positions intended for SK-7 to SK-9 staff may have been awarded to SK-11 staff who took voluntarily downgrades to enter the UMP and were shortly thereafter promoted to SK-12. Our review confirmed that, of the 27 employees selected for the calendar years 2020 and 2021 UMP Cohorts, 8 employees (or about 30 percent) took a voluntary downgrade from SK-11 to SK-9 to enter the UMP. All 8 employees were re-promoted to SK-11 the pay period after entry into the program. Furthermore, all 8 employees were further promoted, 7 employees were promoted to SK-12 the following pay period, and 1 was promoted to SK-12 four pay periods after re-promotion. Although we found that the voluntary downgrades and subsequent promotions appear to comply with SEC personnel policies, the lack of clear UMP documentation and potential inconsistencies in its implementation makes it unclear if the UMP is intended exclusively for SK-9 and below staff. Moreover, we observed a lack of formal policies and procedures for the UMP. Although we are not making any formal recommendations, we encourage the SEC to establish written policies and procedures for the UMP, to include the intended SK levels² for participation in the program and to ensure the UMP is administered accordingly.

I. Background

In March 2022, an individual contacted the OIG expressing concern that SK-11s were taking voluntary downgrades to enter the UMP as a means of being quickly promoted to SK-12. The reporting individual stated that the UMP offers a chance to develop and promote lower graded personnel, specifically SK-7

¹ The Office of Counsel to the Inspector General conducted this review with the assistance of the Office of Audits and the Office of Operations and Management. Although the Office of Audits assisted the Office of Counsel to the Inspector General with this review, the OIG did not conduct an audit pursuant to generally accepted government auditing standards, or an evaluation pursuant to the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards on Inspection and Evaluation*.

² Throughout this letter, we use the terms "SK level" and "grade level" interchangeably.

and SK-9 employees, and was concerned the alleged practice of downgrades and rapid promotions may be “gaming the system.”

The 2018 Collective Bargaining Agreement (CBA)³ between the SEC and National Treasury Employees Union (NTEU) requires the SEC to establish an UMP with a goal of providing “opportunities for employees to advance so as to perform at their highest potential.” The CBA states that the program will allow employees to “expand their career and promotion potential through a systematic, planned approach for career progression.” Although the SEC’s Office of Human Resources (OHR) oversees the UMP for the Agency, a joint SEC-NTEU committee makes recommendations for program structure, operation, and employee selections. The CBA obligated the SEC to post a total of 20 UMP positions for “employees in lower graded positions” over a 3-year period, with 7 postings in the first year of the agreement, 7 in the second, and 6 in the third year. According to OHR personnel, the first year of the UMP was delayed due to “prolonged planning” by the joint committee, leading to a revised agreement with the NTEU for 13 vacancies to be posted in 2020 and 7 in 2021. The revised agreement also expanded participation to non-bargaining unit employees in situations where adding a non-bargaining unit employee did not take a position from a bargaining unit employee.

As part of the UMP requirements, successful UMP applicants must complete a 2-year training program. OHR personnel describe the purpose of the training program as being “to ensure the agency is providing ample opportunity for participants to enhance their knowledge and skills to perform work related to the shift in their work responsibilities.” The training program consists of two parts: (1) a learning plan focused on “leadership skills and teamwork” that selectees for each program year take as a group, and (2) individualized technical training developed in coordination between the employee, their supervisor, and SEC University that is incorporated into an individual development plan. SEC University personnel meet with the participant and their supervisor after a year in the UMP to update the participant’s individual development plan. OHR personnel stated that successful completion of the training program is not a prerequisite for promotion and that employees are expected to continue attending the learning plan trainings after promotion to SK-12.

In 2021, the UMP implementation team received the 2021 SEC and NTEU Labor-Management Relations Award honoring “staff members who have significantly enhanced labor-management relations over the past year through their collegial commitment to harmonious labor-management relations.”

II. 2020 and 2021 UMP Cohorts

The Agency selected 27 employees for the 2020 and 2021 UMP Cohorts, including 17 employees in 2020 and 10 in 2021. The employees were selected from vacancy announcements for SK-7 or SK-9 Program Support Specialists (job series 0301) with career ladder promotion potential to SK-12. All positions were filled at the SK-9 level. Typical job duties for the position included data collection and analysis, administrative support, and assisting with business management activities. Employees selected for the UMP remained in their respective divisions or offices. Table 1 shows the SK level of successful applicants.

³ The 2018 CBA became effective January 1, 2019, for a 3-year term. A new CBA became effective on March 22, 2023, with substantially similar UMP provisions.

TABLE 1. SK Level of Successful Applicants by Cohort

Applicant SK Level	2020 Cohort	2021 Cohort	Total
SK-7	6	1	7
SK-8	4	3	7
SK-9	5	0	5
SK-11	2	6	8
			27

Source: *OIG-generated based on UMP documents.*

Of the 27 employees selected, 8 (or about 30 percent) opted for a voluntary downgrade to SK-9 to enter the UMP. Specifically, 2 employees of the 17 selected candidates (or about 12 percent) for the 2020 Cohort and 6 employees of the 10 selected candidates (or 60 percent) in the 2021 Cohort opted for voluntary downgrades. As Table 2 shows, all 8 of the downgraded employees were re-promoted to SK-11 the pay period following entry into the UMP, 7 of the 8 were promoted to SK-12 one pay period after re-promotion, and the remaining employee was promoted four pay periods after re-promotion. Overall, as of July 14, 2022, there were 12 SK-12 employees in the UMP; 6 from the 2020 Cohort and 6 from the 2021 Cohort.

TABLE 2. Re-Promotion to SK-11 and Promotion to SK-12

Employee	Date of Entry into UMP	Promotion to SK-11	Promotion to SK-12
Employee 1	11/22/2020	12/6/2020	12/20/2020
Employee 2	11/22/2020	12/6/2020	12/20/2020
Employee 3	6/6/2021	6/20/2021	7/4/2021
Employee 4	6/6/2021	6/20/2021	7/4/2021
Employee 5	6/6/2021	6/20/2021	8/15/2021
Employee 6	6/6/2021	6/20/2021	7/4/2021
Employee 7	6/6/2021	6/20/2021	7/4/2021
Employee 8	6/6/2021	6/20/2021	7/4/2021

Source: *OIG-generated based on UMP documents.*

III. What We Found

We found that the process of voluntarily downgrading, re-promoting, and further promoting SK-11 UMP participants appears to comply with SEC personnel policies and that UMP participants appear to be complying with the UMP’s training practices. However, we were unable to determine whether this process comports with the intent of the UMP due to a lack of formal UMP policies and procedures as well as potential inconsistencies in the Agency’s interpretation of the phrase “lower graded positions” and its implementation of the UMP.

a. The UMP Appears to Comply with SEC Personnel Policies and Training Practices.

The UMP appears to comply with the SEC personnel policies related to voluntary downgrades, re-promotion, and further promotions, as well as its own training practices.⁴ As discussed above, about 30 percent of UMP employees were downgraded to SK-9 and subsequently promoted to the UMP position's full promotion potential within two to five pay periods. This practice appears permissible as SEC personnel policies permit employees to take voluntary downgrades to positions with higher promotion potential. Additionally, all of the downgraded employees spent at least 52 weeks as SK-11s prior to their entry into the UMP, thereby meeting the requirements for re-promotion and subsequent career ladder promotion to SK-12. We also found that employees promoted to SK-12 continued to take the group learning plan trainings as required by the UMP.

b. The SEC Should Consider Formally Clarifying What Grade Levels Are Intended to Participate in the UMP.

We were unable to conclude what grade levels are intended to participate in the UMP; specifically whether the process of permitting SK-11s to apply to the UMP, enter the program, accept a voluntary downgrade to SK-9, shortly thereafter be re-promoted back to SK-11, then shortly thereafter be promoted to SK-12, is appropriate based on the purpose of the UMP.

The CBA requires the Agency to post UMP positions for employees in "lower graded positions," a phrase that was defined in the 2007 CBA as SK-7 and below. This definition for "lower graded positions" is not included in the 2018 CBA or SEC policy. Not only is the phrase not formally defined, OHR does not appear to have a generally-accepted understanding of what constitutes a "lower graded position." For example, some OHR personnel told us that the phrase "has been used colloquially in discussions and negotiations between management and the union to refer to employees below SK-9 to account for employees at the SK-8 level. This has been translated to the job vacancy announcement for the program for employees to apply at either the SK-7 or SK-9 level." However, one OHR official stated that OHR has implemented the CBA to consider "lower graded positions" as those employees occupying positions at less than the full promotion potential of the UMP position (SK-12), which includes SK-11s. The OHR official told us that permitting SK-11s to apply to the UMP broadens the pool of qualified candidates.

While the phrase "lower graded positions" is not formally defined, SK-11 employees were allowed to apply to the 2020 and 2021 UMP Cohorts. After 2 SK-11 applicants were selected for the 2020 Cohort, the Agency noted as part of a "lessons learned" review that there were "a number of" SK-11 applicants and asked whether slots should be allocated for SK-11s to compete against each other. The Agency does not appear to have made the determination to require the SK-11s to only compete against each other. In fact, the agency included SK-11 employees in its recruitment efforts for the 2021 Cohort by including in the applicant information sessions that SK-11s could take downgrades to enter the UMP and be re-promoted the next pay period. Ultimately, 60 percent of employees selected for the 2021 Cohort were SK-11s.

⁴ Our review of SEC personnel policies was limited to provisions specific to changes to positions with higher promotion potential and promotions (including re-promotion).

We encourage the Agency to define the phrase “lower graded positions” to eliminate confusion regarding who can participate in the UMP and to promote more efficient use of OHR’s limited resources. If the phrase indeed includes SK-11 positions, then this would eliminate the need for SK-11 employees to accept downgrades to SK-9 in order to enter the program, only to be re-promoted to SK-11 and promoted to SK-12 in short order. So, too, would this eliminate the need for OHR personnel to process the paperwork involved in such actions. An OHR official acknowledged allowing SK-11 employees to apply to and participate in the UMP as SK-11s would be simpler than the current voluntary downgrade and re-promotion process. If the Agency determines that the phrase “lower graded positions” does not include SK-11s, then the Agency should discuss if the current practice of allowing SK-11s to take voluntary downgrades to enter the UMP is acceptable and consider whether the promotions to SK-12s are appropriate to occur so soon into the employee’s entrance into the UMP. Indeed, we found that in all but one case, promotions of downgraded SK-11 employees to the full promotion potential of the position (SK-12) occurred prior to or within a week of attending the first of numerous UMP learning plan trainings that are to be taken over a 2-year period. If the purpose of the UMP is professional development of lower graded employees, such speedy promotions to SK-12 may be inconsistent with that purpose.

As discussed above, the NTEU is involved in various aspects of the UMP, including (1) participation on a joint committee for making recommendations on program structure and operation and employee selection, and (2) participation in UMP interval panels. The OIG solicited NTEU input on which grade levels should be permitted to apply to the UMP. The NTEU did not provide input to the OIG. It is our understanding that the NTEU has not filed a grievance over the Agency’s implementation of the UMP allowing SK-11 participation and promotion. We encourage the SEC, with the input of NTEU, to document its understanding of what grade levels the UMP is intended to benefit and ensure the UMP is administered accordingly.

c. Formal Documentation of UMP Policies and Procedures Would Be Beneficial For Consistency and Transparency.

We found that the SEC does not appear to have formally documented policies and procedures for the UMP. As described above, there is no documentation of the definition of “lower graded positions” in SEC policy or the CBA. We received documentation from OHR personnel on certain aspects of the UMP, such as learning plan syllabi, proposed interview processes, and lessons learned documentation, among others. However, policies and procedures that are more comprehensive appear to be limited to a PowerPoint presentation for an information session related to the 2021 Cohort, and an unsigned 2020 proposal for the UMP which (had it been adopted) would have required completion of training as a prerequisite for promotion. OHR personnel stated that the proposal “was a working document to begin conversations for planning.” As indicated, these planning conversations do not appear to have resulted in a formal policy or operating procedures. We encourage the Agency to review UMP documentation and formalize UMP policies and procedures.

IV. Next Steps

On March 23, 2023, we provided SEC management a draft of our management letter for review and comment. On April 19, 2023, the SEC indicated it would not be providing a written response.

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To help us determine whether further action by the OIG is warranted, we request that management provide the OIG, no later than May 23, 2023, a description of the actions the agency has taken or plans to take to address the concerns raised in this letter.

We appreciate the courtesies and cooperation extended to us during our review. We look forward to receiving more information on the Agency's efforts in the areas we highlighted above for possible improvement. If you have any questions, please do not hesitate to contact me or Lori Wagner, Counsel to the Inspector General (acting).

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