

**HOLDING THE BIDEN ADMINISTRATION  
ACCOUNTABLE FOR WASTEFUL SPENDING  
AND REGULATORY OVERREACH**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTEENTH CONGRESS  
FIRST SESSION

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MARCH 8, 2023  
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## **HOLDING THE BIDEN ADMINISTRATION ACCOUNTABLE FOR WASTEFUL SPENDING AND REGULATORY OVERREACH**

**Wednesday, March 8, 2023**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS,  
COMMITTEE ON FINANCIAL SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2:17 p.m., in room 2128, Rayburn House Office Building, Hon. Bill Huizenga [chairman of the subcommittee] presiding.

Members present: Representatives Huizenga, Wagner, Mooney, Rose, Meuser, Ogles; Green, Horsford, Garcia, and Williams of Georgia.

Ex officio present: Representative Waters.

Chairman HUIZENGA. The Subcommittee on Oversight and Investigations will now come to order, and I would like to welcome everybody.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Today's hearing is entitled, "Holding the Biden Administration Accountable for Wasteful Spending and Regulatory Overreach."

The Chair now recognizes himself for a brief point of personal privilege.

Today's hearing marks the first hearing of our subcommittee in the 118th Congress and my first as its chairman. Now, that does not mean we have been inactive. It does not mean that we have not been doing anything. In fact, we have had a number of discussions, letters that have gone out, and conversations with, for example, Agency Inspectors General, which actually led to this hearing, and so many more to come. And I would like to extend a welcome to all of our subcommittee members, both the Republicans and the Democrats, and look forward to serving with you over the next 2 years.

Like some of you, this is my first term as a member of the Oversight Subcommittee specifically. And while I am no stranger to oversight issues, I look forward to learning how we can make our government more accountable to the American people and the consumers that we serve. I want to be clear. The subcommittee will approach oversight in a fair and even-handed manner. That being said, I will not hesitate to use my authority as chairman to hold regulators accountable, and I certainly am not going to shy away

from topics that might be sensitive or frankly uncomfortable to either side of the aisle. I think that is part of our duty. I look forward to working with the ranking member, Mr. Green of Texas, as we work to accomplish our shared objectives. And I would like to now recognize the ranking member for a brief point of personal privilege.

Mr. GREEN. Thank you very much, Mr. Chairman. I concur with you that many things have been done prior to today, and I would like to accentuate the meeting that you and I had; it was very beneficial. We have made many agreements. Probably one that you and I both understand is that there will be times when we won't agree, but we have also agreed that we won't be exceedingly disagreeable, and we have agreed that we will meet again. You have a great mentor on this subcommittee to assist you—Mrs. Wagner is a former Chair, and she and I worked closely together. I will look forward to doing a similar thing with you, and I would like to welcome all of the members to the committee as well.

And I thank the witnesses for being here.

And, Mr. Chairman, without question, reservation, or hesitation, I am convinced that there will be something that you and I will be able to work on together, and I look forward to doing that thing as well as many others. I yield back.

Chairman HUIZENGA. The gentleman yields back. I appreciate that. I now recognize myself for 5 minutes to give an opening statement.

Today's hearing is entitled, "Holding the Biden Administration Accountable for Wasteful Spending and Regulatory Overreach." Oversight of the Executive Branch is a vital check on the President's power, regardless of who occupies the Oval Office. In fact, I had a mentor in my first couple of terms from Michigan, the lion of the House of Representatives, John Dingell, who taught me a number of things. One was the tyranny of the vote, which is what we just experienced earlier. It doesn't matter what plans you have, it doesn't matter who you are with or where you are at, when they ring the bells, we have 15 minutes to go and perform our constitutional obligation of voting on the House Floor. That said, we were delayed a couple of minutes because of that today.

But the other is oversight, and, in fact, I decided that I was just going to look up a simple definition of, "oversight," and this was what popped up on Wikipedia, of all things: "Congressional oversight is oversight by the United States Congress over the Executive Branch, including the numerous U.S. Federal agencies. Congressional oversight includes the review, monitoring, and supervision of Federal agencies, programs, and activities, and policy implementation."

If it is good enough for Wikipedia, it should be good enough for us and this committee to know what our lane is here, and that is to make sure that we are holding those in the Administration accountable. The Inspectors General before us today represent four agencies who touch nearly every part of our financial system. The work done by your offices is paramount to make sure that these agencies stay within the bounds Congress established for them.

In recent years, these regulators have pushed those limits, leaving Congress with little or no recourse. In fact, I would argue that

there is no better example than the Consumer Financial Protection Bureau (CFPB). Over a decade ago, as a response to the great financial crisis, Congress created the CFPB as an Agency charged with protecting consumers. Since its inception, the Bureau has grown to radically transform the notion of consumer protection, often at the expense of small business owners and hardworking Americans, with little to no benefit for the actual consumers. I say, “actual,” because oftentimes these so-called advocates are really ginning up a paycheck rather than looking for protection. And now, CFPB Director Chopra’s strategy of regulation by enforcement has left many wondering how one Agency can have so much autonomy with virtually no oversight from Congress. Well, we know that the courts are weighing in on that at this point.

Mr. Bialek, you lead a staff that has the difficult job of providing independent oversight and investigations into two governmental agencies, both with very different missions, but equally consequential in today’s financial system. In 2022, the Federal Reserve’s Office of Inspector General conducted 13 audits of the Reserve Banks, compared to just 5 of the CFPB, a less than 30-percent allocation. While I am aware that new programs created under the CARES Act have increased your workload, this begs the question, why did Congress fail to give the Bureau their own Inspector General? I was not here for the creation of the Dodd-Frank Act, but I came immediately afterwards, and I have been living with the echo effects of it.

Mr. Delmar, like the Fed, the Treasury’s IG office has been tasked with overseeing massive programs that had billions of dollars in Federal spending, whether they be programs that were a result of the pandemic or of the partisan American Rescue Plan. The Treasury Department will face challenges in holding participants of these programs accountable for proper use of those funds.

Lastly, I want to spend some time focusing on the Securities and Exchange Commission. The SEC oversees \$118 trillion in annual trading volume, 29,000 registered entities, 24 exchanges, 95 alternative trading systems, and, depending on the day of the week, digital assets. Last year, the SEC proposed an unprecedented 34 rules—34—with an additional 20 or so left on their most recent agenda.

Ms. Sharek, the IG report your office released last fall was, frankly, jaw-dropping. While the SEC Chair continues to push a rushed rulemaking agenda in his effort to rewrite nearly every aspect of securities law, the Agency has failed to keep its own house in order.

Furthermore, these efforts have been met with little question or inquiry from committee Democrats. Ranking Member Waters continues to defend Chair Gensler at every turn. What makes the above statement so alarming is the lack of stability at the SEC’s Inspector General’s Office. Since the last appointed IG retired in May of last year, 3 different individuals have assumed the acting Inspector General position over the last 10 months.

Ms. Sharek, while I have no doubt you will be able to answer our Members’ questions, it is worth noting that the current acting IG has only been on the job for roughly 90 days and will be need to be replaced again in April, this April. Given the volume of rules cur-

rently before the SEC, one would hope that it is the Chair's preference to resolve this vacancy issue in a timely manner, but, then again, maybe not. Regardless, that is unacceptable in my mind.

Without objection, I ask unanimous consent to enter into the record the letter we sent to Chair Gensler last week calling on him to appoint a permanent Inspector General at the SEC to allow for consistent and proper oversight of the Agency.

Without objection, it is so ordered.

I look forward to hearing from all of the witnesses, and I yield back the balance of my time.

The Chair now recognizes the ranking member of the subcommittee, the gentleman from Texas, Mr. Green, for 4 minutes for an opening statement.

Mr. GREEN. Thank you, Mr. Chairman. Today, friends, the subcommittee will hold a hearing entitled, "Holding the Biden Administration Accountable for Wasteful Spending and Regulatory Overreach." No mention of President Trump. Dear friends, we live in a world where it is not enough for things to be right, they must also look right, and much of today's hearing will emanate from what happened during the pandemic.

You see, it doesn't look right when the world knows that the World Health Organization declared COVID-19 a pandemic on March 11, 2020, during the watch of a Republican President, Donald Trump, and today, this powerful committee will focus only on the watch of the Democratic President, Joe Biden. Sadly, this looks like a partisan witch hunt focused on a Democratic President, wherein the perfect will become the enemy of the good by overlooking the good that was done while ignoring the performance of his predecessor, Republican President Donald Trump.

Therefore, a better title for this hearing, my friends, would be how Republicans are out to get a Democratic President by making the perfect the enemy of the good. The danger with making the perfect the enemy of the good is the adverse impact it is likely to have and produce during a future pandemic when millions of lives may be at risk and immediate action is necessary.

Understanding this, I will focus on the good done by putting the American people above Republican politics during a pandemic. This was done by providing direct support to the American people with \$814 billion to households and individuals; by supporting small businesses with \$792.6 billion through the Paycheck Protection Program (PPP); by helping States keep schools, businesses, and emergency services open, with nearly \$150 billion, which included dollars to almost 90,000 local businesses; by fighting the pandemic with \$47.8 billion for COVID-19 testing, contact tracing, and mitigation, and with \$16 billion to fund vaccine distribution as well as supply chains; by keeping people in homes with \$29.6 billion in emergency rental assistance to 6.5 million households; and by keeping children out of poverty with \$109 billion through the child tax credit.

All of this was done because Democrats put the American people above Republican politics. Therefore, my refrain will be that while Republicans are making the perfect the enemy of the good, generally speaking, I will focus on the good accomplished when Demo-



crats put the American people above Republican politics. I yield back, Mr. Chairman.

Chairman HUIZENGA. The gentleman yields back.

We will now turn to the testimony of our witnesses.

First, Hon. Mark Bialek. Mr. Bialek is the Inspector General of the Office of the Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau. I will note that earlier today, seated right down there, was Fed Chair Powell, and I believe it was Mr. Rose who had asked about some of that interplay between the Fed and the Board of Governors and the CFPB. Mr. Bialek, for over 40 years, has been an Inspector General, in that community at least, and has experience. He previously served in numerous capacities at the U.S. Environmental Protection Agency, the Department of State, and the Department of Commerce, all in the Offices of Inspector General. As the Federal Reserve and CFPB Inspector General, he serves as a member of the Pandemic Response Accountability Committee.

Second, Mr. Richard Delmar. Mr. Delmar is the acting Inspector General at the Department of the Treasury Office of Inspector General (OIG). He has served as Deputy Inspector General and Counsel, and as a Media and Legislative Liaison, and as a Whistleblower Program Coordinator at the Treasury OIG. Prior to the Treasury OIG, Mr. Delmar served on active duty in the Navy JAG Corps, and as a trial attorney in the Department of Justice Tax Division. Sir, we thank you for your service to our country.

Mr. Delmar is also a member of the Pandemic Response Accountability Committee and chairs the Council of Inspectors General on Financial Oversight.

And third, Ms. Rebecca Sharek. Ms. Sharek has served as the Deputy Inspector General for Audits, Evaluations, and Special Projects at the SEC since January of 2014. Last year, she served as the acting Inspector General following Mr. Carl Hoecker's retirement. Ms. Sharek is active in the Federal oversight community, and has chaired the Enterprise Risk Management Working Group of the Council of Inspectors General on Integrity and Efficiency.

We thank each one of you for taking time to be here today. Each of you will be recognized for 5 minutes to give an oral presentation of your testimony, and without objection, each of your written statements will be made a part of our permanent record.

Mr. Bialek, you are now recognized for 5 minutes for your oral remarks.

**STATEMENT OF THE HONORABLE MARK BIALEK, INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL FOR THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (FED) AND THE CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Mr. BIALEK. Thank you, and good afternoon, Chairman Huizenga, Ranking Member Green, and members of the subcommittee. I am Mark Bialek, the Inspector General of the Federal Reserve Board and the Consumer Financial Protection Bureau. I very much appreciate the opportunity to discuss our oversight of the Board and the CFPB.

Independent, objective oversight is critical for ensuring government agencies work efficiently and effectively, and that they abide by the laws, the regulations, and the rules and practices that govern them. Such oversight work is, of course, also vital for maintaining public trust and confidence in government institutions. Toward that end, over the last 5 years, we have issued 108 audit and evaluation reports: 61 of those reports focused on the Board and included 175 recommendations for improvement; and 47 of those reports focused on the CFPB and included 122 recommendations.

To provide the most-effective oversight, we consider a number of factors when we plan our discretionary work. We look at levels of risk within a program or operation and areas that we see as major management challenges. As risk areas shift over time, we appropriately adapt our work to address those changing conditions. The result is that the balance between our Board and CFPB workload will fluctuate from time to time.

Our Board and CFPB audits and evaluations cover a broad area. In 2021, we identified several major management challenges facing the Board, including pandemic response, emergency lending facilities design and implementation, organizational governance and enterprise risk management, and information security and cybersecurity oversight at supervised financial institutions. We also identified major management challenges facing the CFPB, including information security, supervision and enforcement strategy, and managing consumer complaints. We are currently updating our management challenges for 2023.

In addition, we have other ongoing work covering the Board's and Reserve Banks' ethics programs pertaining to personal investment and trading activities, the CFPB's process for conducting enforcement investigations, and the CFPB's effectiveness and timeliness in responding to consumer complaints. The details on these projects are contained in our publicly-available work plan, which we update quarterly.

We also conduct investigations into possible violations of law, regulation, or policy. The matters that we often investigate include bank fraud, employee misconduct, ethics violations or conflicts of interest by agency officials, leaks of protected information, and waste or mismanagement of funds or government resources. Since the start of the pandemic, we have dedicated significant resources to investigating potential fraud related to the Board's emergency lending facilities. Over the last 5 years, we have closed 170 investigations, leading to 116 convictions and \$4.4 billion in financial actions. We opened a total of 141 pandemic response-related cases, 37 of which are now closed, resulting in 62 convictions.

In conclusion, I am so very proud of the breadth of our oversight work, especially given the challenges posed by the pandemic. Congress is a key stakeholder for us, so we, of course, always welcome your feedback on risk areas that you see facing the Board and the CFPB. This concludes my statement and I would be pleased to respond to your questions.

[The prepared statement of Inspector General Bialek can be found on page 30 of the appendix.]

Chairman HUIZENGA. Thank you, Mr. Bialek. We appreciate that.

Mr. Delmar, you are now recognized for 5 minutes for your oral remarks.

**STATEMENT OF RICHARD K. DELMAR, ACTING INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF THE TREASURY**

Mr. DELMAR. Thank you, Mr. Chairman, Ranking Member Green, and members of the subcommittee. I am Rich Delmar, the acting IG for the Department of the Treasury, and I appreciate the opportunity to talk about the oversight work that we have done on the many programs for which Treasury is responsible. I will also discuss at the end, if I have time—I understand the committee has an interest in some of the work we are doing with respect to the Financial Crimes Enforcement Network (FinCEN).

Treasury has responsibilities under all three of the major pandemic statutes that have passed since 2020, and its responsibilities have expanded. Because of that, they have been responsible for dispersing over \$650 billion to a large universe of recipients, governmental organizations, businesses, and many others. We have oversight responsibility for 12 of those programs, and I am going to talk about 4 of them today where we have found concerns about improper payments, instances of fraud, and costs and internal control concerns. The programs are the Air Carrier Payroll Support Programs, the original Coronavirus Relief Fund, the Emergency Rental Assistance Programs, and the State and Local Fiscal Recovery Funds. To put all of these in context, I want to mention a couple of concepts that are key to the work we do, and that is the whole concept of improper payments and fraud, the concept of questioned costs, and the role of a Treasury bureau, the Bureau of the Fiscal Service (BFS), and its Do Not Pay Program.

Improper payments are, as it suggests, payments that are not authorized. They were incorrectly done. It is not the same thing as fraud. Any incidence of fraud will be, by definition, an improper payment, but not every improper payment will constitute fraud. It could be something that happened by mistake, by accident, by misinterpretation of eligibility, but in those cases, money that should have gone to authorized recipients doesn't get there or it goes to unauthorized recipients. And to the extent that happens, the effectiveness of the program and the execution of Congress' intent in creating that program is not met, so that is a key concern.

We have done audit work on Treasury's Improper Payment Program, and we have determined that at least with respect to the bureaus other than the IRS, the Department is in compliance with those rules. BFS' Do Not Pay Program reduces the amount of improper payments because it is a forum by which people can find out if a recipient is entitled. It can be made more effective if it has greater access to all of the relevant information. We have done some work on that. One of the big concerns is the access it has to the Social Security Administration's Master Death File, and there have been some efforts to improve that. There was actually legislation that will go into effect later this year which will increase the availability of that Social Security information to the Do Not Pay Program.

Moving on to the specific programs for which we have oversight, the Air Carrier Payroll Support Program—there are actually three of them, one under each of the statutes—gives payments to air carriers, passenger and cargo, and affiliated businesses that were impacted by the decline in air traffic. We have a mandatory audit requirement for a subset of those eligible carriers and contractors. Generally, it is the smaller ones. What we found was that there was a systemic problem in the amounts that they were paid because of misinterpretation of the rules, and have addressed those concerns. One of the big problems is self-certification versus actually going out and checking.

Under the Coronavirus Relief Program, and the work we did, we set up a portal by which all the recipients could report what they had done with the money. And I see I am running out of time, so let me skip the Emergency Rental Assistance Program. There are actually a couple of those. We are getting a lot of complaints about how that works, and we have set up a specialized team to process those complaints, and get caught up with the problems that are being reported to us about that. And we will look at those as appropriate.

Lastly, I just wanted to mention the FinCEN work that we are doing. We have a series of related audits dealing with how FinCEN manages its bulk data provision program, and we see issues with the memorandums of understanding (MOUs). We see issues with the controls on how that information is used, and we have a series of reports that are going to be coming out starting in the spring and throughout the year.

[The prepared statement of Acting Inspector General Delmar can be found on page 44 of the appendix.]

Chairman HUIZENGA. I will look forward to that. The gentleman's time has expired. Ms. Sharek, you are recognized for 5 minutes for your oral testimony.

**STATEMENT OF REBECCA L. SHAREK, DEPUTY INSPECTOR GENERAL FOR AUDITS, EVALUATIONS, AND SPECIAL PROJECTS, OFFICE OF INSPECTOR GENERAL, U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)**

Ms. SHAREK. Chairman Huizenga, Ranking Member Waters, 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 Office's 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.

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, provides essential accountability and transparency, and, where appropriate, makes recommendations for corrective action. 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, help further increase efficiencies in the SEC's Whistleblower Program, improve strategic planning and performance management related to the SEC's investor education and outreach, and further strengthen the SEC's contract management, information security, Investment Advisor/Investment Company Examination Program, and the Tips, Complaints, and Referrals Program, and controls over hiring actions.

The Reports Consolidation Act of 2000 requires OIGs to identify and report annually on the most-serious management and performance challenges facing agencies. 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 provide a draft of each year's report to SEC officials, and we consider all comments received when finalizing the report.

Last October, we issued our latest report on management performance challenges, and we identified four broad areas where the SEC faces challenges. The first area is meeting regulatory oversight responsibilities. In this section, 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 rule-making activities, and in light of changes in the workforce, including due to attrition.

The second area, protecting SEC systems and data, noted opportunities to evaluate and address the underlying causes and impact of a material weakness related to insufficient user controls, strengthening the Agency's cybersecurity posture, and continuing to mature its information security program.

Third, improving contract management is the next 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.

The fourth, and final, challenge discussed in our report is ensuring human capital management. In this section, we provide data

that demonstrates recent increases in attrition. We also discussed uncertainties that exist surrounding the plans for return to office and the potential for expanded telework, as well as an audit we completed that identified opportunities to further strengthen controls over the SEC's hiring actions.

In conclusion, the SEC OIG remains committed to examining important aspects of the SEC's programs and operations. For example, we are currently assessing 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 the subcommittee. Thank you for the subcommittee's support for our mission, and for the opportunity to testify. I will be pleased to answer any questions you have.

[The prepared statement of Deputy Inspector General Sharek can be found on page 57 of the appendix.]

Chairman HUIZENGA. Thank you.

We are going to now turn to Member questions, and the Chair will recognize himself for 5 minutes.

I will note my colleague was going on in his comments about this focusing only on the Biden Administration. Well, we are 2 years in, halfway through the Biden Administration, so yes, I will note that Jay Clayton, as head of the SEC, had an active schedule in front of this committee, under both Republicans and Democrats as well, while he served until 2020. So I want to thank our witnesses again, and I am going to jump right into my questions.

Ms. Sharek, my first question is for you. I am concerned about transparency at the SEC. The SEC is one of the wealthiest independent agencies in our Federal Government, based on how it collects the fines and uses that to fund itself. The Agency has many employees and resources, yet it appears not to allocate them to respond to congressional inquiries or requests, or requests made under the Freedom of Information Act (FOIA), to ensure that citizens, and the media, and others can provide a check on the government and hold the Federal Government accountable to its statutory duties.

I understand that you worked on the top management challenges report of 2022. Considering the major workforce challenges that were highlighted in that report, attrition and some other things, do you plan to evaluate resource allocation with respect to the different offices at the Agency, specifically the General Counsel's Office, who responds to Congress, and the Office of FOIA services?

Ms. SHAREK. Yes, I did work on the Management and Performance Challenge Report in question. We are beginning the work to produce this year's report, and we will certainly be following up on some of the workforce challenges that we identified. We have not planned an audit specifically of the allocations of the different offices and divisions, but as we develop our Fiscal Year 2024 plan, we are certainly interested in continuing to discuss with you your concerns.

Chairman HUIZENGA. Consider this a suggestion.

Ms. SHAREK. Yes.

Chairman HUIZENGA. Yes. I think we have seen a tremendous delay in responses to, frankly, Members on both sides of the aisle as well as the media and others when it comes to FOIA. As you know, the committee initiated an investigation into FTX under the leadership of, at the time, Chair Waters, that has been continued with Chair McHenry. We also formally requested an investigation from your office. Will your office commit to investigating the SEC's role and involvement with FTX?

Ms. SHAREK. I am aware of the letter in question and have participated in some preliminary conversations amongst our leadership team. I have not been involved in all of those discussions. In my role of as the head of the Office of Audit, I think any questions about what our office may or may not do would probably be best addressed to our acting Inspector General.

Chairman HUIZENGA. At a different time?

Ms. SHAREK. I am sure our office can reach out to you and your staff. I am not prepared, in my role as the head of the Office of Audit, to speak for our acting Inspector General.

Chairman HUIZENGA. Okay. My next question is for you, Mr. Delmar. Standing up the Emergency Rental Assistance (ERA) Program was particularly challenging, no doubt. Complaints about those programs are not new and continue to come through as ERA2 funds continue through 2027. Mr. Delmar, is it true that your office has received thousands of pandemic-related complaints through your hotline, with most of them related to the ERA?

Mr. DELMAR. Yes, sir. We have on the order of over 2,000 at this point. It grows by the day, and that is why we have set up the cross-functional team to specifically work on processing those.

Chairman HUIZENGA. Why is that? Why do you speculate? What are you hearing from the folks who are registering these complaints?

Mr. DELMAR. I think it is probably fair to say that it is more of a retail distribution operation, just more opportunities for people to see either real or perceived inequities, or people getting the funds that, for whatever reason, should not. And what we have to do is isolate those things, and if that is something that we can look at, we will. If it is something that somebody else ought to be looking at, we will do our best to refer it to where it should go.

Chairman HUIZENGA. Mr. Bialek, I have just a few minutes left. You oversee a very busy CFPB. In the Board's OIG work plan, there is a plan to, "review the Board's approach to climate risk supervision at financial institutions within the first quarter of 2023." My concern is that the Fed may be acting outside of the supervisory role when it comes to climate policies. Can you tell me more about the goal of this review, as well as the status of the review, and what Board activity has encouraged your office to add this to your work plan? I am going to let you answer very quickly, and then I am going to submit a couple of other questions to you in writing.

Mr. BIALEK. Certainly. We do have a team looking at climate risk issues in the supervision arena. They are going to be drafting a White Paper that will be setting forth the activities of the Board as it looks at establishing and implementing a climate risk activity and initiative. We are going to compare that to other agencies, and

departments, and central banks to see and check their missions and their authorities to see how that compares to the Board's efforts, and maybe have some best practices laid out so we can put the pieces of the puzzle together as the Board continues to pursue this matter.

Chairman HUIZENGA. My time has expired, so we are going to have to continue this later, and maybe one of my colleagues can pick that up.

Mr. BIALEK. Okay.

Chairman HUIZENGA. I appreciate it. At the request of the ranking member, we are going to go to the gentleman from Nevada, Mr. Horsford, next.

Mr. HORSFORD. Thank you very much, Mr. Chairman, and to the ranking member for holding this necessary hearing. And thank you to our Inspectors General for appearing before the subcommittee today. There can be no doubt that it is necessary at times to take a step back and retrospectively analyze the efficacy of our work, both here in Congress as well as the Administration's implementation of the laws that we passed. I want to say that I am proud of the votes that I took to deliver for the American people during the hardest days of the pandemic, and I don't need to remind my colleagues of the depth of the pain that all of our constituents felt at times.

However, despite the challenging circumstances we found ourselves in, we were able to deliver relief to families and the small businesses who are struggling to simply keep their heads above water. We were able to ensure 6.5 million working families could keep a roof over their heads with the emergency rental assistance that we provided. We were able to protect the payrolls of small businesses across the country with the Paycheck Protection Program (PPP) so that they could keep their doors open and keep approximately 90 million people on the payroll. When State and local governments faced historic shortfalls, we were able to make them whole and to preserve the services that our constituents rely on every day. That includes public safety, healthcare workers, first responders, police, and fire, all that are essential to our quality of life.

So, I am happy to take a look back at the challenges that we faced as long as we, as you said, Mr. Chairman, keep in mind that there were successes, and I hope that we don't forget that. These programs were vital lifelines to Americans at a time when uncertainty and fear dominated their lives. And I want to commend my colleagues for following up on our efforts from the last Congress and taking time today to ensure that these programs are working as Congress intended. Of course, there are lessons to be learned, and I am eager to be educated on how we can better prepare for whatever may come next.

Now, I have been sounding the alarm for years on the fraudsters and the thieves who have been ripping off American taxpayers and blocking honest applicants from accessing the support they need. When we saw issues with the unemployment insurance system, I introduced the Guaranteeing Unemployment Assistance and Reducing Deception (GUARD) Act to guarantee our State unemployment insurance programs can fight back against these literal crimi-



nal cartels, most of whom are foreign. No individual should be allowed to take advantage of individuals desperately in need of these emergency benefits. It should be no different in the programs overseen by our witnesses today. These criminals should and will be held accountable, but in order to do so, we must have accurate data on the funds that were dispersed.

Mr. Delmar, I understand that multiple programs under Treasury's jurisdiction, including the Emergency Rental Assistance Program, have had various reporting and compliance delays that have impeded monitoring and audit activities. Would you please speak to how these delays may inhibit the Department's ability to identify and eliminate fraud?

Mr. DELMAR. Generally speaking, Congressman, a lot of the problem was delays by the Department in setting up how the programs were actually going to be operated, and putting together the guidance so that people who were applying had a clearer idea of what was eligible and what was not. The combination of delays in standing up the program, having the guidance, and being able to get the reports input, just means that you have less of a thorough view of what is going on. And anytime there is a lack of guidance, the opportunities for ineligible to get benefited increases.

Mr. HORSFORD. Okay, I am going to follow up with this last question. I would like to ask you to respond in writing. I am concerned about the implementation of the community development financial institutions (CDFIs) and the minority depository institutions (MDIs), and the funds that we need to ensure are getting to the marginalized and underserved communities. Could you please respond in writing to the question that I will submit for the record? And with that, I yield back.

Chairman HUIZENGA. The gentleman yields back. With that, we are going to the gentlewoman from Missouri, the former Chair of this subcommittee and former ranking member, as well, Mrs. Wagner, who is also the Chair of our Subcommittee on Capital Markets. She is now recognized for 5 minutes.

Mrs. WAGNER. Thank you, Chairman Huizenga. Ms. Sharek, the SEC Inspector General's report on the SEC's management and performance challenges from last October—I know you were the first IG and you worked on this particular report. I think it was released under a second IG, but I know that you were working on it as you were the first one appointed as acting. And it highlights the concerns of many managers across the SEC about increased risks, specifically, and difficulties managing mission-related work. The report is very clear that these concerns are driven by the, "increase in the SEC's rulemaking activities that are being rushed with shortened timelines during the drafting process." That is taken directly from the report.

The Inspector General is not only the only one urging the SEC to slow down. Last April, several members of this subcommittee joined a group of 47 bipartisan Members in a letter to Chair Gensler asking for longer comment periods, particularly for significant rulemakings, and on September 12th, Democratic Senators sent a similar letter. Yet, since the IG report was released, the SEC has not—underscore, "not"—reduced its quantity or slowed down its speed of rulemaking. By the end of 2022, the SEC had in-

roduced 34 new rule proposals, an increase of 143 percent compared to the annual average over the preceding 5 years of 14 proposals. The October report made it clear that the volume and pace of rulemaking under Chair Gensler are threatening what the Inspector General exists to promote, and this is what you worked on and helped draft, “the integrity, efficiency, and effectiveness of the critical programs and operations of the SEC.”

Ms. SHAREK, with such short comment periods, are managers concerned that the Commission is not getting the data they need from all stakeholders?

Ms. SHAREK. Some of the folks that we met with and some of the rulemaking divisions did express that there may be some increased risk there. And we felt, given the role of the individuals that we met with and their experience, that it warranted inclusion in the major management performance challenges.

Mrs. WAGNER. Increased risk? I agree. What other tools does the Inspector General have to address the management problems stemming from the SEC’s regulatory agenda?

Ms. SHAREK. Certainly, we will revisit these issues, and we are starting to work on and gather our staff together. This month was typically when we will begin efforts to draft this year’s report, so we will be following up on each of the issues that we addressed. And certainly, we have audits and evaluations that my office performs, and investigations from the Office of Investigations as well.

Mrs. WAGNER. Can you please provide additional details on these risks that are being created by the mission-related work that is being neglected because of the increase in rulemaking activities, as well as the causes and impacts of the, “coordination and communication challenges in the rulemaking process,” particularly given potential overlaps in jurisdiction and differences in opinions?

Ms. SHAREK. I don’t have any specific risks to any specific activity that I can offer to you. The conversations that we had with knowledgeable individuals were broad. They broadly described, as you mentioned, the volume and the urgency, so I don’t have anything more specific.

Mrs. WAGNER. It did say, though, that mission-related work was being neglected. Is that correct?

Ms. SHAREK. I don’t know that we used the word, “neglect.”

Mrs. WAGNER. Yes, you said mission-related work that was causing risks.

Ms. SHAREK. Generally, as I said, we did not have any specific details that were provided to us.

Mrs. WAGNER. Do you anticipate that the IG will be following up on these issues, given that they impact the Commission’s ability to meet its mission, including protecting investors?

Ms. SHAREK. That the IGs office will follow up? Yes, absolutely.

Mrs. WAGNER. Great. Thank you. And, Mr. Chairman, before I yield back, I would submit to the record the fact that Secretary Gensler has not appointed a permanent IG after over 2 years in the job. I would like it entered in the record that what he is doing is putting in a new acting IG every 180 days. I think this is a way to thwart Congress and our oversight, so that we can’t actually talk to an IG who is permanent.

Chairman HUIZENGA. Yes.

Mrs. WAGNER. I would like that to be placed in the record. Thank you.

Chairman HUIZENGA. The gentlelady's time has expired. That has been noted, and the letter requesting that Chair Gensler appoint a permanent IG has been sent as well.

With that, the Chair now recognizes the ranking member of the Full Committee, the gentlewoman from California, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much. I have been trying to quickly understand the role and responsibility of all of the Inspectors General related to the CARES Act and the American Rescue Plan. I want to know if you were involved at all with the Defense Production Act, any of you, in planning or in management concerns, anything about the Defense Production Act, please. Each of you, please, yes or no?

Ms. SHAREK. No, ma'am.

Ms. WATERS. No?

Ms. SHAREK. No.

Ms. WATERS. No?

Mr. DELMAR. No, ma'am.

Ms. WATERS. No?

Mr. BIALEK. No.

Ms. WATERS. How were you involved with the PPP program? Do any of you know anything about the PPP program?

Mr. BIALEK. It is not within Treasury OIG's oversight jurisdiction.

Ms. WATERS. But you had the responsibility for basically planning, as I understand, what were you planning. I am reading your description of what you had the responsibility for.

Mr. DELMAR. Our oversight responsibilities are for the original Coronavirus Relief Fund, the Emergency Rental Assistance Programs, the Air Carrier Programs, the State and Local Fiscal Recovery Funds, the CDFI Rapid Response Program, the Emergency Capital Improvement Program, the Community Emergency Response Team (CERT) Program, which deals with other transportation entities, and an extension of the old State Small Business Credit Initiative (SSBCI) Program.

Ms. WATERS. So, you are not familiar with PPP and all of what happened in the first year of the PPP program under Trump, when the big companies and corporations were in the panels created by the banks as their concierge clients? They got funded, and some of them even felt guilty and gave the money back. Are you familiar with that?

Mr. DELMAR. I would like to add to what I said previously. Through our involvement in the PPP program, we have helped, along with many other IGs, including the the Small Business Administration (SBA) OIG, and the Pandemic Response Accountability Committee (PRAC), in conducting investigations into abuses in the PPP program.

Ms. WATERS. Okay. Was this during the first year of the PPP program?

Mr. DELMAR. That we got involved?

Ms. WATERS. That you got involved, that you were involved in helping the SBA.

Mr. DELMAR. I don't recall exactly when we and other IGs were recruited to help the SBA OIG, but pretty early on, yes, ma'am.

Ms. WATERS. Okay. Were you responsible for helping to identify these major corporations who got PPP money that the PPP program was not intended to give money to? Are you familiar with that?

Mr. DELMAR. I am certainly familiar with it, but we don't have primary responsibility for that. We have been, as I said, with other IGs, helping the SBA OIG, which has a tremendous—

Ms. WATERS. Do you know who was responsible? Who is responsible for looking at fraud, waste, and abuse in PPP?

Mr. DELMAR. The SBA OIG and the PRAC are involved in that as well.

Ms. WATERS. So, you worked with the SBA OIG, but had nothing to do with PPP?

Mr. DELMAR. Each IG is independent, ma'am, and we help each other, as I said.

Ms. WATERS. Well, when you help each other, do you talk to each other?

Mr. DELMAR. Yes, we do.

Ms. WATERS. So, did you all talk about PPP and what was going on?

Mr. DELMAR. Sure. In the PRAC, and in the Council of Inspectors General on Integrity and Efficiency, it is a big issue, and it was one of the ones that was so big that more than just Inspector General Ware's shop at SBA OIG got involved in it. It was to help him carry out his responsibilities as the person responsible for oversight of the SBA.

Ms. WATERS. So, while we are looking at fraud, waste, and abuse, and the way that you have described what your responsibility was, can you say that in an investigation, part of your responsibility was to discover or find or investigate fraud, waste, and abuse in anything that you were doing?

Mr. DELMAR. I'm sorry, ma'am, I didn't hear the end of that. Could you repeat it?

Ms. WATERS. Did you have the responsibility for investigating fraud, waste, and abuse in any of your responsibilities?

Mr. DELMAR. Yes. Under the IG Act, each IG is responsible for looking at fraud and waste in the programs and operations of that department, which, in the case of my office, would be Treasury programs, except not the IRS, and not the Troubled Assets Relief Program (TARP).

Ms. WATERS. Did you find—

Chairman HUIZENGA. The gentlelady's time has expired.

Ms. WATERS. Thank you very much. I yield back.

Chairman HUIZENGA. The gentlelady yields back. With that, the Chair recognizes the gentleman from Tennessee, Mr. Rose, for 5 minutes.

Mr. ROSE. Thank you, Chairman Huizenga and Ranking Member Green, for holding this hearing, and thanks to our witnesses for taking the time to be here today and for your insights.

I want to start with Deputy IG Sharek. Your report shows that Chair Gensler's aggressive rulemaking agenda has been limiting the time available for staff research and analysis, which could po-

tentially make cost-benefit analysis exponentially more difficult and less accurate. Almost every one of his 60-plus rulemakings, including on private funds, dealer definitions, Form PF, equity, market structure, climate disclosures, and now the custody proposal, has significant consequences for the numerous industries targeted by these rules.

So, Deputy IG Sharek, is it true that the report found that each of the major rulemaking divisions at the Commission has stated that they do not have enough time to properly write all of these rules?

Ms. SHAREK. No, I cannot support that statement. We certainly collected information that there is a challenge, an ongoing challenge, again, related to the folks that we met with who shared that in certain cases, the volume and the urgency of the rulemaking activity is presenting a challenge. We didn't speak to them about specific rules or the substance of specific rules. It was more geared towards the workload and the challenge that it was presenting to the managers with whom we met.

Mr. ROSE. Is it true that they had to pull one rule back and reopen the comment period because there was a failure to properly catalogue all of the comments that had been submitted?

Ms. SHAREK. I am not sure which rule you are referring to; they reopened the comment period for a number of rules that related to a technological error that was publicly disclosed, so I am aware of that. I am not sure if that is the rule to which you are referring.

Mr. ROSE. Would you surmise that that technological error, the failure to observe that might have been a result of the rushed or frantic pace of rulemaking?

Ms. SHAREK. My office is looking into the technological error, and we plan to hopefully be able to provide a public report on that by the end of this month. So, I don't want to get out ahead of the work that is still ongoing, but I think we will have an answer to that question as soon as our work concludes.

Mr. ROSE. We look forward to hearing that answer. Secondly, Deputy IG Sharek, is it true that the Division of Economic and Risk Analysis has warned that they do not have enough time to conduct proper cost-benefit analysis for all of these rules?

Ms. SHAREK. I am not aware of that specific warning.

Mr. ROSE. Has the Agency shown any attempt or awareness with regard to perhaps slowing down or reassessing the process based on the IGs recommendations? In other words, do they seem to be listening to the report that you have put forward?

Ms. SHAREK. As has already been stated in this hearing, the numbers continued to increase throughout the remainder of last year. We will certainly continue engaging with the Agency to determine what they may have done with respect to our management performance challenge, unlike an audit report where we have an actionable recommendation that we ask them to respond to, and then we assess their performance. This report was informational to them to take further action deemed necessary, so, again, we will be continuing to follow up to see exactly what they may have done.

Mr. ROSE. Sounds sort of like a, "damn the torpedoes, full speed ahead," policy there.

IG Bialek, earlier this morning, I asked Chair Powell about the Fed's oversight of the CFPB budget request, and he told me that you would have the answer, so I hope that you have the answer, or I guess I will have to go back to him. The question is, does the Federal Reserve Board perform any due diligence of the CFPB's claims about its budget or any verification of the budget requests and whether they comply with the statute?

Mr. BIALEK. Congressman, we conducted a review actually based on a request from Congressman Barr back in 2019, I believe it was. We issued a report in 2019 where we looked at exactly what the legal responsibilities were of the Board and the Bureau when it comes to processing requests from the Bureau, the CFPB, for their quarterly budget. We looked at both the CFPB's responsibilities to provide information to the Board, and we looked at the Board's responsibilities under the law for what it is they were required to do in processing those requests. We determined that they both abided by those statutory requirements that were in the Dodd-Frank Act for that purpose. We did find there was some failure to report to Congress some information about those budget requests, I think, for 2 or 3 years. They fixed that and started reporting them as they were required to do, but other than that, they both were upholding their legal responsibilities on the statute.

Mr. ROSE. Thank you. I yield back.

Chairman HUIZENGA. The gentleman's time has expired. The Chair now recognizes the gentlewoman from Texas, Ms. Garcia, for 5 minutes.

Ms. GARCIA. Thank you, Mr. Chairman, and thank you to all of the witnesses who are joining us today.

Before I get to my questions, I would like to just point out as a point of personal privilege that this title is just really a misnomer and a misrepresentation of the insensible pandemic and economic relief dollars that the Biden Administration has provided to the American public: "wasteful spending." It really was about saving lives, and that is what we should really be looking at. In Texas alone, \$3.3 billion helped nearly 736,000 households pay their rent, and PPP funding helped over 209,000 businesses in Houston alone while a deadly pandemic ravaged our nation.

With that context, I also want to remind everyone that all of these programs were passed and signed somewhere between April and May of 2020, and our President was not inaugurated until January 20, 2021. So, in fact, most of these programs were signed into law by the former twice-impeached President, and, more importantly, they were implemented by him. I remember more than one occasion when we had Treasury Secretary Mnuchin talking about the PPP program. We had HUD Secretary Carson talking about the housing assistance. So, this whole misnomer, misinformation that it is all President Biden and all his fault, frankly, is just what we would call in Texas, well, I bet I shouldn't say that word; I will just say, "bunk." It is just bunk.

Mr. Delmar, I am going to start with you. I am just trying, frankly, to get my head around, what is it you really do? You first said in response to one of my colleague's questions that you really didn't have any authority or do anything with the PPP program, but then, when the ranking member of our committee asked you a

question, you said, well, yes, we do because we went in there and helped. So, did you or did you not work on anything having to do with the PPP program, and do you agree with me that when you say that there was a problem with setting it up, it wasn't President Biden who set it up. That was set up back when it first got passed in the year before.

Mr. DELMAR. Let me clarify, Congresswoman.

Ms. GARCIA. Please do.

Mr. DELMAR. Okay. We do not have primary oversight.

Ms. GARCIA. Oh, I understand the word, "primary," sir, but you later said that you did, because you went in there to help the SBA OIG.

Mr. DELMAR. We, along with—

Ms. GARCIA. Did you or did you not review or audit any PPP loans?

Mr. DELMAR. No, we were assisting more on the investigative side of individual cases involving instances of PPP fraud.

Ms. GARCIA. So, you did look at cases involving PPP fraud. Do you recall if those cases were before or after January 2021?

Mr. DELMAR. I don't recall when our assistance started.

Ms. GARCIA. No, I mean when the cases were involving loans between January 2021, before or after.

Mr. DELMAR. I can get you an answer for that, ma'am. I don't want to give you incomplete or erroneous information now, so I will have to check our records.

Ms. GARCIA. Okay. So, you are not familiar with any fraud or abuse of any of the PPP loans at all?

Mr. DELMAR. Not in specific detail of specific cases. I can tell you generally.

Ms. GARCIA. I don't want specifics. I just want to know whether you did or you didn't do any of it, because you are here testifying, and I am trying to figure out who is supposed to talk about these things.

Mr. DELMAR. Okay.

Ms. GARCIA. But that is okay, sir.

I will move on to Ms. Sharek. Ms. Sharek, two management challenges identified in the SEC OIG October 22nd memo are mentioned as being managing resources while meeting the regulatory agenda, and implementing a program to effectively retain and recruit qualified staff to replace personnel loss due to attrition. Is it the case that the SEC OIG reviews and audits have established that there is a causal relationship between these two?

Ms. SHAREK. No.

Ms. GARCIA. There is not, or does this report state that the SEC faces two separate problems—an increased regulatory workload, and an increase in loss of personnel—that combined, increase the management and performance challenges confronting the SEC?

Ms. SHAREK. It is true. We did not establish a causal relationship between those. We didn't attempt to, and we did not. Our view, as expressed in the report, is that there were two things occurring at the same time. There may be a relationship. We didn't look at that. We will review that in our Fiscal Year 2023 work, but we did not establish a causal relationship.

Ms. GARCIA. So, you did not. You just see it as two separate problems?

Ms. SHAREK. Yes.

Ms. GARCIA. Okay. Thank you very much. I yield back.

Chairman HUIZENGA. The gentlelady yields back. The Chair recognizes the gentleman from Tennessee, Mr. Ogles, for 5 minutes.

Mr. OGLES. Thank you, Mr. Chairman, and thank you to our witnesses.

Mr. Delmar, I would like to address some troubling information regarding the Financial Crimes Enforcement Network (FinCEN). FinCEN is the primary regulator of the Bank Secrecy Act and is charged with maintaining government-wide data, and your written testimony, based on audits from your office, highlights significant concerns with four aspects of FinCEN: suppression; user access; MOUs; and monitoring. Regarding suppression processes, are the processes being used by FinCEN sufficient to protect data?

Mr. DELMAR. Not completely, sir. With many other situations, there isn't the regime of internal controls and follow-up that would be ideal, and that is, as I said, in one of our reports which will be issued later this year. We will address the specifics of that.

Mr. OGLES. Okay. We don't have enough time to go into the details, but any recommendations that you or our other witnesses might have to improve suppression processes, if you could submit those to the committee, I think that would be ideal. Mr. Chairman, I do believe you had a couple of additional questions, so I yield to you the balance of my time, sir.

Chairman HUIZENGA. Thank you. I appreciate that. Mr. Bialek, at the very end of my questioning, you were starting to say something. We were kind of on a roll about the Fed's Pilot Climate Analysis Program. Does your office intend to review the nature of this?

Mr. BIALEK. What we are doing is we are reviewing the Board's process as it exists today to develop and eventually presumably implement some activity regarding climate risks. We will be laying out in our White Paper what those activities are, what progress there has been, and how they have gone about doing it. And I think I was mentioning that we are going to be doing some benchmarking with other departments, and agencies, and central banks, and comparing what others have done in the space to what the Board has done, and make any kind of key considerations available to the Board as they continue to pursue this.

I don't want to pre-judge or predetermine the outcome of that White Paper because it is in process right now, but that is the game plan. And I will say we decided to do this White Paper because obviously, this is a hot-button, controversial topic. We thought we are uniquely positioned to be able to kind of lay out the status of it, put the pieces of the puzzle together to explain to the public. It will be a public report about what has been going on and what the game plan is, and then also position ourselves to possibly do some further audit or evaluation work in this space depending on how that program evolves.

Chairman HUIZENGA. Okay. Very quickly, in the remaining time, because I need to get to Ms. Sharek as well, you are aware of the ongoing current case pending before the Supreme Court regarding



the funding mechanisms for the CFPB. I noticed in your most recent Inspector General report on management challenges that they are even looking into the potential impact on the Court's decision as to constitutionality, and they aren't even subject to the lawsuit. Is your office looking into this as well, and if so, what steps have you taken?

Mr. BIALEK. Because the matter is going to be presented and will be pending before the Supreme Court, we have not gone ahead and done any assessment of the potential impact of a decision from the Supreme Court on the CFPB's funding because it depends a lot on the rationale, obviously which way they decide, but also on the rationale for any decision.

Chairman HUIZENGA. Okay.

Mr. BIALEK. Once we have that, we will be in a better position to make that assessment.

Chairman HUIZENGA. Okay. You might want to start thinking about it.

Ms. SHAREK, last week, we learned that SEC employees will officially return to the office at the end of the month. According to reports, they will be required to be in the office 2 days per pay period. That is twice a month as per the pay period, so basically an average of 1 day a week. We also know that the SEC plans to move into a new 1.2-million-square-foot headquarters in Washington, D.C., which can accommodate 4,500 employees at one time. Given these new developments, will your office be reviewing the SEC's lease agreement as part of your audit plan?

Ms. SHAREK. We will certainly take that into consideration. We did not have that on our plan, but I take your point.

Chairman HUIZENGA. It would seem, having a background in real estate and construction, that that is very valuable real estate in downtown D.C., and there is going to be a pretty penny paid, and if we aren't even filling that with the employees, that is a problem.

The gentlewoman from Georgia, Ms. Williams, is now recognized for 5 minutes.

Ms. WILLIAMS OF GEORGIA. Thank you, Mr. Chairman, and thank you to all of the witnesses who are here with us today. The programs that the institutions represented here today oversee, audit, and investigate, supported Americans in every congressional district, including people of color, working families, and many minority business owners during the pandemic. Congressional Democrats, putting people over politics, created these lifesaving programs that were critical to uplifting communities and supporting the most marginalized. As we continue to move towards a strong recovery, we need to keep a watchful eye on these programs to make sure that they are supporting the people that they were intended to support. The resources that these programs offered put children back in school, kept businesses open, kept people employed, and kept families in their homes.

We have all seen the data that shows how communities of color were disproportionately impacted by the pandemic, leading to a greater need for resources. My hometown of Atlanta, unfortunately, felt this more severely than any other city in America, as we lead the nation in the racial wealth gap. Under Democratic leadership, this committee strongly supported CDFIs and MDIs, recognizing

the importance of diverse and mission-driven community financial institutions for marginalized communities. In recent years, the number of CDFIs in Atlanta and across Georgia have multiplied rapidly, offering a lifeline for many business owners, homeowners, and others seeking capital in our communities.

But we have heard concerns that some firms were receiving certifications but were not truly focused on providing financial access to underserved communities. In response, the CDFI Fund took steps to overhaul the certification process. We can't allow firms to receive assistance meant for true CDFIs if they are not going to do the work.

Mr. Delmar, your office is overseeing these efforts. What are your office's plans to examine CDFI and MDI programs that are intended to strengthen these institutions and ensure that funds are going to underserved communities, including communities of color, that traditional financial institutions often ignore?

Mr. DELMAR. We have a number of audits that have either been accomplished or are underway. We have specific responsibility for looking at the CDFI Rapid Response Program, and we are certainly open to additional targeted work. After this hearing, I can send you a fuller description of the work that we have done and are doing. You are one of our stakeholders, so if you have particular concerns that you think warrant our review, we want to take that into account, and to the extent that we have the bandwidth to do it, we can.

Ms. WILLIAMS OF GEORGIA. Thank you, Mr. Delmar.

Also, your office oversees the State Small Business Credit Initiative (SSBCI), which Congress renewed and expanded in the American Jobs Recovery Act in 2020. This committee sought to ensure that the sole proprietors and other small businesses had access to the technical assistance they needed to apply for SSBCI and other forms of loans and investments, allowing them to use that financing to grow their businesses. Georgia uses SSBCI funds to support five crucial programs for startups and other small businesses, but I am concerned that this capital is not reaching the business owners who need it the most.

Mr. Delmar, how does your office plan to examine Treasury and the jurisdictions receiving funds to guarantee that SSBCI is administered consistent with congressional intent to ensure that the smallest and most-underserved small businesses get the support and financing they need? And can you provide any insight on how States have worked to ensure that SSBCI financing reaches marginalized communities?

Mr. DELMAR. As a baseline, certainly our oversight of any of these programs is to make sure that they are actually executing what Congress' intent was in the organic legislation. Again, as I said in response to your last question, if you will give me the opportunity to pull together some information on what we have done and what we expect to be doing, and again, any input that you or any other member of the committee has on specific concerns, we will take that into account.

Ms. WILLIAMS OF GEORGIA. Thank you. I will look forward to that follow-up.

Also, during the pandemic, the Fed stood up the Main Street Lending Program to provide support for mid-sized companies that may not have qualified for PPP loans, even though there is still demand for small businesses to get medium- to longer-term financing once their PPP funds ran dry. As you may recall, Chairwoman Waters and others repeatedly asked the Fed to modify the qualifications to remove unnecessary barriers to access for small businesses.

Mr. Bialek, what has your office found when looking at how a similar program could be better-designed to ensure that smaller businesses have access to financing in future emergencies? And you might have to send me this in writing, since I am out of time.

Mr. BIALEK. I would be happy to.

Ms. WILLIAMS OF GEORGIA. Thank you so much. I yield back, Mr. Chairman.

Chairman HUIZENGA. Thank you. The gentlelady's time has expired. The Chair recognizes the gentleman from Pennsylvania, Mr. Meuser, for 5 minutes.

Mr. MEUSER. Thank you very much, Mr. Chairman. And thank you very much to our witnesses for being here.

Ms. Sharek, as the Deputy Inspector General at the SEC, would the SEC enforce ESG mandates which require investment banks or banks to renege on their fiduciary responsibility to their investors?

Ms. SHAREK. That is not an issue that my office has reviewed, so unfortunately, I cannot answer that question.

Mr. MEUSER. Okay. Can we follow up on it? Thank you.

Ms. SHAREK. Yes.

Mr. MEUSER. Also, Ms. Sharek, in the February 15th report from the Office of Audits about the timeliness of enforcement actions, the report found that timeliness had improved from 2016 to 2021. It is a little concerning related to special purpose acquisition companies (SPACs) because I am hearing from many retail investors and special purpose acquisition companies that they are very concerned with the length of time that their investments are being held in limbo because of prolonged SEC enforcement actions. It has been reported to me that the SEC barely communicates, but does not communicate at all about the status of this enforcement. Has your office conducted any audits related to the SEC's treatment of SPACs?

Ms. SHAREK. No, we have not.

Mr. MEUSER. Okay. Is that something we can provide you information on and perhaps you could?

Ms. SHAREK. Yes, we would be happy to discuss your concerns with you.

Mr. MEUSER. Great. And again, I am receiving information that the approval process at the SEC has taken quite a bit longer for this than the average case. And in many cases, the SEC deals with many high-profile deals, which we hear about, including those that may have a political partisan-ness to them and are somewhat subjective and/or controversial. Are you aware of any unusually-lengthy applications under the review and communications that are currently pending before the SEC?

Ms. SHAREK. No, I don't have the information on those issues.

Mr. MEUSER. I see. Okay. Well, there is data from industry groups specialized in the S-4 filing process. They have reported that the average time for the SEC to process this form was 82 days in 2020, and up to 134 days last year. Yet, I have reports that there is one particular case in which the SEC has not made a determination for over 500 days, with no explanation. Can you try to explain that?

Ms. SHAREK. Again, these are not issues that my office has reviewed, but we would be happy to get back with you on any information that we may have in other components of our office. It is just not something that I am prepared to speak on today.

Mr. MEUSER. Sure.

Ms. SHAREK. My office hasn't looked at those issues.

Mr. MEUSER. Okay. So, we can submit to your office this specific case and ask for you to conduct an oversight and response?

Ms. SHAREK. Again, yes. That is not something that my office has looked at, so I don't have any information.

Mr. MEUSER. Okay.

Ms. SHAREK. We are happy to continue discussing with you and your staff what your concerns are, and if there is a way that we can produce some meaningful work in that area, we will take that into consideration.

Mr. MEUSER. Okay. I am going to yield to my colleague, Mr. Ogles, my remaining minute-and-a-half.

Mr. OGLES. Mr. Delmar, in 2018, the BPI conducted a comprehensive study to help determine if the resources that banks put towards anti-money laundering compliance were providing law enforcement with useful data. BPI found that participating banks meant roughly \$2.4 billion and employed roughly 14,000 individuals for AML regulatory compliance. Despite those high costs, BPI found that only 4 percent of suspicious activity reports and 0.44 percent of currency transactions warranted law enforcement follow-up. FinCEN has about 470 memorandums of understanding with law enforcement and intelligence components. Once an agency has been approved, what are the issues that you see with MOUs and continued compliance, and, of course, the financial burdens therein?

Mr. DELMAR. The issues we see specifically with the MOUs is that many of them are very, very old. They need to be updated. It needs to be clear what the actual rights and responsibilities are of the participants in the MOUs. Overall, sir, the problem is that FinCEN doesn't have as much control over what gets done with the BSA information once it is distributed, what further uses it gets put to. And that is the nature of the findings that we have put together, that we have shared with FinCEN management, and that will be coming out in the reports later this year.

Mr. OGLES. Thank you, Mr. Delmar. Mr. Chairman, I yield back.

Chairman HUIZENGA. The gentleman's time has expired. At this time, the ranking member of the subcommittee, the gentleman from Texas, Mr. Green, is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the witnesses for appearing today, and I would like to, if I may, take a moment to talk just a bit about what occurred with the pandemic. In 2022, we surpassed 1 million deaths to the pandemic. I traversed the streets

in Houston, Texas. There were very few vehicles on the street. Businesses were closed, not all, but a good many. People were concerned about paying the rent. They were concerned about paying their mortgages. People were afraid. It was a pandemic, a global shutdown.

My assumption is that you are not here today to tell us that we shouldn't have provided money directly to people to assist with rent, and mortgages, and food on the table, and keeping their homes, and avoiding eviction. You are not here to tell us that we shouldn't have done that, are you? If you are here to tell us this, raise your hand.

[No response.]

Mr. GREEN. Let the record reflect that no hands are up. You are not here to tell us that we shouldn't have spent some \$792.6 billion to support small businesses, are you? If so raise your hand.

[No response.]

Mr. GREEN. Let the record reflect that no one has raised a hand. And surely, you are not here to tell us that we should not have spent the \$29.6 billion in emergency rental assistance, assisting 6.5 million households, keeping people in their homes, with a roof over their heads. You are not here to tell us that we shouldn't have done that, are you?

[No response.]

Mr. GREEN. My suspicion is that the pandemic was something that we had to fight by spending money. I say, my suspicion, but it is a fact. We did. We spent \$47.8 billion testing, performing contact tracing, and mitigation. You are not here to tell us that that was a bad idea, are you? If so, raise your hand.

[No response.]

Mr. GREEN. Let the record reflect that no one has raised a hand. Here is my point. I am not going to allow the perfect to become the enemy of the good. There were many good things done, many good things, and many of us have been criticized, as Democrats, for doing these good things to protect the American people when we had a global pandemic. How on earth could we have had the people of this country believe that their government was doing what it was supposed to do without providing assistance? People expect the government to step in and be of assistance when they can't work because we told them not to go to work, when they couldn't pay the mortgage payments because we required that they stay home. This is what people expect from the government, that we will do these things. So, I am exceedingly proud of the way my Democratic colleagues and I were the adults in the room and decided that we would do what was right for the American people.

Yes, there were some mistakes made along the way, but if you are going to talk about mistakes made along the way and you are going to develop best practices, you ought to look at the entirety of the picture and all of the mistakes if you are going to have best practices, and that is what we should look for here in Congress. So, I thank you for appearing, and I yield back the balance of my time.

Chairman HUIZENGA. The gentleman yields back. The Chair recognizes the gentleman from West Virginia, Mr. Mooney, for 5 minutes.

Mr. MOONEY. Thank you, Mr. Chairman. Mr. Bialek, your office has no small task. You oversee two independent agencies, the Federal Reserve and the CFPB. Typically, I understand your time is split 60–40 in favor of the Federal Reserve, but most recently, maybe more like 70–30, following the pandemic lending programs that were mentioned. The CFPB, however, has a unique, and frankly, I believe, unconstitutional funding structure, taking funds from the Federal Reserve rather than through the annual appropriations process from Congress. This insulates the CFPB from, really, congressional oversight.

In Fiscal Year 2022, the CFPB requested \$642 million from the Federal Reserve for operating expenses, a record high, yet the CFPB's unobligated funds or leftover funds have only increased over the past several years, more than doubling from 2018, now \$228 million. In fact, the only time the CFPB spent down any of its unobligated funds was under Acting Director Mick Mulvaney, who wisely decided to use those funds instead of requesting more when it was not needed.

So, Mr. Bialek, can you explain why the CFPB keeps requesting record transfers from the Federal Reserve, while the amount of leftover funds continues to grow?

Mr. BIALEK. We haven't done a deep dive into, for example, financial statement analysis of how they handle their funds. If there are some concerns about them having violated any statutory provision or regulation, that is something we would be interested in hearing about, and we would follow up on.

Mr. MOONEY. Okay. Thank you. I would encourage you to look into that. Now, let us turn to some kind of a slush fund or a witch hunt organization under Director Chopra, and let us, frankly, hope that the Supreme Court does the right thing by concluding that their funding structure is unconstitutional, and we can bring real accountability through Congress to that Bureau as well. But, Mr. Bialek, 20 agencies with similar or smaller operating budgets than the CFPB have a dedicated Inspector General for each agency, not shared with other agencies, so I would like some assurance, how are you ensuring that the CFPB has proper oversight?

Mr. BIALEK. We take a look at our management challenges that we have identified for the CFPB, and we look at kind of a risk analysis of the programs and operations of the CFPB. We look at financial risk, we look at reputational risk, operational risk, and match that with the management challenges that we have already determined are the areas which, if they don't satisfactorily address them, they are in jeopardy of not being able to successfully carry out their mission.

We will be adding more work to our CFPB work plan in terms of audits and evaluations now that we see the pandemic work lessening, and I fully suspect that the ratio between the work we do with the Board and the Bureau will come closer to the same percentage. As always, I encourage any member of this subcommittee to get ahold of us and let us know if there are some risk areas as you see them that we should take into consideration as we do our work plan for the coming year. We would welcome those conversations.

Mr. MOONEY. Okay. Great. Thank you for that response, and you might be hearing from me on some specifics. My last question would be, let me first say the CFPB, in my opinion, has rightfully been criticized, based on our first discussion, about going outside their rulemaking, outside their authority. They have rightfully been criticized for regulating through press releases, blog posts, and changes to its examination manual, clearly violating the CFPB statutory authority, and notice-and-comment requirements for rulemaking. So, is your office reviewing how the CFPB is using every possible avenue to circumvent the traditional rulemaking process?

Mr. BIALEK. Congressman, the IG community is prohibited from delving into or weighing into policy disputes, policy differences of view. If we do engage in that, it throws up a roadblock in terms of our ability to be viewed as objective, and going in and auditing or evaluating the programs and operations which evolved from that policy. So, we have to make a distinction between what are policy-based issues versus what is fraud, waste, abuse, and illegality in terms of how an agency is conducting itself. That would be my kind of high-level answer to your question.

And also, some of those policy issues I think you are alluding to are matters that are in litigation, and that is another area that IGs are mindful not to wade into. We are not judges or juries in terms of interpreting the law. So with those provisos, I would say that any other types of concerns you have, we would be happy to discuss with.

Mr. MOONEY. Okay. I think my time has expired.

Chairman HUIZENGA. I would like to thank the witnesses for their testimony today.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And with that, I appreciate the participation from all of my colleagues, and certainly, we appreciate the participation of our witnesses.

This hearing is adjourned.

[Whereupon, at 3:51 p.m., the hearing was adjourned.]





# **A P P E N D I X**

March 8, 2023

March 8, 2023

Testimony Before the Subcommittee on Oversight and Investigations,  
Committee on Financial Services, U.S. House of Representatives

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**Statement of Mark Bialek, Inspector  
General, Board of Governors of the Federal  
Reserve System and Consumer Financial  
Protection Bureau**



**OIG**  
Office of Inspector General  
Board of Governors of the Federal Reserve System  
Consumer Financial Protection Bureau



## Introduction

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Chairman Huizenga, Ranking Member Green, and members of the subcommittee:

I am pleased to be here today to discuss our oversight of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau. Independent, objective oversight is critical for ensuring that government agencies work efficiently; effectively; and in accordance with the laws, rules, and regulations that govern them. Such work is also vital for maintaining public trust in government institutions.

As the Office of Inspector General for the Board and the CFPB, we conduct audits, evaluations, and other reviews to assess the economy, efficiency, and effectiveness of the agencies' programs and operations. We also investigate wrongdoing—including actions that hinder the agencies' ability to supervise financial institutions within their jurisdictions—committed by agency employees, contractors, or any other person or entity.

Over the last 5 years, we have issued 108 audit and evaluation reports. Of these reports, 61 focused on the Board and included 175 recommendations, and 47 focused on the CFPB and included 122 recommendations. During the same period, we closed 170 investigations, leading to 116 convictions and \$4.4 billion in fines, restitution, special assessments, forfeiture, and civil judgments. Our COVID-19 pandemic response-related investigations netted nearly \$66 million in financial actions (criminal fines, restitution, special assessments, forfeiture, civil judgments, and civil monetary penalties). Of the 170 closed investigations, 37 were pandemic-response related and resulted in 62 convictions.

My testimony consists of four parts. First, I will discuss our overall approach to oversight; second, I will review our audit and evaluation results, highlighting the management challenges we see facing the Board and the CFPB; third, I will discuss our investigative work; and fourth, I will describe our partnership with the Pandemic Response Accountability Committee (PRAC).



## Approach to Oversight

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### Statutory Mandates

Our statutory mandates are our highest priority. These mandates play a large part in our information technology (IT) audit and evaluation planning in particular: Approximately 75 percent of our IT audit and evaluation work is legislatively mandated. We also have statutory mandates related to our non-IT audit work that require independent audits of the Board's and the Federal Financial Institutions Examination Council's financial statements. In addition, we are mandated to conduct risk assessments and audits of the Board's and the CFPB's purchase card and travel card programs as well as reviews to determine the CFPB's compliance with the Payment Integrity Information Act.

With our remaining resources, we focus on those programs and operations in which potential deficiencies pose the highest risk to the Board and the CFPB in achieving their strategic goals, objectives, and priorities; meeting budgetary and financial commitments; and complying with applicable laws, regulations, and guidance.

### Biennial and Dynamic Planning

In addition to these mandates, our discretionary project selections are based on two types of risk-based planning activities: our biennial planning process and dynamic planning.

We begin our biennial planning process by defining the agencies' major management challenges. We are not required by statute to identify these major management challenges. We have conducted this activity on a discretionary basis to help inform our planning and project selection decisions. This helps to ensure that we (1) have defined the topics that can hamper the agencies' ability to achieve their strategic goals and objectives, (2) are performing work that has a clear connection to those strategic goals and objectives, and (3) are engaged in risk-based oversight. We also assess inputs such as stakeholder outreach, hotline complaints, risks, and ideas identified during prior projects.

Then, we prioritize projects that we plan to initiate over the remainder of the planning period's time horizon. The project selections we make are based on considerations such as (1) the connection to agency mission or strategic objectives, (2) the dollar amount associated with the relevant program activity, (3) the operational risk associated with the activity, (4) the reputational risk associated with the program or activity, and (5) stakeholder request or interest in the audit or evaluation.

There is also a dynamic aspect to our planning, as we strive to conduct timely and relevant work. We engage in dynamic planning activities in response to developments at or affecting the agencies, input from congressional and other stakeholders, and hotline complaints. Such issues may cause us to reconsider our planned activities and pivot to initiate a project that we had not initially contemplated in the plan. A recent example of a project that was initiated based on an agency development is our ongoing ethics program evaluation for the Board. Our IT audits and evaluations can be informed by reviews of newly issued federal policies and guidance, engagement with other financial OIGs and the U.S. Government Accountability Office, and audit and fraud risk assessments.

## Pandemic Response

With respect to the Board's pandemic response, we initially focused on

- governance and controls to ensure consistent execution of the Board's programs by the Federal Reserve Banks designated to put them into action, as well as vendor activities to execute program objectives
- coordination activities among the Reserve Banks or the designated program manager to execute, monitor, and improve that execution over time
- data aggregation and validation, particularly before program-related information is shared with the public or congressional stakeholders
- the monitoring and tracking of unique features associated with specific programs

## Information Security

Throughout our oversight work, we continue to prioritize reviews of the security of Board and CFPB data, information, and IT systems. Specifically, we have expanded our testing of critical IT systems and security processes at both agencies as part of our cybersecurity oversight conducted pursuant to the requirements of the Federal Information Security Modernization Act of 2014 (FISMA). In addition, as part of our FISMA reviews, we continue to focus our oversight on the steps the Board and the CFPB are taking to strengthen their IT supply chain risk management program and processes related to third-party vendors that are providing services to the agencies. As such, we are closely coordinating with various stakeholders across the Federal Reserve System, the Board, and the CFPB.



## Audit and Evaluation Results

Over the last 5 years, we have issued 108 audit and evaluation reports addressing issues at the Board and the CFPB. These reports included 297 recommendations to improve the economy, efficiency, and effectiveness of the agencies' programs and operations; 214, or 72 percent, of these recommendations have been closed.

**Table. Audit and Evaluation Results, 2018–2022**

Item	Total	Board	CFPB
Reports issued	108	61	47
Recommendations made	297	175	122
Recommendations closed	214	129	85

## Management Challenges

As noted, our biennial planning process involves identifying the management challenges facing the Board and the CFPB. We identify the agencies' major management challenges by considering our knowledge of the agencies' programs and operations and our awareness of emerging risks as well as by assessing key themes from our discussions with management and our knowledge of the agencies' programs and operations. We are in the process of updating our [2021 management challenges](#) for 2023. While we seek to have a segment of our portfolio focused on the Board's and the CFPB's major management challenges, we must also be focused on other key risk areas outside those topics.

The Board's major management challenges, in order of significance, are as follows: (1) design and implementation of pandemic response emergency lending facilities, (2) organizational governance and enterprise risk management, (3) cybersecurity oversight at supervised financial institutions and service providers, (4) information security, (5) human capital and workforce safety, (6) financial institution supervision, and (7) physical infrastructure.

The CFPB's major management challenges, in order of significance, are as follows: (1) information security, (2) human capital, (3) supervision and enforcement strategy, and (4) consumer complaints.

Our completed work is summarized every 6 months in our [semiannual reports to Congress](#), which are available on our public website.

Completed work related to our management challenge topics for the Board includes the following:

1. Designing and Operationalizing Emergency Lending Programs to Address the Economic Effects of the COVID-19 Pandemic:
  - [Observations on Cybersecurity Risk Management Processes for Vendors Supporting the Main Street Lending Program and the Secondary Market Corporate Credit Facility](#) (2022)
  - [The Board Has Effective Processes to Collect, Aggregate, Validate, and Report CARES Act Lending Program Data](#) (2022)
  - [Results of Analytical Testing of the Board's Publicly Reported Data for the Main Street Lending Program](#) (2021)
  - [Results of Analytical Testing of the Board's Publicly Reported Data for the Secondary Market Corporate Credit Facility](#) (2021)
2. Enhancing Organizational Governance and Risk Management:
  - [The Board Can Enhance Enterprise Practices for Data Management Roles and Responsibilities](#) (2023)
  - [The Board Can Enhance Certain Governance Processes Related to Reviewing and Approving Supervisory Proposals](#) (2022)
  - [The Board's Implementation of Enterprise Risk Management Continues to Evolve and Can Be Enhanced](#) (2021)
3. Enhancing Oversight of Cybersecurity at Supervised Financial Institutions:
  - [The Board's Approach to the Cybersecurity Supervision of LISC Firms Continues to Evolve and Can Be Enhanced](#) (2020)
  - [The Board Can Enhance Its Cybersecurity Supervision Approach in the Areas of Third-Party Service Provider Oversight, Resource Management, and Information Sharing](#) (2017)
4. Ensuring an Effective Information Security Program:
  - [Security Control Review of the Board's Secure Document System](#) (2022)
  - [The Board Can Strengthen Inventory and Cybersecurity Life Cycle Processes for Cloud Systems](#) (2022)
  - [2022 Audit of the Board's Information Security Program](#) (2022)
  - [2021 Audit of the Board's Information Security Program](#) (2021)
5. Strengthening the Human Capital Program and Ensuring Workforce Safety:
  - [The Board Implemented Safety Measures in a Manner Consistent With Its Return-to-Office Plan](#) (2022)
6. Remaining Adaptable to External Developments While Supervising Financial Institutions
7. Ensuring That Physical Infrastructure Effectively Meets Mission Needs:
  - [The Board's Contract Modification Process Related to Renovation Projects Is Generally Effective](#) (2022)

- [The Board Can Improve the Management of Its Renovation Projects](#) (2021)

Completed work related to our management challenge topics for the CFPB includes the following:

1. Ensuring That an Effective Information Security Program Is in Place:
  - [2022 Audit of the CFPB's Information Security Program](#) (2022)
  - [2021 Audit of the Bureau's Information Security Program](#) (2021)
2. Managing Human Capital and Ensuring Employee Safety:
  - [The CFPB Implemented Safety Measures in Accordance With Its Reentry Plan](#) (2022)
  - [The Bureau Can Strengthen Its Hiring Practices and Can Continue Its Efforts to Cultivate a Diverse Workforce](#) (2021)
3. Remaining Adaptable to External Developments While Continuing to Refine the Supervision and Enforcement Strategy:
  - [The Bureau Can Further Enhance Certain Aspects of Its Approach to Supervising Nondepository Institutions](#) (2021)
4. Managing Consumer Complaints:
  - [Bureau Efforts to Share Consumer Complaint Data Internally Are Generally Effective; Improvements Can Be Made to Enhance Training and Strengthen Access Approval](#) (2019)

## Other Notable Recently Completed Work

Other notable recently completed work includes the following:

- [The CFPB Is Generally Prepared to Implement the OPEN Government Data Act and Can Take Additional Steps to Further Align With Related Requirements](#) (2022)
- [The Board Can Improve the Efficiency and Effectiveness of Certain Aspects of Its Consumer Compliance Examination and Enforcement Action Issuance Processes](#) (2021)
- [The Board Economics Divisions Can Enhance Some of Their Planning Processes for Economic Analysis](#) (2021)
- [The Bureau Can Improve Its Controls for Issuing and Managing Interagency Agreements](#) (2021)
- [The Bureau's Budget and Funding Processes](#) (2020)

## Ongoing and Planned Work

Our ongoing and planned work is described in detail in our quarterly [Work Plan](#), which is available on our public website. Selected projects include the following:



**Pandemic response oversight**

- Paycheck Protection Program Liquidity Facility fraud deterrence efforts
- the Federal Reserve Bank of New York's vendor selection and management processes for its emergency lending facilities
- the System's loan purchase process for the Main Street Lending Program (MSLP)

**Supervision and regulation**

- the processes by which depository institutions transition to CFPB oversight
- the extent to which the CFPB promotes independence and has policies, procedures, and controls to mitigate the risk of conflicts of interest among supervision, enforcement, and fair lending staff
- the operation of the CFPB's examiner commissioning program
- the Board's and the Reserve Banks' cybersecurity incident response process for supervised institutions

**Workforce and human capital**

- the Board's hiring practices and their effect on workforce diversity
- the CFPB's healthcare benefits administration

**Other ongoing and planned reviews**

- the Board's and the Reserve Banks' ethics programs pertaining to personal investment and trading activities
- the Board's approach to climate risk supervision at financial institutions
- the integration of cybersecurity requirements into the CFPB's agile software development life cycle processes
- the Board's intelligence program
- the CFPB's controls for exercising contract options
- the CFPB's process for conducting enforcement investigations
- the CFPB's effectiveness and timeliness in responding to consumer complaints



## Investigative Results

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Our investigative work focuses on identifying and aggressively pursuing individuals who hinder the Board and the CFPB from carrying out their responsibilities. These investigations are wide ranging and include employee misconduct, ethics violations, obstruction, and material misrepresentation to examiners. Since 2018, we have closed 170 investigations, leading to 116 convictions and \$4.4 billion in fines, restitution, and special assessments.

We are dedicated to identifying and investigating potential fraud affecting the emergency lending facilities and other Board programs central to the pandemic response. To do so, we leverage our relationships with various federal law enforcement organizations, U.S. attorney's offices, and components of the U.S. Department of Justice. We also work closely with CFPB supervision and enforcement and our law enforcement partners throughout the country to identify, investigate, and prosecute pandemic-related fraud as it emerges.

We have dedicated significant resources to investigate potential fraud related to the Board's emergency lending facilities. Our work in this area has resulted in 141 investigations: 127 related to the Paycheck Protection Program (PPP), 13 related to the MSLP, and 1 related to the Municipal Liquidity Facility. Of these, 104 are still active. More than half of the MSLP borrowers investigated also received PPP loans. In total, our pandemic-related investigations have netted \$65,796,574 in financial actions.

The following are summaries of selected significant cases that demonstrate the range of our investigative work.

- Board and Reserve Bank Officials' Trading Activities.** In response to a request from the Board, we initiated separate investigations of Board and Reserve Bank officials' trading activities. With regard to Board officials, we found that former Vice Chair Richard Clarida's and Chair Jerome Powell's trading activities did not violate the laws, rules, regulations, or policies as investigated by our office. Our [report](#) on this matter is available on our public website. The investigation of senior Reserve Bank officials is ongoing.
- Former Bank Executives and Others Guilty in First NBC Bank Fraud.** In April 2017, the \$5 billion First NBC Bank failed. Based in New Orleans, the bank was a subsidiary of First NBC Bank Holding Company, a Board-supervised bank holding company. In a long-running scheme that led to First NBC Bank's collapse, several executives conspired with borrowers to defraud the bank. The executives extended loans to borrowers who were unable to repay them, then extended new loans to the borrowers to cover their existing loans. The executives enriched themselves through fees earned on the loans while concealing their actions—and the true financial condition of the bank—from the board of directors and outside auditors and examiners. By the time the bank collapsed, these bogus loans totaled hundreds of millions of dollars. The bank's failure cost the Federal Deposit Insurance Corporation's Deposit Insurance Fund just under \$1 billion. Former First NBC President and Chief Executive Officer Ashton J. Ryan Jr. was found guilty of all 46 counts against him, including bank fraud, conspiracy to commit bank fraud, and making false entries in bank records. Former Executive Vice President Robert B. Calloway, former Chief Credit Officer William J. Burnell, and former General Counsel Gregory St. Angelo all pleaded guilty to conspiracy

to commit bank fraud. In addition, several business owners and borrowers pleaded guilty to conspiracy to commit bank fraud: Frank J. Adolph, Arvind “Mike” Vira, Warren G. Treme, Gary G. Gibbs, and Kenneth Charity. Each faces prison terms ranging from 5 to 30 years and fines up to \$1 million or the greater of twice their gains or twice the losses to the victims. Others, including a former assistant district attorney, have been indicted for various roles in defrauding First NBC Bank.

- **Former Board Employee Pleads Guilty to Theft of Government Property.** Venkatesh Rao, a former employee of the Board, removed restricted documents, which contained proprietary information used by the Board to conduct bank stress tests, from a Board building and stored the material at his home. Rao pleaded guilty to the theft of government property from the Board and was sentenced to 1 year of supervised probation, a criminal fine of \$2,500, and a special assessment of \$25.
- **Wells Fargo Agrees to Pay a \$3 Billion Civil Monetary Penalty Resolving Criminal and Civil Investigations Into False Sales Practices.** Wells Fargo and Co. and its subsidiary, Wells Fargo Bank, N.A., agreed to pay \$3 billion to resolve three matters stemming from a years-long practice of pressuring employees to meet unrealistic sales goals, which led thousands of employees to provide millions of accounts or products to customers under false pretenses or without consent, often by creating false records or misusing customers’ identities. As part of these agreements, Wells Fargo admitted that it collected millions of dollars in fees and interest the company was not entitled to, harmed the credit ratings of certain customers, and unlawfully misused customers’ sensitive personal information.
- **Former Freedom Mortgage Employee Sentenced to 46 Months in Prison for Illegally Accessing Computer to Steal \$2 Million.** Dilcia Mercedes, former payment processor at Freedom Mortgage, discovered that some escrow checks were returned to the company as undeliverable. If the money was not claimed by the customer, she effected wire transfers—about 580 totaling more than \$2 million—from her company’s bank account to bank accounts and reloadable debit/credit accounts controlled by her relatives, friends, or associates. Mercedes was sentenced to 46 months in federal prison after pleading guilty to an information charging her with one count of unauthorized access of a computer with intent to defraud and one count of money laundering. She was also sentenced to 3 years of supervised release and ordered to pay \$2,087,697 in restitution. Freedom Mortgage is a privately held mortgage lender supervised by the CFPB.
- **Chief Executive Officer of PPP Lender MBE Capital Partners Charged in New York in Nearly \$1 Billion PPP Loan and Lender Fraud.** Rafael Martinez, chief executive officer and primary owner of MBE Capital Partners, was charged with numerous counts for his alleged role in a PPP fraud scheme. According to the allegations, Martinez used false representations and documents to fraudulently obtain the U.S. Small Business Administration’s approval for his company, MBE Capital Partners LLC, to be a nonbank PPP lender. He then obtained capital to issue \$823 million in PPP loans to thousands of businesses, earning himself over \$71 million in lender fees. The fact that a defendant has been charged with a crime is merely an accusation, and a defendant is presumed innocent until and unless proven guilty.
- **Owner of Massachusetts Tech Services Company Sentenced to Prison for \$13 Million PPP Fraud.** Elijah Majak Buoi, owner of IT services company Sosuda Tech, devised a scheme to obtain PPP funds by repeatedly filing false and fraudulent loan applications in which he systematically used false tax documents and payroll processing records until he was ultimately awarded a loan. As a

result of his scheme, Buoi obtained a \$2 million PPP loan. The government recovered about \$1.97 million of the loan funds. Buoi was sentenced to 39 months in prison and 3 years of supervised release, and he was ordered to pay restitution of \$2 million and forfeiture of \$2 million.



## Pandemic Response Accountability Committee

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Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, PRAC is housed within the Council of the Inspectors General on Integrity and Efficiency and comprises 20 federal inspectors general that work collaboratively to oversee the more than \$5 trillion in federal pandemic relief emergency spending. PRAC's primary mission is to work with OIGs to ensure that taxpayer money is being used effectively and efficiently to address the pandemic-related public health and economic needs funded through the various COVID-19 relief bills.

To facilitate its mission, PRAC promotes transparency by publicly reporting accessible and comprehensive pandemic relief spending data; collaborates across the oversight community to identify cross-cutting issues and program risks; detects and prevents fraud, waste, abuse, and mismanagement of relief spending through leading-edge data insights and analytic tools; and holds wrongdoers accountable by marshaling the investigative and analytic resources of the oversight community.

I am a member of PRAC, and my staff has been actively involved in PRAC start-up activities and data calls and has provided staff resources to support PRAC efforts throughout the PRAC's life cycle, including the development of PRAC's strategic plan and PRAC outreach activities. We have also provided legal support related to producing PRAC deliverables and leveraging PRAC authorities for investigations.

I am also a member of the PRAC Financial Sector Inspector General Workgroup, and I serve as vice chair of the PRAC Investigations Subcommittee. Earlier in the pandemic, the Financial Sector Workgroup hosted a series of Pandemic Listening Event panels focused on obtaining financial-sector stakeholder perspectives from the borrower, lender, and housing communities concerning the efficiency and effectiveness of CARES Act programs, as well as ideas for enhanced oversight of the programs.

Additionally, we are coordinating with PRAC through membership on the PRAC Fraud Task Force. The task force was established to help law enforcement pursue investigations related to pandemic relief fraud. The PRAC Fraud Task Force includes 15 OIGs who have contributed 53 special agents, serving as part-time detailees to investigate PRAC leads and other investigative referrals to PRAC. We are currently supporting the task force with one agent from our San Francisco field office who is serving in a part-time detail capacity. He is providing Western Region law enforcement relationship support to PRAC and expertise in financial crimes, and he is investigating a PPP fraud case that was referred to PRAC from a U.S. attorney's office in the region.

The PRAC Pandemic Analytics Center of Excellence, or PACE, has provided our office with access to nonpublic PPP loan data through a memorandum of understanding that it has established with PRAC members and law enforcement partners. These data are available to certain individuals in our Office of Investigations, Office of Audits and Evaluations, and Data Analytics section.



## Closing

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In conclusion, we have been providing independent, objective oversight of the Board and the CFPB to ensure that they work efficiently; effectively; and in accordance with the laws, rules, and regulations that govern them. We will continue to actively engage with internal and external stakeholders to identify existing and emerging risks facing the Board and the CFPB so that we can allocate our resources to those areas that provide the highest value-added oversight.

Thank you, Chairman Huizenga, Ranking Member Green, and members of the subcommittee. This concludes my prepared statement. I would be pleased to respond to your questions.

## Contact Information

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Report fraud, waste, and abuse.

Those suspecting possible wrongdoing may contact the  
OIG Hotline by mail,  
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**Testimony of  
Richard K. Delmar  
Acting Inspector General  
U.S. Department of the Treasury**

**Before the  
House Financial Services Committee  
Subcommittee on Oversight and  
Investigations  
U.S. House of Representatives**

**Hearing on "Holding the Biden  
Administration Accountable for  
Wasteful Spending and Regulatory  
Overreach"**

**March 8, 2023**



Chairman Huizenga, Ranking Member Green, and members of the subcommittee, thank you for the opportunity, along with Mark Bialek, the Inspector General for the Federal Reserve Board and Consumer Financial Protection Bureau, and Rebecca Sharek, the Assistant Inspector General for Audit for the Securities and Exchange Commission, to discuss our oversight work to address wasteful spending in pandemic recovery programs.

In addition, recognizing the Committee's concerns regarding the Treasury Financial Crimes Enforcement Network (FinCEN) stewardship of Bank Secrecy Act (BSA) information, I offer an update of our current and planned oversight work.

The Department of the Treasury (Treasury or the Department) has been instrumental to the implementation of economic relief provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Consolidated Appropriations Act of 2021 (CAA, 2021), and the American Rescue Plan Act (ARPA). As a result, Treasury's responsibilities and workloads have expanded enormously since 2020. Treasury is tasked with disbursing over \$655 billion<sup>1</sup> in aid to more than 35,000 recipients, including state, local, territorial, and tribal government entities in a relatively short period of time.

My office is responsible for oversight of 12 pandemic recovery funding programs, created by the pandemic legislation. My testimony today will focus on four programs where our oversight has found improper payments, fraud, questioned costs, and internal control concerns. These programs include the Air Carrier Payroll Support Program, the Coronavirus Relief Fund, the Emergency Rental Assistance Program, and the State and Local Fiscal Recovery Fund. Through my office's work we have identified questioned costs of \$2.6 billion thus far for unsupported and unallowable charges to the Coronavirus Relief Fund, and based on data available at this time, we estimate that improper overpayments for the Air Carrier Payroll Support Program could approach \$100 million.

#### **Treasury Office of Inspector General Overview**

My office provides independent audit and investigative oversight of Treasury's programs and operations and that of its bureaus, excluding the Internal Revenue Service (IRS), the Troubled Asset Relief Program, and certain pandemic programs under the jurisdiction of the Special Inspector General for Pandemic Recovery. Our current on-board staffing level is 242 including 180 personnel in the Office of Audit and 43 personnel in the Office of Investigations. As a result of the pandemic, my office has hired staff and re-oriented our work plans to meet these expanded responsibilities. In addition to traditional oversight, my office was given non-traditional statutory

<sup>1</sup> Amount excludes Economic Impact Payments distributed by the Internal Revenue Service and support to small businesses under the Paycheck Protection Program administered by the Small Business Administration.

responsibilities for the Coronavirus Relief Fund and the Emergency Rental Assistance Program including programmatic monitoring and recoupment authorities. In July 2021 we established a data analytics capacity within our Office of Audit which enables us to better manage the enormous quantities of pandemic information we collect, and to use the data to better understand how the programs are operating, and identify problem areas in the programs. Our annual budget for fiscal year 2023 is \$48.8 million, and during 2020 and 2021, my office received \$47.1 million in dedicated no-year and multi-year funding for oversight of 4 of the 12 pandemic programs. Notably, we did not receive any dedicated funding for oversight of the \$350 billion State and Local Fiscal Recovery Fund.

#### **Improper Payments and Fraud**

Improper payments are any payments that should not have been made or were made in an incorrect amount, such as overpayments and underpayments. All fraud is an improper payment (since it should not have been paid out), but not all improper payments are fraud - it may be a mistake by an agency or a result of confusion about payment guidance. In pandemic programs, every dollar reaching an ineligible recipient or disbursed contrary to the program's purpose lessens the effectiveness of the program and reduces its success. Reducing improper payments across government programs ensures taxpayer dollars are used more effectively and efficiently. Programs must have proper controls in place to reduce improper payments, and detect and prevent fraud. Each year my office audits Treasury's improper payment program. With the exception of the IRS, Treasury has complied with improper payment statutes.

The Department has long held that the four refundable tax credits (RTCs)—the Earned Income Tax Credit, American Opportunity Tax Credit, Additional Child Tax Credit, and net Premium Tax Credit—which have error rates similar in concept to "significant improper payments," are not "payments" as intended under the improper payments legislation but are more appropriately addressed in the tax gap estimate. Treasury officials assert that erroneous claims for RTCs are more appropriately referred to as "overclaims." Treasury officials believe that legislative change is needed related to these issues.

In addition, the Government Accountability Office (GAO) recommended that for new programs, certain changes should be made in improper payment reporting. Specifically, GAO recommended that all new Federal programs distributing more than \$100 million in any one fiscal year be designated as "susceptible to improper payments," and, thus, subject to more timely improper payment reporting requirements; and agencies should be required to report improper payment information in their annual financial reports. We agree with these recommendations. Treasury received approval from the Office of Management and Budget (OMB) in April 2022 waiving compliance with certain improper payment requirements for pandemic programs. We have found significant improper payments in the Air Carrier Payroll Support Program and do not agree that the requirements should have been waived.

### **Treasury's Do Not Pay Program**

In April 2011, Treasury's Bureau of the Fiscal Service (Fiscal Service) established the Do Not Pay Business Center to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal Government. The Do Not Pay Business Center includes the Do Not Pay portal and Data Analytics Services to help agencies identify ineligible recipients and prevent fraud or errors before making payments or awards.

Since 2014, my office has conducted three audits<sup>2</sup> related to the Do Not Pay Program and currently has a corrective action verification underway. In our past work, we noted that Fiscal Service was facing challenges in obtaining better death information, including full access to the Social Security Administration's Death Master File, for the Do Not Pay Business Center. Additionally, Fiscal Service has not obtained complete access to the Department of Housing and Urban Development (HUD) database, Credit Alert Interactive Voice Response System (CAIVRS) regarding information reported by the Department of Education.

HUD's CAIVRS is a shared database comprised of information reported from six Federal agencies and it is required by the Improper Payments Elimination and Recovery Improvement Act of 2012 to be reviewed by the program prior to the release of any Federal funds to eligible recipients. We encouraged Fiscal Service to continue working with the Department of Education to obtain full access to the required CAIVRS dataset.

To overcome the challenges of obtaining better death data, Fiscal Service submitted legislative proposals to Congress seeking access to the full Death Master File. On December 27, 2020, Congress enacted the CAA, 2021, which amended the Social Security Act to allow the Social Security Administration to share its full death data with the Do Not Pay program for a 3-year period starting no later than December 27, 2023. As this access is only temporary, Fiscal Service plans to seek a permanent legislative change for access to the full death data. We concur with the Department's decision to pursue a permanent legislative change for this necessary information to prevent improper payments.

### **Questioned Costs**

In addition to our work related to Treasury's management of improper payments and the Do Not Pay program, we also review the pandemic programs for questioned costs. According to the Code of Federal Regulations,<sup>3</sup> a questioned cost is a cost that is questioned by the auditor because of an audit finding:

<sup>2</sup> OIG-15-006, (November 6, 2014), OIG-16-042, (May 18, 2016), and OIG-20-025, (January 28, 2020)

<sup>3</sup> 2 CFR § 200.84 – Questioned Cost

- (a) which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (b) where the costs, at the time of the audit, are not supported by adequate documentation; or
- (c) where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

In our work on pandemic programs, the questioned costs primarily relate to the grantees' use of Federal funds. As mentioned previously, the majority of grantees for Treasury pandemic programs are state, local, tribal, and territorial governments.

#### **Overview of Specific Programs**

My office has been engaged in pandemic oversight since the passage of the CARES Act in March 2020. Significant statutorily mandated work has been performed on the Air Carrier Payroll Support Program, the Coronavirus Relief Fund, and the Emergency Rental Assistance Program. Although my office does not have specific statutory mandates related to the State and Local Fiscal Recovery Program, we are performing self-directed work on this \$350 billion pandemic program. We have found improper payments including fraud, questioned costs, and root causes of these issues. In coordination with the Department, we will aggressively seek recoupment from the appropriate parties for monetary improper payments and grantee costs that we question and that are ultimately disallowed.

#### **Air Carrier Payroll Support Programs**

The CARES Act Air Carrier Payroll Support Program (PSP) required Treasury to provide financial assistance to passenger and cargo air carriers and respective contractors for the continuation of payments of employees' wages, salaries, and benefits. CAA, 2012 and ARPA provided additional funding for PSP for a total of \$63 billion under all three acts. The legislation required Treasury to provide financial assistance to passenger air carriers that report salaries and benefits to the Department of Transportation (DOT) (referred to as 241 carriers). For air carriers that do not report such data to DOT (referred to as non-241 carriers) and contractors, financial assistance is provided based on information provided by the air carrier or contractor using sworn financial statements or other appropriate data as to the amount of wages, salaries, benefits, and other compensation paid to employees.

Treasury Office of Inspector General (OIG) is statutorily mandated to conduct certification audits of non-241 carriers and contractors to assess the accuracy, completeness, and sufficiency of "sworn" financial statements or other data used to certify the wages, salaries, benefits, and other compensation amounts submitted to and approved by Treasury. In our oversight of the first air carrier payroll support program

under the CARES Act, we identified a systemic problem in how the non-241 air carriers and contractors were reporting their eligible expenses for executive compensation and employer side payroll taxes, which would serve as the basis for their receipt of funds. Treasury relied upon awardee self-certification of these amounts.

We noted that pervasive improper payments were being made as a result of unclear guidance on the definition of executive compensation and the treatment of employer side payroll taxes in the application for funds. In addition, the use of self-certified financial data related to executive compensation and other costs contributed to the improper payments. We brought this to the attention of the program's administrators at Treasury in December 2020, which led to attempts to clarify guidance and have non-241 recipients and contractors re-certify their information. Again, this certification was a self-certification with no independent Treasury review of the financial information.

As our work has continued, we have determined that the corrective action employed by Treasury was only partially effective and we are currently working with the Department to get a statistically reliable estimate of improper payments. Amounts awarded for non-241 carriers and contractors approximates \$9.6 billion. Based on data available at this time, we estimate that improper overpayments could approach \$100 million. We have and will continue to recommend that Department officials seek recoupment from the appropriate parties for these improper payments.

#### **Coronavirus Relief Fund**

The CARES Act established the Coronavirus Relief Fund (CRF) and appropriated \$150 billion for making payments to states, territories, tribal governments, and qualifying units of local government. CRF awardees were to use funds provided to cover only those costs that (1) are necessary expenditures incurred due to the public health emergency with respect to Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020; and (3) were incurred between March 1, 2020 and December 31, 2021, or December 31, 2022 for tribal entities. All non-tribal awardees are in the closeout phase and tribal governments are expected to closeout awards by July 10, 2023.

In addition to traditional audit and investigative oversight, the legislation gave my office expanded statutory responsibilities for CRF, including programmatic monitoring and recoupment authorities when we have determined that funds have not been used in accordance with program requirements. Carrying out this expanded responsibility, my office stood up the online portal for quarterly reporting from the states, territories, tribes, and local governments. The CARES Act was enacted on March 27, 2020, and we had the reporting portal available for over 800 awardees by September 1, 2020.

Through our reviews of quarterly awardee reporting, audits, and desk reviews, we have identified questioned costs of \$2.6 billion thus far for unsupported and unallowable charges to CRF. We expect additional questioned costs as we complete our work over the next two years. We have over 40 desk reviews and audits of CRF awardees

underway. Desk reviews are a part of our monitoring authority over the CRF program. We select a sample of CRF transactions and review the recipients' documentation to sufficiently support the use of funds. This sampling of a recipient's uses of CRF funds enables us to determine the level of risk of unauthorized or improper use, so as to focus our full-scope audit resources most efficiently.

Our CRF work thus far has identified internal control deficiencies or other noncompliance matters, including:

- Expenditures outside the period of performance (services or purchases before/after the allowable periods to obligate funds)
- Lack of supporting documentation
- Non-compliance with procurement policies and procedures to include verifying vendor suspension and debarment status
- Inadequate sub-recipient monitoring
- Unallowable costs charged
- Payroll expenses not supported – documentation that expenses are substantially dedicated to COVID-19 response

While these findings relate to the CRF program, due to the similarities in the grantee population, we believe that these types of findings will likely occur in other Treasury programs if not corrected by grantees.

During the closeout of this program my office is working the remaining 115 of over 425 hotline complaints received, completing audits and desk reviews, focusing on Single Audit Act findings resolution, and ensuring that all questioned costs are identified. Please note that for questioned costs, during closeout we will allow the grantee to correct any documentation deficiencies and replace unallowable costs with other allowable costs that have not been charged to other Federal programs. Once a cost is questioned, we will work with the Department on a determination of disallowance after receiving any additional information from the grantee. And once a cost is disallowed we will seek recoupment on behalf of the Federal Government. Due to our process to work with grantees on questioned costs for support or other allowable charges, we do not anticipate that the full \$2.6 billion of questioned costs will be recouped.

#### **Emergency Rental Assistance Programs**

Treasury established the Emergency Rental Assistance Program (ERA) authorized under CAA, 2021 and ARPA. Total appropriations of \$47 billion were approved for grants to states, territories, tribal governments, and units of local government with populations of 200,000 or greater to pay for rent, utilities, and other housing-related expenses and arrears for eligible households. My office is conducting an audit of Treasury's implementation of the program where we have noted concerns with an overall delayed stand-up of the grantee reporting portal and Treasury's compliance monitoring functions, thus impeding monitoring and audit activities.

The ERA program has generated a large amount of media coverage and critical comment, in addition to the receipt by our Office of Investigations hotline of approximately 2,000 complaints alleging ineligible recipients, improper uses of funds, or problems with program administration. We have developed a cross-functional review team, consisting of auditors, investigators, and legal personnel, to review, process, and resolve these complaints. Complaints are recommended for an audit, investigation, or referral to the grantee, Treasury program office, or local law enforcement.

This cross-functional review team was fully staffed as of February 2023. To date, of the over 2000 complaints received, 514 are in process, and over 300 have been reviewed by staff and are ready for management to recommend final disposition. The cross-functional review team receives approximately 100-150 ERA complaints per month. We expect that our work in this area over the next year will uncover fraud and questioned costs. In coordination with the Department, we will aggressively seek recoupment from the appropriate parties.

The ERA legislation gives my office recoupment authority only for the first ERA program authorized under CAA, 2021. The later extension authorized under ARPA leaves recoupment in the discretion of the Department. While we would hope that my office and the Department will be in agreement on a recoupment rule, this potential dichotomy does exist. My office will aggressively seek recoupment from the appropriate parties in accordance with our authority under CAA, 2021. In addition, we encourage state, local, territorial, and tribal authorities to pursue available prosecution and civil remedies to protect their equities in these funding programs, as the Federal Government cannot and should not substitute for state law enforcement resources.

#### **State and Local Fiscal Recovery Program.**

ARPA authorized \$350 billion for payments to states, territories, tribes, and local governments to support the COVID-19 public health response and support economic recovery including assistance to households, small businesses and nonprofits, aid to impacted industries, and premium pay to eligible workers. Recipients must obligate all funds by December 31, 2024 and expend funds by December 31, 2026.

In May 2021 my office advised the Department of how lessons learned in its administration of the CRF could improve the stand-up and administration of the State and Local Fiscal Recovery Fund (SLFRF) program. We noted the value and necessity of clear and timely guidance to recipients on proper uses and compliance with reporting requirements; the value of formal agreements with terms and conditions in order to mandate conditions for receipt of funds; the need to balance transparency and recipient burden in reporting; and the need for outreach by program administrators and establishment of performance metrics for the program.

Treasury OIG is currently conducting an audit of Treasury's implementation of the SLFRF program where we have noted concerns with an overall delayed stand-up of



Treasury's portal for grantee reporting and Treasury's compliance monitoring functions, thus impeding monitoring and audit activities.

#### **Conclusion – Pandemic Recovery Program Oversight**

Emergencies such as COVID-19 heighten oversight challenges as agencies work to stand-up programs and distribute large-scale funding quickly. My office has identified lessons learned that are consistent with findings made by GAO and the Council of the Inspectors General on Integrity and Efficiency's (CIGIE) Pandemic Response Accountability Committee (PRAC). Specifically, we found:

- Agencies should not solely rely on self-certification by entities without other validation controls
- Relief guidance needs to be accurate and issued quickly
- Failure by agencies and grantees to implement or effectively modify critical internal controls created risks for pandemic programs
- Failure to stand up timely reporting capabilities created program monitoring challenges and increased program risk
- Watchdogs need timely access to data to find fraud
- Program integrity is enhanced by the availability of civil remedies, including the Program Fraud Civil Remedies Act (PFCRA) and suspension and debarment; as well as a commitment to civil and criminal enforcement by the Department of Justice and by state, territorial, local, and tribal authorities.

Our pandemic oversight, monitoring, and recoupment work will continue for several more years. Thus far, we have found PSP improper overpayments that could approach \$100 million and estimated questioned costs for the CRF program of \$2.6 billion. In addition, we are at the early stages of working over 2000 complaints on the ERA program and await reliable data for both the ERA and SLFRF programs to enable our oversight activities.

As mentioned, my office has noted concerns with an overall delayed stand-up of Treasury's portal for grantee reporting and Treasury's compliance monitoring functions for the ERA and SLFRF programs, thus impeding monitoring and audit activities. The use of data analytics and risk modeling is critical in efficiently and effectively conducting oversight activities.

With the proper resources, my office is well-positioned and committed to ensuring that essential pandemic funding is used properly and reaches the intended recipients.

#### **Oversight of the Financial Crimes Enforcement Network**

Treasury OIG has underway a series of related audit engagements that address FinCEN's management of the BSA Database; specifically, our audit objective is to determine if FinCEN manages BSA data access, use, and retention in compliance with laws, regulations, and Treasury policies and procedures.



This work has been separated into four major sections: (a) Suppression; (b) User Access; (c) Memoranda of Understanding (MOUs), including Bulk Data; and (d) Monitoring. Suppression is FinCEN's process to restrict users' access to specific records in the BSA database. An example of when this is necessary is when a law enforcement agency does not want to reveal a clandestine agent's identity. Bulk Data Access, also known as Integrated Agency Access is provided in accordance with an MOU. It provides the requesting agency access to a full download of BSA information on a regular basis rather than individual FinCEN Query searches. With bulk data access, FinCEN can no longer (i) control users' access to that data, and (ii) review users' activity on external systems. For this reason and others, it is critical that FinCEN has updated MOUs with its users and that data is monitored for proper access and use.

### **Suppression**

My office has found that FinCEN's processing and documentation of requests for suppression was untimely and inadequate and FinCEN did not ensure all agencies using bulk data removed suppressed records from their databases. Regarding FinCEN's processes for receiving, vetting, and managing recipients' requests for suppression of information in BSA reports, our work demonstrates that FinCEN:

- does not have a dedicated email for receiving suppression requests. Requests are received, tracked, documented, and initiated solely by the FinCEN Resource Center Director;
- does not consistently conduct and maintain complete records reflecting internal deliberations and outgoing communications; and
- has not established a timeliness metric for accomplishing requested suppression of records.

### **User Access**

My office's audit of user access to BSA data looks at FinCEN's process to grant and disable users' access. Approximately 13,000 external users have direct access to FinCEN's database and approximately 15,000 users from 11 external agencies have access to bulk BSA data housed on external/non-FinCEN systems. We found that FinCEN:

- does not track and enforce requirements to control, and cancel when necessary, access to shared BSA information;
- has not ensured external agencies provided proper notification when disabling accounts;
- has not ensured that BSA data user access was disabled timely or appropriately;
- has not maintained proper records of internal FinCEN users' disabled dates; and

- has not required external agency coordinators to identify in the FinCEN Portal whether users have background checks.

### MOUs

Our work on MOUs covers FinCEN's process to establish and memorialize written agreements with agencies requesting direct access to the BSA database. FinCEN has approximately 470 MOUs, mainly with local, state, and federal law enforcement and Intelligence components. Our work found that FinCEN:

- did not execute and maintain/update MOUs in accordance with Standard Operating Procedures (SOP). SOPs did not clearly identify the type of access they apply to or cover all types of access offered,
- did not maintain updated and adequate SOPs, and did not periodically assess agencies' need for bulk data, and
- could not readily account for all MOUs in place.

At least one instance of bulk data provision has occurred without execution of an MOU. MOUs are not routinely updated, and the body of MOUs needs more rigorous tracking as well as a means to determine the continuing need and justification for provision of BSA bulk data to other organizations.

### Monitoring

Lastly, my office's work on monitoring addresses FinCEN's process to ensure its BSA database is accessed only by authorized users for authorized purposes. In addition, monitoring helps ensure that users are complying with their MOU obligations. Our work found that FinCEN:

- did not inspect user agencies use of data in accordance with policies and procedures,
- did not document supervisory reviews of its monitoring process,
- did not adequately or regularly review anomalous user query activity, and
- does not have a penalty table to address MOU violations.

In particular, FinCEN did not monitor bulk data users' activity. This is concerning because once FinCEN provides an agency with bulk data access, it can no longer control that agency's users' access to that data, nor review those users' search and download activity on their external agencies' bulk data systems.

Our field work is largely completed, as are our discussions with FinCEN management. We have over 30 findings and recommendations for FinCEN management as a result of these audits. We expect that our audit reports on these engagements will be issued throughout 2023, starting in the spring.

Thank you for the opportunity to present our oversight program. I'm ready to address your questions about our work.

**RICHARD K. DELMAR**

Acting Inspector General  
United States Department of the Treasury

Mr. Delmar is an attorney with over 40 years of federal and military experience. Currently, he serves as the Acting Inspector General of the Treasury, and leads 240 auditors, investigators, program analysts, attorneys, and support professionals in the oversight of Treasury programs and operations. He has led the expansion of professional staffing and development of audit and investigative protocols to provide oversight of new pandemic-related fund disbursement programs, successfully managing the transition of the office to a completely remote work environment in response to the COVID-19 pandemic, despite undertaking significantly expanded oversight jurisdiction and assuring continuation of existing oversight responsibilities. He also supported the stand-up and operation of the Pandemic Response Accountability Committee (PRAC) established by the Coronavirus Aid, Relief, and Economic Security Act to bring together the Inspectors General of affected federal agencies.

Mr. Delmar brings significant experience to his role as Acting Inspector General, a role he has filled since 2019, having been Counsel to the Inspector General since 1999. In that capacity, he provided comprehensive legal services to the investigative, audit, management and Equal Employment Opportunity programs of Treasury Office of Inspector General (OIG) advising on audit standards, criminal law and procedure, procurement law, personnel law, and other statutes, regulations, and policies relevant to OIG operations and Treasury programs.

As Deputy Inspector General, he has individually conducted special inquiries responsive to Congressional, Intelligence Community, and Office of Special Counsel requests.

Prior to his appointment as Counsel and Deputy Inspector General, he spent 10 years as a Technical Assistant and Branch Chief with the Criminal Tax Division in the Internal Revenue Service (IRS) Office of Chief Counsel, where he reviewed proposed criminal tax prosecutions and provided training to investigators and attorneys on tax, money laundering, Bank Secrecy Act, and forfeiture law, in addition to supervising attorney staff.

Mr. Delmar has also served as a Trial Attorney with the IRS Office of Chief Counsel and the Tax Division of the Department of Justice. He is retired from the Judge Advocate General's Corps, U.S. Navy Reserve.

Mr. Delmar is a graduate of Georgetown University and the New York University School of Law.

**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.<sup>1</sup> 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

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<sup>1</sup> 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**




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

**MEMORANDUM**

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.<sup>1</sup> 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

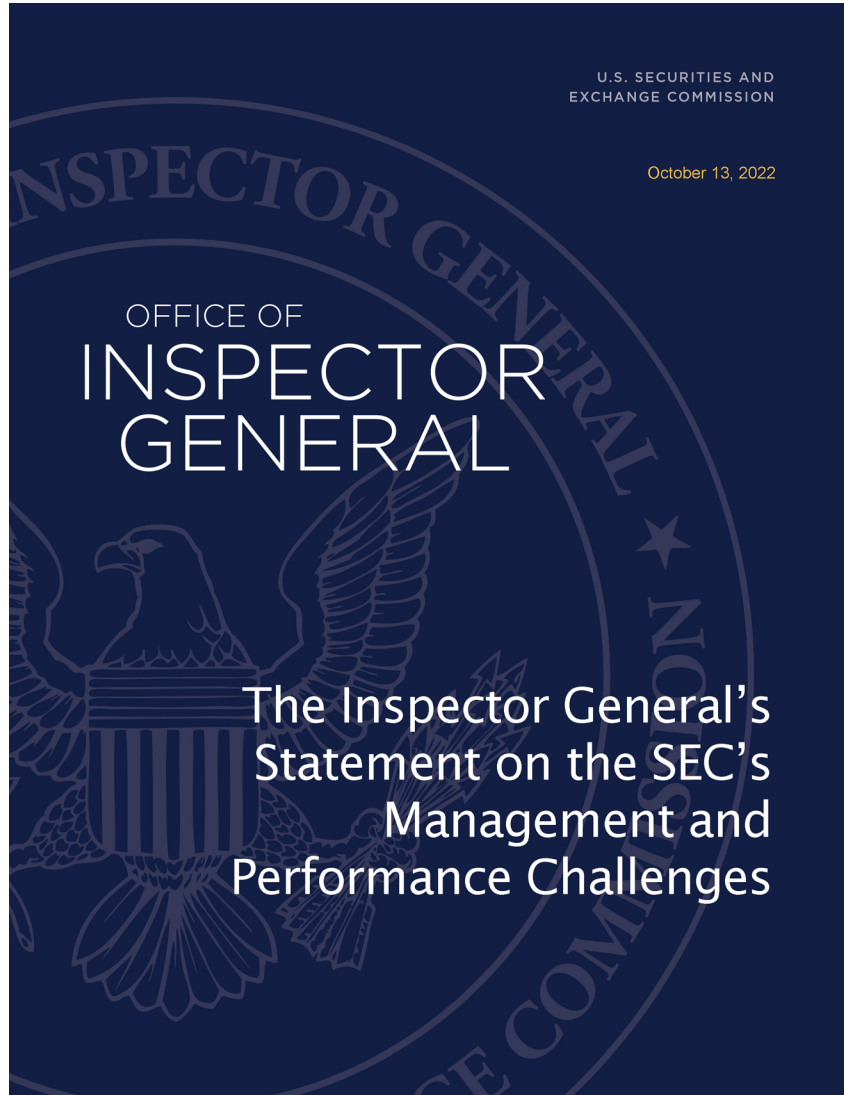
Information on the challenge areas and the corresponding audit, evaluation, investigation, or review work are discussed in the attachment. If you have any questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

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

Chair Gensler  
October 13, 2022  
Page ii

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  
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Shelly Luisi, Chief Risk Officer  
Jim Lloyd, Audit Coordinator/Assistant Chief Risk Officer, Office of Chief Risk Officer



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## ABBREVIATIONS

<b>CAT</b>	Consolidated Audit Trail
<b>CISA</b>	Cybersecurity and Infrastructure Security Agency
<b>COVID-19</b>	Coronavirus Disease 2019
<b>Enforcement</b>	Division of Enforcement
<b>EXAMS</b>	Division of Examinations
<b>FISMA</b>	Federal Information Security Modernization Act of 2014
<b>FY</b>	fiscal year
<b>GAO</b>	U.S. Government Accountability Office
<b>IT</b>	information technology
<b>Kearney</b>	Kearney & Company, P.C.
<b>LH</b>	labor-hour
<b>NAICS</b>	North American Industry Classification System
<b>OA</b>	Office of Acquisitions
<b>OASB</b>	Office of the Advocate for Small Business Capital Formation
<b>OHR</b>	Office of Human Resources
<b>OIAD</b>	Office of the Investor Advocate
<b>OIG</b>	Office of Inspector General
<b>OIT</b>	Office of Information Technology
<b>OMB</b>	Office of Management and Budget
<b>OMWI</b>	Office of Minority and Women Inclusion
<b>RIA</b>	registered investment adviser
<b>SAM</b>	System for Award Management
<b>SEC, agency, or Commission</b>	U.S. Securities and Exchange Commission
<b>SLC</b>	Service Level Commitment
<b>T&amp;M</b>	time-and-materials
<b>TCR</b>	tips, complaints, and referrals
<b>TRENDS</b>	Tracking and Reporting Examination National Documentation System
<b>WTTS</b>	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.<sup>1</sup>

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,<sup>2</sup> the Securities Exchange Act of 1934,<sup>3</sup> the Investment Company Act of 1940,<sup>4</sup> the Sarbanes-Oxley Act of 2002,<sup>5</sup> and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank)<sup>6</sup> 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,<sup>7</sup> agencies must follow an open process when issuing regulations, including publishing a

<sup>1</sup> 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.

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

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

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

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

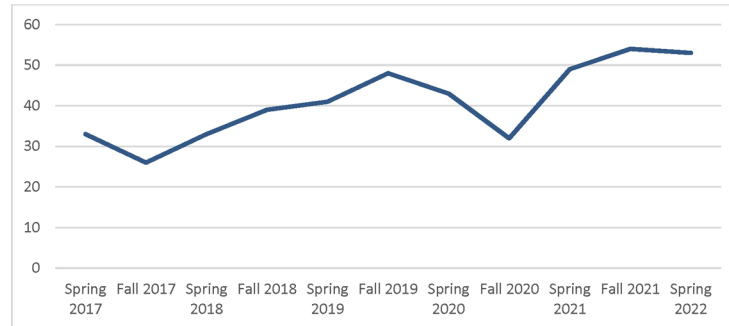
<sup>6</sup> Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010).

<sup>7</sup> 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,<sup>8</sup> 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.

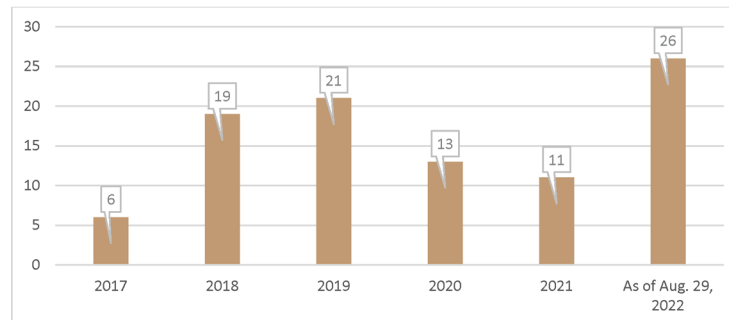
**FIGURE 1. Number of Rulemaking Activities on the SEC's Regulatory Agenda (Spring 2017 – Spring 2022)**



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).

<sup>8</sup> 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."<sup>9</sup> 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.<sup>10</sup> 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:

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*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.<sup>11</sup>*

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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.<sup>12</sup> 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,<sup>13</sup> and (3) achieving the goals established in the SEC's strategic plan.

<sup>9</sup> U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*, November 15, 2021.

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

<sup>11</sup> 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.

<sup>12</sup> U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*, November 15, 2021.

<sup>13</sup> 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 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.<sup>14</sup> 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)<sup>15</sup> and the Office of the Investor Advocate (OIAD)<sup>16</sup> receiving only fatal flaw drafts of proposed rules<sup>17</sup> for a brief period of time.<sup>18</sup> 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.<sup>19</sup> 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.

<sup>14</sup> 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).

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 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.

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

<sup>19</sup> 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.

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

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 the Division of Enforcement's (Enforcement) 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.<sup>22</sup> 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,<sup>23</sup> 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:

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.<sup>20</sup> The new Executive

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

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

<sup>22</sup> 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.

<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup> 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

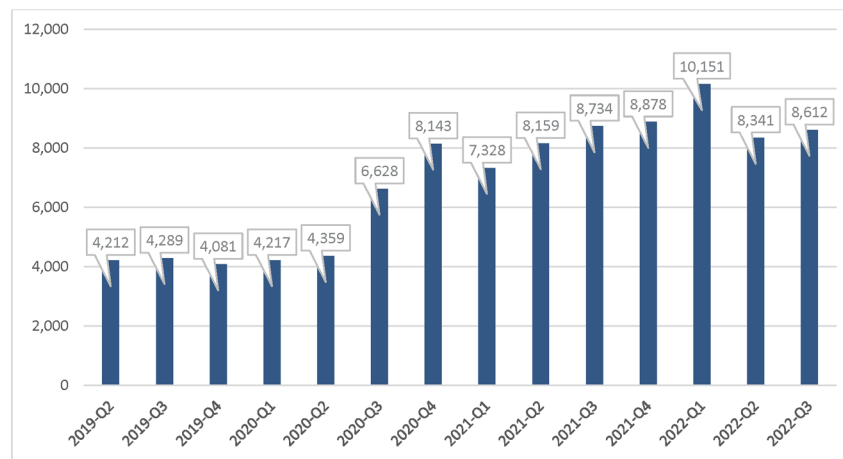
<sup>24</sup> U.S. Securities and Exchange Commission, Office of Inspector General, *Registered Investment Adviser Examinations: EXAMS Has Made Progress To Assess Risk and Optimize Limited Resources, But Could Further Improve Controls Over Some Processes* (Report No. 571, January 25, 2022).

<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> 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.<sup>28</sup> 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 regulation<sup>29</sup> 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

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

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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.<sup>30</sup>

<sup>28</sup> 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).

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

<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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."<sup>33</sup> 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.<sup>34</sup> 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.

<sup>31</sup> 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).

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

<sup>33</sup> 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.

<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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:

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*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.<sup>37</sup>*

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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

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

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

<sup>37</sup> 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.<sup>38</sup> 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 (Report No. 562)</i>	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.<sup>39</sup>

<sup>38</sup> 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.

<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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).<sup>42</sup>

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

<sup>40</sup> 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).

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

<sup>42</sup> 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").<sup>43</sup> 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

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

FY 2017,<sup>44</sup> one from FY 2018,<sup>45</sup> and two from FY 2020<sup>46</sup>). 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.

<sup>44</sup> 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).

<sup>45</sup> 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).

<sup>46</sup> 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).

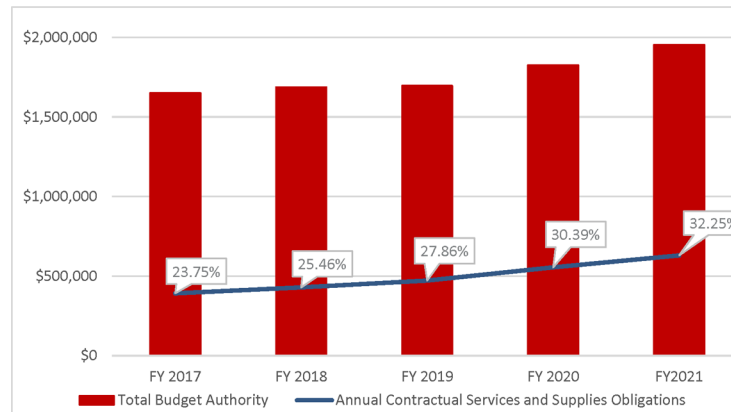
## CHALLENGE: Improving Contract Management

### 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,<sup>47</sup> 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)**

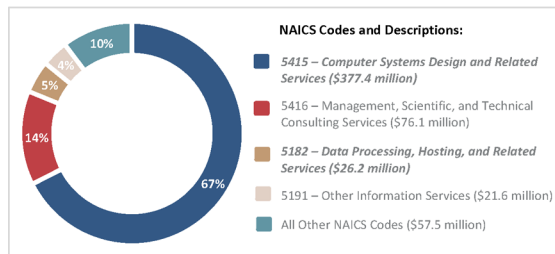


Source: OIG-generated based on annual actual obligations by object class as reported in the SEC's Congressional Budget Justifications for FY 2019 through FY 2023.

<sup>47</sup> 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.<sup>48</sup> 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) codes<sup>49</sup> associated with SEC contracts in FY 2022, as reported through the System for Award Management ([SAM.gov](https://sam.gov)),<sup>50</sup> 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).<sup>51</sup>

<sup>48</sup> 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).

<sup>49</sup> 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.

<sup>50</sup> 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.

<sup>51</sup> 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.”<sup>52</sup> We have previously reported on needed improvements in the SEC's management of IT

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

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investments.<sup>53</sup> 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.<sup>54</sup> 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.

<sup>52</sup> 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).

<sup>53</sup> 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).

<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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."<sup>57</sup> 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;<sup>58</sup> 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](https://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).<sup>59</sup> 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.

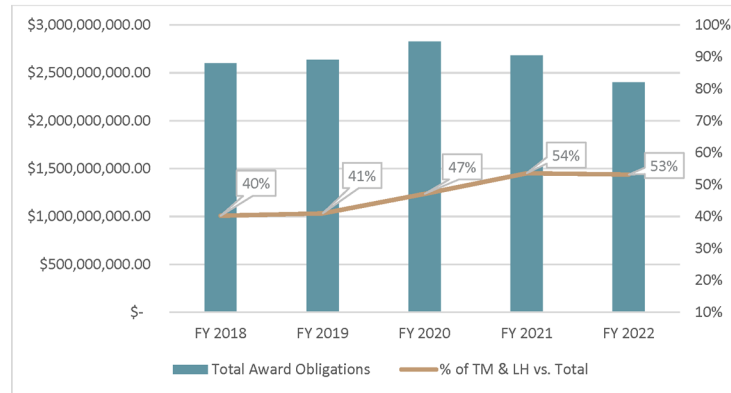
<sup>55</sup> Office of Management and Budget, Memorandum M-22-03, *Advancing Equity in Federal Procurement*, December 2, 2021.

<sup>56</sup> 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.

<sup>57</sup> U.S. Securities and Exchange Commission, *Fiscal Year 2021 Agency Financial Report*, November 15, 2021.

<sup>58</sup> We plan to initiate an audit of this issue in FY 2023.

<sup>59</sup> According to [usaspending.gov](https://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](https://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.<sup>60</sup> 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."<sup>61</sup>

<sup>60</sup> 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).

<sup>61</sup> 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."<sup>62</sup> Moreover, Goal 1 of OHR's Human Capital Strategic Plan is to "Attract Diverse and Highly Talented People to the Agency."<sup>63</sup>

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."<sup>64</sup>



*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.

### Retention and Attrition

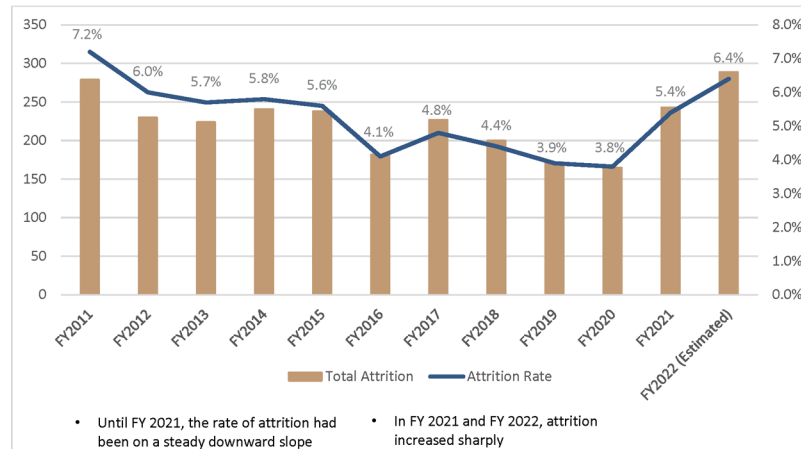
Despite OHR's and OMWI's efforts and the SEC being recognized as one of the best places to work in the federal government,<sup>65</sup> the SEC seems to be facing challenges to its retention efforts. As the figures below demonstrate, the SEC has seen a significant increase in attrition over the last 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.

<sup>62</sup> 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.

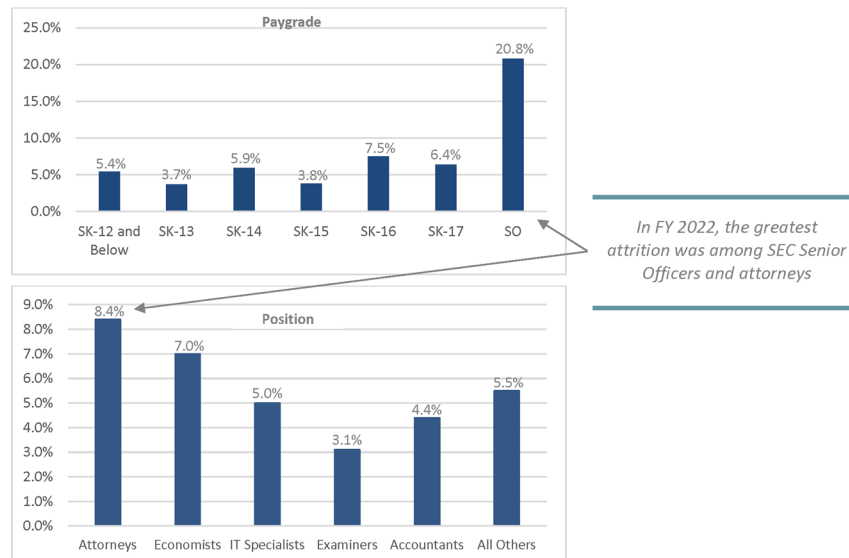
<sup>63</sup> U.S. Securities and Exchange Commission, Office of Human Resources, *FY 2020-2022 Human Capital Strategic Plan*, March 2020.

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

<sup>65</sup> 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).<sup>66</sup>

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.<sup>67</sup> 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,<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup>

<sup>66</sup> Partnership for Public Service. "[Who Is Quitting and Retiring: Important Fiscal 2021 Trends in the Federal Government](#)."

<sup>67</sup> 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).

<sup>68</sup> 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).

<sup>69</sup> Partnership for Public Service. "[Roadmap for Renewing Our Federal Government](#)."

<sup>70</sup> 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.<sup>71</sup> 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

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<sup>71</sup> 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.<sup>72</sup> 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.

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



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

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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.

## OIG General Office Contact Information

### 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](mailto: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](mailto:AUDPlanning@sec.gov).

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Office of Inspector General

100 F Street, N.E.

Washington, DC 20549



## **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.

For additional information, contact the Office of Inspector General at (202) 551-6061 or <http://www.sec.gov/oig>

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## **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**



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).<sup>1</sup> 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.<sup>2</sup> 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

<sup>1</sup> 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).

<sup>2</sup> 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).

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rulemaking divisions and offices<sup>3</sup> 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 drafts<sup>4</sup> of proposed rules for a brief period of time.<sup>5</sup> 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,<sup>6</sup> 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,<sup>7</sup> the Securities Exchange Act of 1934 (Exchange Act),<sup>8</sup> the Investment Company Act of 1940,<sup>9</sup> the Sarbanes-Oxley Act of 2002,<sup>10</sup> and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank),<sup>11</sup> 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)<sup>12</sup> requires OASB to advocate for small businesses and their investors by, among other things, analyzing the potential impact

<sup>3</sup> 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.

<sup>4</sup> 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.

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

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

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

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

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

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

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

<sup>12</sup> 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.<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup> 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 draft<sup>16</sup> 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

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

<sup>14</sup> 15 U.S.C. § 78d(j)(5).

<sup>15</sup> 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.

<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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."<sup>19</sup> 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.<sup>20</sup>

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

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

<sup>19</sup> 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).

<sup>20</sup> 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*.

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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 Sutarra, 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 WTTTS 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 (WTTTS) 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 WTTTS data fields we reviewed, and almost 9 percent of the WTTTS data entries we reviewed were either inaccurate, inconsistent, or incomplete;
- the SEC's WTTTS data continued to include unannotated anomalies; and
- certain hiring actions were not consistently identified in WTTTS.

These conditions occurred because (1) OHR's WTTTS job aid did not include sufficient instructions regarding the dates and information expected in key WTTTS data fields, and (2) some data fields were not included on the WTTTS 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 WTTTS 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 WTTTS and did not effectively use the WTTTS 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.

PATRICK McHENRY, NC  
CHAIRMAN



MAXINE WATERS, CA  
RANKING MEMBER

United States House of Representatives  
One Hundred Eighteenth Congress  
Committee on Financial Services  
2129 Rauborn House Office Building  
Washington, DC 20515

March 1, 2023

The Honorable Gary Gensler  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street N.E.,  
Washington, D.C. 20549

Dear Chair Gensler:

We write concerning the current vacancy of a permanent Inspector General at the Securities and Exchange Commission Office of Inspector General (SEC OIG) and your unwillingness to fulfill your duty to appoint a permanent individual to the position. The Office of Inspector General plays a vital role in oversight of federal agencies against potential waste, fraud, and abuse of federal funds and regulatory authority. The Securities and Exchange Commission's (SEC) lack of a permanent Inspector General causes concern that the duties of this office may be limited by a lack of continuity in the position.

As you are aware, the Inspector General Act Amendments of 1988 expanded the Inspector General Act of 1978 and established a Designated Federal Entity Office of Inspector General at the SEC and several other federal agencies.<sup>1</sup> In establishing this office, the Act placed the duty of appointing the SEC's Inspector General to the Chair of the SEC.<sup>2</sup> The SEC's last appointed Inspector General, Carl W. Hoecker, retired on May 7, 2022.<sup>3</sup> This has since led to three Acting Inspector Generals over the course of 10 months, all of whom are tasked with the same duties as would an individual appointed by the Chair.

Regarding Mr. Hoecker's retirement you stated that "the Office of Inspector General, as an independent reviewer, is a critical partner in identifying ways to improve the SEC's efforts to execute its mission."<sup>4</sup> Whether it be your explicit decision to not appoint a permanent Inspector General, or your inattention to your duty to do so as the Chairman, your actions conflict with your statement—showing a lack of value in the SEC OIG as a partner to the SEC and an integral part of its structure.

Your inaction and seemingly unwillingness to prioritize the SEC OIG did not stop it from issuing a scathing report in October 2022.<sup>5</sup> The October report highlighted the issues in

<sup>1</sup> The Inspector General Act Amendments of 1988, Pub. L. No. 100-504.

<sup>2</sup> *Id.*

<sup>3</sup> Press Release, Securities and Exchange Commission, *Inspector General Carl W. Hoecker to Retire from SEC*, 2022-71 (Apr. 27, 2022), <https://www.sec.gov/news/press-release/2022-71>.

<sup>4</sup> *Id.*

<sup>5</sup> Office of Inspector General, Report, *The Inspector General's Statement on The SEC's Management and Performance Challenges*, U.S. Securities and Exchange Commission (Oct. 13, 2022).


The Honorable Gary Gensler  
March 1, 2023  
Page 2

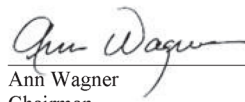
management and several performance challenges that plague the SEC. A permanent Inspector General will allow the SEC OIG to continue to monitor the issues and challenges at the SEC and will complement the oversight duties of the Committee on Financial Services.

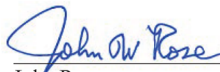
While the Committee applauds the continued efforts of the rotating Acting Inspectors General, we request that you act upon your duty to appoint a permanent Inspector General to promote integrity, efficiency, and effectiveness in the operations of the SEC. Please explain the process and the current timeline for appointing an Inspector General.

Please provide a response to this request as soon as possible, but no later than March 15, 2023. Contact Michael Case of the Committee's Majority Staff at [michael.case@mail.house.gov](mailto:michael.case@mail.house.gov) with any questions regarding the request. Thank you for your attention to this important matter.

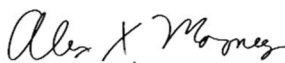
Sincerely,


  
Bill Huizenga  
Chairman  
Subcommittee on Oversight  
and Investigations

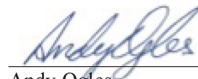
  
Ann Wagner  
Chairman  
Subcommittee on Capital  
Markets

  
John W. Rose  
Vice Chair  
Subcommittee on Oversight  
and Investigations

  
Pete Sessions  
Member of Congress

  
Alex Mooney  
Member of Congress

  
Dan Meuser  
Member of Congress

  
Andy Ogles  
Member of Congress

**Representative Andy Barr (KY-06) Question for the Record**

The Honorable Mark Bialek, Inspector General, Office of Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau

1. The FDIC's Office of Inspector General released a report last month on FDIC management challenges and risks. The report cited a Fifth Circuit ruling that the Consumer Financial Protection Bureau's funding violated the appropriations clause of the Constitution, and claimed that the ruling presents a risk, because it could also be applied to the FDIC. The report claimed that: "The FDIC is funded outside of the Congressional appropriations process through bank assessments (similar to the Federal Reserve)." The report also states that: "The CFPB receives its funding from the Federal Reserve, which is funded through bank assessments."

That, I believe, is false. And, as a consequence, the risk to the FDIC that the FDIC inspector general cites is based on a false premise.

The Annual Report of the Federal Reserve Board states that: "...the Board does not recognize the supervision and regulation assessments as revenue nor does the Board use the collections to fund Board expenses; the funds are transferred to the U.S. Treasury."

Therefore, the CFPB does not receive its funding, via the Federal Reserve, through bank assessments as the FDIC inspector general claims. The vast majority of Federal Reserve earnings come from seigniorage, which basically derives from the Fed's authority to create money.

Do you agree that the CFPB does not receive funding from bank assessments levied by the Federal Reserve?

Response

In accordance with the Dodd-Frank Act, the Board is required to fund the Consumer Financial Protection Bureau (CFPB) from the combined earnings of the Federal Reserve System, in an amount not to exceed a fixed percentage of the total operating expenses of the System as reported in the Board of Governors' 2009 annual report. The Board of Governors assesses the Reserve Banks to fund the CFPB's operations.

The Federal Reserve's operations are financed primarily from the interest earned on the securities it owns from its open market operations. Another source of income for the Federal Reserve includes the fees it receives for priced services provided to depository institutions, such as check clearing, funds transfers, and automated clearinghouse operations; and this income is used to cover the cost of those services.

Although the Board assesses bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with total assets of \$100 billion or more for the cost of the Board's supervision and regulation, the Board does not recognize these assessments as revenue nor does the Board use the collections to fund Board expenses. Instead, these assessments are transferred to the U.S. Treasury.

Accordingly, the CFPB's funding occurs through Board assessments of the Federal Reserve Banks, which in turn obtain their funding primarily from interest earned on the securities the Federal Reserve owns from its open market operations and from fees received by the Federal Reserve for priced services it provides to depository institutions. The Board's assessments of BHCs and SLHCs for the cost of the Board's supervision and regulation are provided to the U.S. Treasury, not used to fund the CFPB.



Responses from OIG – Treasury  
Rep. Andy Barr  
March 8, 2023

Questions from Rep. Andy Barr

I understand you have a series of audits that will be released throughout the year with respect to many of the Financial Crimes Enforcement Network's processes.

Notably, FinCEN is responsible for safeguarding the financial system from illicit use, combatting money laundering, and promoting national security through the use of financial authorities and collection of financial intelligence. This in turn allows the agency to store and analyze massive amounts of confidential and sensitive data.

It is particularly concerning to hear that the FinCEN has a suppression process to restrict access to its database that lacks proper internal controls to keep data safe. Additionally, as you highlighted in your testimony, there are issues with respect to user access of Bank Secrecy Act (BSA) data.

Are there proper controls in place to monitor user access to FinCEN BSA data to satisfy the risks posed specifically by bulk data users?

Based on our current audit work with respect to FinCEN BSA data systems, FinCEN did not monitor bulk data (now called integrated access) users' access and/or activity. Control improvements are needed to monitor bulk data users to ensure they have access authority, that the access is limited to agreed-upon purposes, and that further, unauthorized dissemination and use is mitigated.

How many bulk data users have access to FinCEN's BSA data?

It's our understanding, based on our current FinCEN engagement, that FinCEN has arrangements with 10 entities to provide approximately 35,000 of their users with access to FinCEN BSA data via bulk data.

Response from OIG – Treasury  
Richard Delmar  
March 8, 2023

#### Questions from Rep. Pete Sessions

Through the CARES Act, Consolidated Appropriations Act of 2021, and American Rescue Plan, Treasury is tasked with disbursing over \$655 billion in aid to more than 35,000 recipients. Since 2020, we here, in Congress, and the Treasury OIG has seen continual challenges for the Department of Treasury. The oversight work we're seeing is just the beginning.

How has pandemic relief spending impacted the work of your office?

Treasury OIG has oversight responsibility for a total of 12 pandemic recovery programs administered by the Department of the Treasury (Treasury). Ultimately, these programs will disburse a total of 650 billion dollars to approximately 30,000 recipients – state, local, territorial, and Tribal governments, transportation-sector businesses, and eligible renters and homeowners. We have expanded monitoring and recoupment authority in 2 of these programs (Coronavirus Relief Program and the Emergency Rental Assistance Program), which involved us working with Treasury management in standing up the programs, aiding in the stand-up and work of the Pandemic Response Accountability Committee (PRAC), and providing guidance to recipients on reporting of program funds.

The amount and complexity of these oversight mandates led to a 35% increase in auditor, investigator, program analyst, and support personnel staffing since April 2020, as well as rearrangement of other scheduled oversight work. The pandemic relief appropriations my Office received have assisted with acquiring the resources needed to perform the additional oversight.

Has there been an increase in pending audits and evaluations specifically to address waste, fraud, and abuse in the numerous Treasury programs that started in 2020? If so, what have the numbers jumped to?

Yes. As of March 31, 2023, we have completed 10 audits, 4 desk reviews, 16 other products and reviews of Treasury-administered

Response from OIG – Treasury  
Richard Delmar  
March 8, 2023

pandemic recovery programs, and have 90 engagements underway, with more planned in the next three fiscal years.



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

April 25, 2023

**Via Electronic Delivery**

Chairman Bill Huizenga  
Financial Services Committee  
2129 Rayburn House Office Building  
Washington, DC 20515

Re: "Holding the Biden Administration Accountable for Wasteful Spending and  
Regulatory Overreach." March 8, 2023, Questions for the Record.

This letter responds to the April 11, 2023 questions for the record submitted for Rebecca Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects, U.S. Securities and Exchange Commission (SEC) Office of Inspector General (OIG). Attached please find the SEC OIG's responses. We appreciate and share your interest in ensuring effective oversight of the SEC's programs and operations. We will continue to review the concerns raised in the hearing and in the questions for the record as we start our work on the annual Inspector General's Statement on the SEC's Management and Performance Challenges and our fiscal year 2024 audit plan.

Additionally, we wanted to make you aware that on April 17<sup>th</sup>, the SEC announced the appointment of Deborah Jeffrey as the new SEC Inspector General, effective May 7, 2023.

Thank you for the opportunity to respond on this matter. Should you or your staff have any questions about the information provided, please contact Raphael Kozolchyk, Legislative Counsel, at (202) 368-9003.

Sincerely,

A handwritten signature in black ink that reads "Katherine H. Reilly".

Katherine H. Reilly  
Acting Inspector General

Congressman Dan Meuser  
“Holding the Biden Administration Accountable for  
Wasteful Spending and Regulatory Overreach”  
March 8, 2023  
Questions for the Record

**Questions for Rebecca Sharek, Deputy Inspector General for Audits and Evaluations, U.S.  
Securities and Exchange Commission Office of Inspector General**

1. Has your office conducted any audits related to the SEC’s treatment of SPACs? And if not, would you consider adding such an audit to your audit plan this year?

**Answer:** The SEC OIG has not conducted an audit related to the SEC’s treatment of SPACs. However, we appreciated hearing your concerns related to the SEC’s treatment of SPACs and are keeping those concerns in mind as we develop our FY 2024 audit plan.

2. Does the OIG evaluate for partisan or political bias in SEC decision-making?

**Answer:** The SEC OIG conducts independent and objective audits, evaluations, investigations, and other reviews of SEC programs and operations. It also prevents and detects fraud, waste, abuse and mismanagement in SEC programs and operations. The particular facts and circumstances surrounding issues or allegations, including those of partisan or political bias, inform the SEC OIGs decision making on the specific work to perform related to the programs and operations of the SEC.

3. Are you aware of any unusually lengthy applications currently pending before the SEC?
4. Any idea as to why these might be different from the norm?

**Answer:** The SEC OIG has not conducted any work related to SPACs and thus we are not aware of any unusually lengthy SPAC applications currently pending before the SEC. However, we are happy to work with your office to better understand your concerns.

5. Can we submit to your office the specifics of a case and ask you to conduct oversight for unfair or biased treatment?

**Answer:** Yes, we are happy to review any specific information your office provides and discuss any questions or concerns you have.

Congressman Pete Sessions  
 “Holding the Biden Administration Accountable for  
 Wasteful Spending and Regulatory Overreach”  
 March 8, 2023  
 Questions for the Record

**Questions for Rebecca Sharek, Deputy Inspector General for Audits and Evaluations, U.S. Securities and Exchange Commission Office of Inspector General.**

Pursuant to its website at SEC.gov, the U.S. Securities and Exchange Commission (“SEC”) states its mission is to: “protect investors, maintain fair orderly and efficient markets, and facilitate capital formation.”

With respect to these three mandated goals, it is my opinion that the SEC has wholly failed to succeed at two (2) of three (3) goals with respect to the approximate 1,000 shareholders of Rapid Therapeutic Laboratories Sciences, Inc. (“RTSL”).

Specifically, the SEC received a so-called “complaint” about RTSL and initiated an inquiry into RTSL. The SEC then with knowledge that such inquiry if not conducted properly and timely could cause RTSL to fail as a business, did not reasonably or timely conduct such inquiry.

Such failure to timely and reasonably conduct a mandatory inquiry has now placed RTSL in a position of insolvency through the SEC’s gross negligence which is actionable under the Federal Tort Claims Act (“FTCA”). Such insolvency predicated on the SEC’s willful actions related to its investigation fails to protect RTSL shareholders and fails to facilitate capital formation.

On September 19th of last year, I was authorized by my Texas constituent and a representative of RTSL to ask Chair Gensler for a status update and to urge prompt consideration of his RTSL inquiry.

I have a very strong indication from Chair Gensler’s unwillingness to do so that he is currently failing to achieve the stated mission of the SEC to protect investors, maintain fair orderly and efficient markets, and facilitate capital formation.

- 1. Ms. Sharek, does the Office of Investor Education and Advocacy and the SEC Office of the Whistleblower have enough staff to properly and timely manage investor issues and complaints? Does the OIG often hear complaints about these offices?**

**Answer:** We have conducted recent audit and evaluation work with respect to both the Office of Investor Education and Advocacy (OIEA) and the Office of the Whistleblower. In January 2021, the SEC OIG issued an [evaluation report](#) that assessed the OIEA's processes and controls for reviewing, referring, and responding to investor complaints and other investor assistance matters. Similarly, the SEC OIG recently conducted an [audit](#) of the SEC's Whistleblower Program. The audit assessed the growth of the SEC's Whistleblower Program and the functioning of key program controls, such as those for communicating with stakeholders, reviewing information provided by whistleblowers, and determining award amount. In neither case did we make any recommendations related to staffing issues. However, the SEC OIG is aware that for fiscal year 2024, the SEC Chairman has requested two additional positions for OIEA. One position is for support of investor education outreach to underserved communities. The second position is for an information technology specialist to support OIEA's investor assistance function. Additionally, the Division of Enforcement requested 50 additional positions, in part to help augment resources in market surveillance, the Office of the Whistleblower, and operations support.

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On or about September 23rd of last year, this same Texas constituent of mine filed a complaint with your office concerning Chair Gensler's handling of the same inquiry, which was confirmed received.

- 2. Ms. Sharek, can you commit to working with my office on this specific SEC OIG Hotline Report?** I believe it could help answer my larger question of whether Chair Gensler is indeed currently failing to achieve the stated mission of the SEC to protect investors, maintain fair orderly and efficient markets, and facilitate capital formation.

**Answer:** Yes, we would be happy to meet with your office to discuss any questions or concerns you may have.

\* \* \* \* \*

In just one of 34 SEC rules proposed last year, the massive “Dealer” proposal that threatens to upend our Treasury markets, the word “uncertain” appears fifteen times. For example:

- “The precise number of affected parties is uncertain....”
- “The precise number of affected parties is highly uncertain...”
- “The third shortcoming introduces additional uncertainty....”

**3. Ms. Sharek, the word “uncertain” in these proposed rulemakings indicate a level of unpreparedness with respect to the rushed rulemaking issues that your office cited at the SEC. Do you agree?**

**4. Is your office concerned that the Commission is not getting the data they need from all stakeholders – forcing them to leave many impact and numbers as “uncertain”?**

**Answer:** The SEC OIG has not conducted a recent audit or evaluation into the SEC’s rulemaking process. However, the SEC OIG is in the preliminary stages of gathering information and planning an audit to review the SEC’s rulemaking activities and compliance with applicable laws, regulations, and guidance. As part of this audit, the SEC OIG is considering plans to assess the SEC’s processes for (1) giving interested persons an opportunity to participate in rulemaking; (2) assessing the impact of proposed rules on competition, efficiency, and capital formation; and (3) ensuring staff with sufficient and appropriate skills, experience, and expertise are involved in formulating and reviewing proposed rules.