



OFFICE OF  
INSPECTOR GENERAL

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

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

October 8, 2021

**TO:** Gary Gensler, Chair

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

A handwritten signature in blue ink, reading "Carl W. Hoecker".

**SUBJECT:** *The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2021*

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 2022, 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

We also noted a theme—Strengthening Communication and Coordination Across Divisions and Offices—that emerged through our work over the previous year. Information on this emerging theme, 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.

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



Attachment

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October 8, 2021

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



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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>DERA</b>	Division of Economic and Risk Analysis
<b>DISP</b>	Diversity and Inclusion Strategic Plan
<b>EA</b>	enterprise architecture
<b>EDGAR</b>	Electronic Data Gathering, Analysis, and Retrieval
<b>Enforcement</b>	Division of Enforcement
<b>EXAMS</b>	Division of Examinations
<b>FAR</b>	Federal Acquisition Regulation
<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>ISS</b>	infrastructure support services
<b>Kearney</b>	Kearney & Company, P.C.
<b>LH</b>	labor-hour
<b>OA</b>	Office of Acquisitions
<b>OHR</b>	Office of Human Resources
<b>OIEA</b>	Office of Investor Education and Advocacy
<b>OIG</b>	Office of Inspector General
<b>OIT</b>	Office of Information Technology
<b>OMB</b>	Office of Management and Budget
<b>OPM</b>	Office of Personnel Management
<b>PIB</b>	Performance Incentive Bonus
<b>SAM</b>	System for Award Management
<b>SEC, agency, or Commission</b>	U.S. Securities and Exchange Commission
<b>T&amp;M</b>	time-and-materials
<b>TCR</b>	tips, complaints, and referrals



## CHALLENGE: Meeting Regulatory Oversight Responsibilities

The U.S. Securities and Exchange Commission (SEC, agency, or Commission) is charged with overseeing more than 28,000 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, 9 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 7,400 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 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> In addition to the challenging and constantly evolving environment that the SEC operates in, Coronavirus Disease 2019 (COVID-19) has continued to be an unprecedented global health and economic crisis, impacting the SEC as a financial regulator and an employer.

We describe further below an update on the SEC's regulatory response to COVID-19 and certain challenges and opportunities we identified in the agency's investor assistance and education processes. As in previous years, we also reiterate the importance of making the best use of technology and analytics to meet mission requirements and respond to significant developments and trends.

### Responding to COVID-19: Regulatory Perspectives

While continuing efforts to ensure the health and safety of its workforce (addressed further on page 20 of this document), the SEC's COVID-19 response has remained focused on market monitoring and engagement with market participants; guidance and targeted regulatory assistance and relief; and enforcement, examinations, and investor protection efforts. Examples of some actions taken since our last statement on the SEC's management and performance challenges include updated staff guidance on conducting annual meetings, additional trading suspensions, and additional enforcement actions in connection with false and misleading claims and disclosures related to COVID-19. Also, in light of the COVID-19 pandemic, the Division of Examinations (EXAMS)<sup>2</sup> indicated in its 2021 statement on examination priorities that it planned to focus examination resources on:

- broker-dealer funding and liquidity risk management practices to assess whether firms have sufficient liquidity to manage stress events;

<sup>1</sup> U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*; October 11, 2018.

<sup>2</sup> In December 2020, the Commission renamed the Office of Compliance Inspections and Examinations the "Division of Examinations."



- how municipal advisors adjusted their practices, if at all; and
- transfer agent business continuity, disaster recovery programs, and cybersecurity measures and account takeover precautions.<sup>3</sup>

More information about the SEC's COVID-19-related actions is available at [SEC Coronavirus \(COVID-19\) Response](#). As we begin fiscal year (FY) 2022, we will continue monitoring the SEC's efforts to meet its regulatory oversight responsibilities throughout this challenging time.



Source: U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*; October 11, 2018.

## Investor Assistance and Education

In pursuit of the SEC's mission, agency divisions and offices assist investors and members of the public with complaints and questions about the SEC, the securities markets, and market participants; conduct educational outreach; and receive and respond to tips, complaints, and referrals (TCRs)

about possible violations of the federal securities laws. The SEC's strategic plan (Goal 1 and related strategic initiatives) reflects the importance of these efforts.

In 2021, we completed evaluations of Office of Investor Education and Advocacy (OIEA) operations and the SEC's management of its TCR program, and we brought to management's attention specific challenges that threaten achievement of the agency's goal of focusing on the long-term interests of Main Street investors. For example, in our report titled, *The SEC's Office of Investor Education and Advocacy Could Benefit From Increased Coordination, Additional Performance Metrics, and Formal Strategic Planning* (Report No. 564, issued January 13, 2021), we notified management that:

- The Office of Investor Assistance could improve its communication and coordination with the SEC's regional offices on the handling of investor assistance matters, as we recommended in a previous audit from 2011.
- OIEA had not engaged in formal strategic planning to further develop measurable goals and detailed objectives to help inform investor education and outreach decision-making.
- OIEA had not developed methods to measure the efficacy of its investor education and outreach activities.

We made four recommendations intended to help management (1) ensure that investor specialists throughout the SEC provide consistent assistance to investors; (2) determine the best course of action to achieve the SEC's investor education and outreach goals and objectives, and minimize the risk of activities that may not fully address the agency's strategic plan; and (3) engage in effective financial education activities and make data-driven improvements in the future to ensure the organization achieves established goals and objectives. Management concurred with all four of our recommendations and, as of

<sup>3</sup> U.S. Securities and Exchange Commission, *Division of Examinations, 2021 Examination Priorities*; March 3, 2021.



the date of this document, had taken action sufficient to close three of them. The remaining recommendation is open and will be closed upon completion and verification of corrective action.

In addition, in our final management letter titled, *Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions* (issued May 24, 2021), we reported certain challenges and risks inherent in maintaining multiple public-facing reporting mechanisms and processes for receiving and, when necessary, transferring between SEC organizations matters submitted by investors.<sup>4</sup> We noted that the majority of investor submissions are received from portals on the SEC's public website. However, at the time of our review, the primary landing page for the public to submit matters to the SEC may not have clearly explained the options for contacting the agency. In addition, a 2011 investor publication titled, *SEC Center for Complaints and Enforcement Tips*, encouraged investors to file complaints using the SEC's online TCR system and complaint form. Yet a 2017 investor bulletin titled, *Investor Complaints*, directed investors to OIEA's investor complaint form, which linked to a different system. In sum, we observed that the SEC may benefit from assessing and, as needed, revising information on its public website to ensure retail investors and others have clear and easily understood instructions for reporting matters to the agency. In response, agency management notified us that they reviewed information on the investor submission landing page and linked from subpages, took steps to remove outdated subpages, discussed future enhancements, and will work on an interim update, including improved graphics and instructions, to enhance the user experience.

As we begin FY 2022, we will continue monitoring agency plans and actions to improve (1) investor assistance and education efforts, and (2) interfaces between critical public-facing reporting mechanisms.

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

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. Additionally, as stated in the SEC's FY 2022 Congressional Budget Justification, "The increasing size and complexity of U.S. markets require that the SEC continue leveraging technology to keep pace with the increases in data the agency is required to receive, process, analyze, and make available to the investing public."<sup>5</sup>



### GOAL 2

Recognize significant developments and trends in our evolving capital markets and adjust our efforts to ensure we are effectively allocating our resources.



### GOAL 3

Elevate the SEC's performance by enhancing our analytical capabilities and human capital development.

Source: U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*; October 11, 2018.

<sup>4</sup> Such matters include investor questions and complaints related to order handling, dividends, fees, and misleading disclosures by investment professionals; matters submitted through the TCR system; and investor concerns and questions about the SEC or a self-regulatory organization the SEC oversees, or questions about securities law and policy.

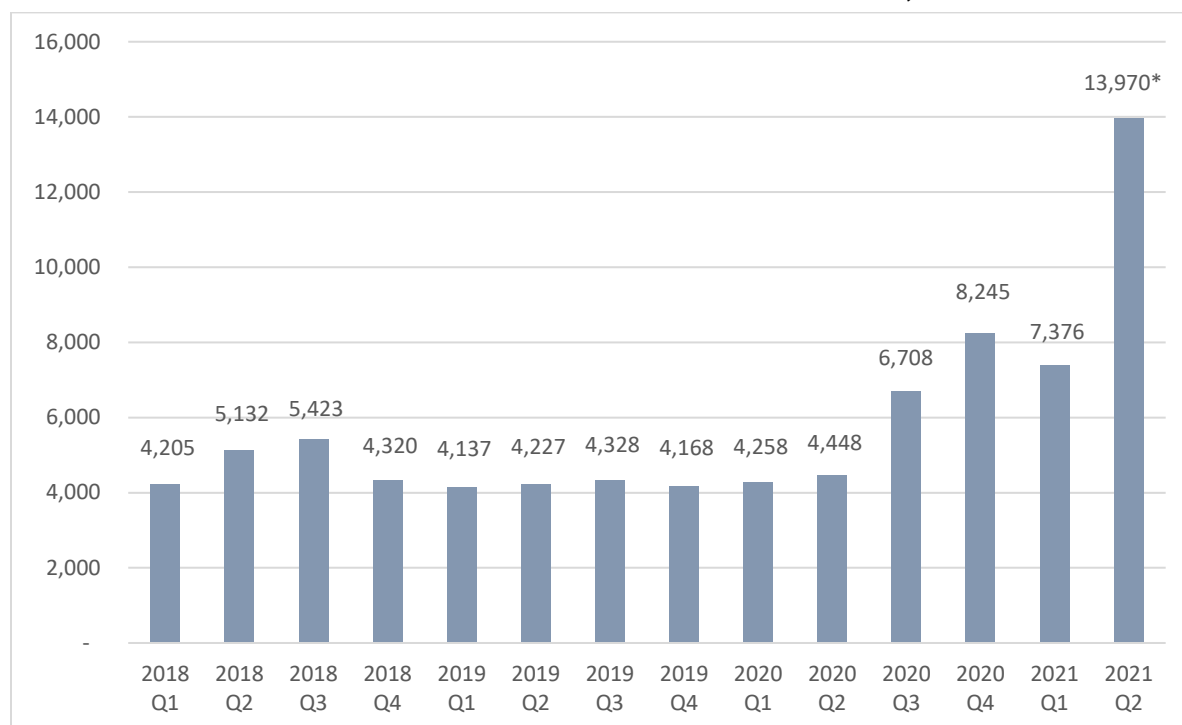
<sup>5</sup> U.S. Securities and Exchange Commission, *Fiscal Year 2022 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2020 Annual Performance Report*; May 28, 2021.



Notably, the Division of Enforcement's (Enforcement) most recent annual report described the division's use of risk-based analytic approaches to uncover potential accounting and disclosure violations, as well as potential violations related to corporate perquisites.<sup>6</sup> EXAMS also reported enhancing its use of new technology and advanced data analytics to improve examination processes, identify risks and prioritize examination candidates, and further analyze information collected during inspections.<sup>7</sup> Gaining efficiencies where possible, including through the use of technology and analytics, is key to organizational success, particularly as Enforcement, EXAMS, and other SEC divisions contend with growth in their areas of regulatory responsibility, and respond to a variety of developments and capital market trends.

For example, over the last year, Enforcement experienced a significant increase in the submission of TCRs, each of which requires review and analysis to identify those that warrant potential further investigation or response. As Figure 1, from our recently completed evaluation of the SEC's management of the TCR program, shows, the upward trend in TCR volume that began after the outset of the COVID-19 pandemic in FY 2020, Quarter 3 continued into FY 2021.

**FIGURE 1. TCRs Received Each Quarter Between FY 2018 and FY 2021, Quarter 2**



Source: 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).

\* TCRs received as of February 20, 2021.

According to Enforcement's Office of Market Intelligence, the organization began using temporary SEC staff detailees and leveraging technology to process the increases in TCRs. In our February 2021 evaluation report (Report No. 566), we recommended actions to further strengthen the SEC's TCR program and TCR system management and development, and we encouraged management to continue

<sup>6</sup> U.S. Securities and Exchange Commission, *Division of Enforcement, 2020 Annual Report*; November 2, 2020.

<sup>7</sup> U.S. Securities and Exchange Commission, *Division of Examinations, 2021 Examination Priorities*; March 3, 2021.



to monitor the upward trend in TCRs, and determine whether additional actions, resources, or staff allocations are 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.

With respect to EXAMS, as reported in previous years, the division continues to be challenged by growth in the number of registered investment advisers.<sup>8</sup> Moreover, as the rules on security-based swaps required by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act go into effect in fall 2021, the SEC estimates that 45 to 50 entities will register as security-based swap dealers who will be subject to various requirements including reporting security-based swap transactions to registered security-based swap data repositories. In December 2020 the SEC stood up a staff joint venture, led by EXAMS and the Division of Trading and Markets, to help coordinate actions to regulate security-based swaps, including monitoring related transaction data for regulatory purposes, and oversee newly registered security-based swaps entities.<sup>9</sup>

Other examples of new regulatory responsibilities or capital market trends facing the SEC include:

- implementation of Regulation Best Interest;<sup>10</sup>
- a “once-in-a-generation wave” of traditional initial public offerings and an “unprecedented surge” in non-traditional initial public offerings by special purpose acquisition companies;
- the growing size and number of private equity funds;
- significant growth in crypto assets; and
- the rise of financial technology and data analytics.<sup>11</sup>

In response, the agency has requested additional resources and continues to make significant investments in a multi-year strategy to (1) enhance the security and management of sensitive data; (2) enable and bolster analytics capabilities to provide timely analyses of market and regulatory data; and (3) modernize and enhance key systems and processes, including those supporting the enforcement and examinations programs. Chief among these initiatives is the Consolidated Audit Trail (CAT), which is designed to facilitate cross-market oversight and analysis and continues to develop in functionality with the principal purpose of enhancing regulatory oversight of securities markets.<sup>12</sup> According to the SEC's

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<sup>8</sup> Management reported in the SEC's FY 2020 Annual Performance Report and FY 2022 Annual Performance Plan (under Strategic Goal 4) that in FY 2020 EXAMS maintained a 15-percent coverage ratio for investment advisers despite disruptions caused by COVID-19, adding, “Investment adviser examinations and coverage will be a continued focus for the Commission during FY 2021 and FY 2022, and EXAMS expects that annual coverage rates will remain relatively stable despite the significant growth and complexity of these registrants. EXAMS will continue to leverage program efficiencies implemented in recent years along with a continued investment in human capital in its efforts to maintain coverage levels of these important entities.”

<sup>9</sup> U.S. Securities and Exchange Commission, *SEC Announces the Creation of the Security-Based Swaps Joint Venture, Led by Division of Examinations and Division of Trading and Markets*; December 18, 2020.

<sup>10</sup> 17 C.F.R. § 240.17a-3 and 17 C.F.R. § 240.17a-4.

<sup>11</sup> U.S. Securities and Exchange Commission, *Fiscal Year 2022 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2020 Annual Performance Report*; May 28, 2021.

<sup>12</sup> In July 2012, the SEC adopted Rule 613, *Consolidated Audit Trail*, to require national securities exchanges and national securities associations to submit a national market system plan to create, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of national market system securities, that would 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. See 17 C.F.R. § 242.613.



FY 2022 Congressional Budget Justification, full implementation of CAT national market system plan requirements is scheduled to continue through the end of FY 2022. The SEC is working to establish an environment and applications to use CAT data as it becomes available. As noted in the SEC Chair's May

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*CAT can play a key part in the SEC's response to significant developments and trends*

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2021 congressional testimony, the CAT can play a key part in the SEC's response to significant developments and capital market trends, as the data that CAT will provide is expected to "significantly enhance the self-regulatory organizations' and SEC's capabilities to identify potentially violative conduct and develop data-driven policies."<sup>13</sup>

Because the SEC's investments in information technology (IT) systems and system modernization efforts directly support its ability to respond to significant developments and trends and meet its regulatory oversight requirements, we sought to determine the extent to which the SEC has implemented an effective enterprise architecture (EA) program to guide and facilitate the modernization of the agency's IT environment. Our report titled, *Additional Steps Are Needed For the SEC to Implement A Well-Defined Enterprise Architecture* (Report No. 568, issued September 29, 2021), concluded, among other things, that the SEC did not document a formal strategy for the continued use and/or retirement of an enterprise platform that supports multiple critical SEC business applications (including those supporting the enforcement and examinations programs) even though agency records indicated that the platform no longer met the SEC's business needs and strategic goals. In the section that follows, we further describe the results of this audit and our other IT-related oversight work, along with the SEC's progress and continuing challenges in its efforts to protect systems and data.

***Ongoing and Anticipated OIG Work.*** To assess the SEC's progress in areas vital to its ability to effectively and efficiently meet its regulatory oversight responsibilities, in FY 2022, we will continue monitoring the SEC's regulatory response to COVID-19. We will also follow-up on open recommendations intended to improve the SEC's investor assistance and education efforts, the TCR program, and aspects of the SEC's IT program, and we will complete ongoing audits of EXAMS' registered investment adviser examination planning processes and the SEC's whistleblower program. Finally, we will initiate reviews of the SEC's oversight of entity compliance with Regulation Best Interest, efforts to emphasize expediency in Enforcement's case management activities, and agency efforts to establish a secure environment and applications to use CAT data.

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<sup>13</sup> Chair Gary Gensler, *Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee*; May 26, 2021.



## CHALLENGE: Protecting Systems and Data

As the U.S. Government Accountability Office (GAO) noted in March 2021, “IT systems supporting federal agencies and our nation’s critical infrastructures are inherently at risk,” as threat actors are increasingly willing and able to conduct cyberattacks with the potential to disrupt critical operations, access sensitive information, and threaten economic well-being. In a single four-month period during FY 2021, the Cybersecurity and Infrastructure Security Agency (CISA) issued at least three emergency directives and/or alerts regarding threat actors who gained access to and/or exploited government agencies, servers, and national infrastructure. This included the SolarWinds Orion Code Compromise, in which a threat actor installed malicious code into a file used as part of SolarWinds Orion software updates.<sup>14</sup> This provided the threat actor with a “backdoor” to remote access systems running the affected software updates. According to CISA, SolarWinds’ public and private sector customers installed these affected software updates between March and December 2020, before the compromise was made public.<sup>15</sup>

SEC management has recognized the importance of “developing a robust and resilient program for dealing with threats to the security, integrity, and availability of the SEC’s systems and sensitive data.”<sup>16</sup> According to its FY 2022 Congressional Budget Justification, the SEC is also committed to enhancing its expertise and capabilities to oversee and manage agency data, which include publicly available data sets, internal agency data, and market-sensitive data. In support of agency goals and objectives, in FY 2020, the SEC spent about \$357 million on 415 steady state investments and on 123 investments for the development, modernization, and enhancement of SEC systems.<sup>17</sup> This represented about 14 percent of the agency’s total budgetary resources for the year.<sup>18</sup> As we describe further below, opportunities remain to improve overall management of the SEC’s IT investments, including by strengthening the agency’s cybersecurity posture and continuing to mature its information security program.



“Protecting information systems and data is a top priority effort...”

Source: SEC Response to The Inspector General’s Statement on the SEC’s Management and Performance Challenges, October 2020.

### Strengthening the SEC’s Cybersecurity Posture

In its FY 2020 Agency Financial Report, the SEC reported that the results of a third party assessment demonstrated that the SEC has an effective system of internal controls with respect to information

security. However, management recognized that this determination does not guarantee the agency’s systems are immune from cyber attacks or that an incident could not occur. In its FY 2022 Congressional

<sup>14</sup> U.S. Government Accountability Office, *High Risk Series: Federal Government Needs to Urgently Pursue Critical Actions to Address Major Cybersecurity Challenges* (GAO-21-288; March 24, 2021).

<sup>15</sup> CISA Alert AA20-352A, *Advanced Persistent Threat Compromise of Government Agencies, Critical Infrastructure, and Private Sector Organizations* (December 17, 2020, revised April 15, 2021).

<sup>16</sup> U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*, Strategic Initiative 3.4; October 11, 2018.

<sup>17</sup> Steady state investments sustain existing information systems at their current capability and performance levels, and include costs for software or equipment support, maintenance, and replacing IT equipment. In comparison, development, modernization, and enhancement investments lead to new IT assets or systems, or change or modify existing IT assets to substantively improve capability or performance.

<sup>18</sup> For the year ended September 30, 2020, the SEC’s total budgetary resources equaled \$2.6 billion. See U.S. Securities and Exchange Commission, *Agency Financial Report Fiscal Year 2020*; November 12, 2020.



Budget Justification, the SEC stated that protecting information systems and data is a top priority effort that must meet the challenges introduced by new technology, new threats, and new business drivers. SEC management remains mindful that governmental agencies, financial market participants, and private sector entities must be vigilant because they are subject to frequent attempts by unauthorized actors to disrupt public-facing systems, access data, or otherwise damage technology infrastructure.

Recognizing there is more work to be done, in FY 2021 and FY 2022 the SEC plans to make strides 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; and
- continue the implementation of a secure application development structure across all agency development teams and projects.

In FY 2021, the Office of Information Technology (OIT) made progress, including taking corrective action sufficient to close the two remaining recommendations from an OIG review completed after a widely-publicized 2016 intrusion of the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.<sup>19</sup> However, as the following table summarizes, work remains to close other cybersecurity-related recommendations we issued before FY 2021.

**TABLE 1. Certain Open Cybersecurity Recommendations as of October 2021\***

Report	Date Issued	Recommendation
<i>The SEC Can More Strategically and Securely Plan, Manage, and Implement Cloud Computing Services</i> (Report No. 556)	11/7/2019	Recommendation 3
<i>Opportunities Exist To Improve the SEC's Management of Mobile Devices and Services</i> (Report No. 562)	9/30/2020	Recommendations 5 and 6

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 page 10 of this document.

In addition, in the wake of the SolarWinds compromise, in FY 2021 we initiated and completed a special review of the SEC's initial response and compliance with CISA Emergency Directive 21-01, *Mitigate SolarWinds Orion Code Compromise* (dated December 13, 2020), and supplemental guidance. Our scope was limited to SEC compliance and response efforts from December 2020 and January 2021. Though we did not conduct an audit or evaluation pursuant to generally accepted government auditing standards or the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for*

<sup>19</sup> In response to the 2016 intrusion of the EDGAR system and a request from the then SEC Chairman that the OIG review related matters, on September 21, 2018, we issued a report titled, *Evaluation of the EDGAR System's Governance and Incident Handling Processes* (Report No. 550). The report (1) presented the OIG's findings and recommendations from our assessment of the information security practices applicable to the EDGAR system between FY 2015 and FY 2017, and (2) included 14 recommendations to improve the SEC's EDGAR system governance, security practices, and incident handling processes. In FY 2021, OIT fully implemented the remaining two open recommendations stemming from our work.



*Inspection and Evaluation*, on August 3, 2021, we issued to the SEC a non-public management letter. On September 2, 2021, the SEC provided a response.

Also, as previously stated, the full implementation of CAT national market system plan requirements is scheduled to continue through the end of FY 2022. CAT data allows for the prompt and accurate recording of material information about all orders in national market system securities, including the identity of customers, as these orders are generated and then routed throughout the U.S. markets until execution, cancellation, or modification. As of the date of this document, interim policies and procedures govern the use of the system through which approved personnel access CAT data. With respect to cybersecurity, finalizing relevant policies and procedures and ensuring appropriate safeguards for any data available and accessed through CAT is of paramount concern.

## Maturing the SEC's Information Security Program

Effective information security controls are essential to protecting the SEC's information systems and the information they contain. To help the SEC establish and maintain effective information security controls and to comply with the Federal Information Security Modernization Act of 2014 (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>20</sup> The OIG contracted with Kearney & Company, P.C. (Kearney) to conduct the FY 2020 independent evaluation and, on December 21, 2020, issued the report titled, *Fiscal Year 2020 Independent Evaluation of SEC's Implementation of the Federal Information Security Modernization Act of 2014* (Report No. 563). The FY 2021 FISMA evaluation is ongoing and will be completed in the first quarter of FY 2022.

As stated in Report No. 563, since FY 2019 OIT improved aspects of the SEC's information security program. Among actions taken, OIT made progress in refining risk management tools, improving the timeliness of security patch deployments, enhancing security awareness and training processes, continuing to enhance the continuous monitoring program, and improving incident response capabilities. Notably, these improvements occurred despite the unique challenges presented by COVID-19.

Although the SEC strengthened its program, Kearney determined for FY 2020 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>21</sup> As stated in Report No. 563, the SEC's maturity level for the five Cybersecurity Framework security functions ("identify," "protect," "detect," "respond," and "recover") and related domains

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*In FY 2020, the SEC's maturity level was primarily "Defined" or "Consistently Implemented"*

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was primarily either Level 2 ("Defined") or Level 3 ("Consistently Implemented"), though two functions, Contingency Planning and Incident Response, reached Level 4 ("Managed and Measurable") and one function, Risk Management, improved one maturity level from the prior year. Although the SEC's

<sup>20</sup> Pub. L. No. 113-283, § 3555, 128 Stat. 3073 (2014).

<sup>21</sup> *FY 2020 Inspector General Federal Information Security Modernization Act of 2014 (FISMA) Reporting Metrics, Version 4.0*; April 17, 2020.



program, as a whole, did not reach the level of an effective information security program, the agency has shown significant improvement at the domain levels. Table 2 shows the SEC's FISMA ratings in FY 2019 and FY 2020.

**TABLE 2. Summary of SEC FISMA Ratings (FY 2019 and FY 2020)**

Domain	Assessed Rating By FY	
	2020	2019
<b>Risk Management</b>	Level 3: <i>Consistently Implemented</i>	Level 2: <i>Defined</i>
<b>Configuration Management</b>	Level 2: <i>Defined</i>	Level 2: <i>Defined</i>
<b>Identity and Access Management</b>	Level 2: <i>Defined</i>	Level 2: <i>Defined</i>
<b>Data Protection and Privacy</b>	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
<b>Security Training</b>	Level 2: <i>Defined</i>	Level 2: <i>Defined</i>
<b>Information Security Continuous Monitoring</b>	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
<b>Incident Response</b>	Level 4: <i>Managed and Measurable</i>	Level 3: <i>Consistently Implemented</i>
<b>Contingency Planning</b>	Level 4: <i>Managed and Measurable</i>	Level 4: <i>Managed and Measurable</i>

Source: OIG-generated based on Exhibit 1 from Report No. 563.

Report No. 563 included seven new recommendations to strengthen the SEC's information security program, and highlighted opportunities to improve in six of the eight FY 2020 Inspector General FISMA reporting metric areas. To date, the SEC has taken corrective action sufficient to close two of these seven recommendations. However, 12 recommendations from prior year FISMA evaluations remain open (4 from FY 2017,<sup>22</sup> 3 from FY 2018,<sup>23</sup> and 4 from FY 2019<sup>24</sup>). We commend agency management for the actions taken to date, and encourage management to promptly act on all opportunities for improvement identified in the last four 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.

Additionally, regarding the SEC's efforts to plan and implement cloud computing strategies, Recommendation 2 from our 2019 report (*The SEC Can More Strategically and Securely Plan, Manage, and Implement Cloud Computing Services*; Report No. 556, issued November 7, 2019) remains open. To recap our findings, we found that the SEC developed a strategy that defined the goals and objectives of the agency's cloud program, and a plan that established cloud-related goals. However, the SEC did not fully implement its cloud strategy; follow a clear, robust strategic plan to evaluate and prioritize IT services and applications for migration to the cloud; or effectively track related goals. Instead, the agency used an "ad hoc" or "as-needed" approach to implementing cloud computing. In June 2021, OIT requested closure

<sup>22</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>23</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>24</sup> U.S. Securities and Exchange Commission, Office of Inspector General, *Fiscal Year 2019 Independent Evaluation of SEC's Implementation of the Federal Information Security Modernization Act of 2014* (Report No. 558; December 18, 2019).



of Recommendation 2 based on corrective action taken; however, those actions did not fully address the intent of the recommendation. We will continue tracking OIT's efforts related to this matter.

Also, in our audit report titled, *The SEC Has Taken Steps to Strengthen Its Monitoring of ISS Contractor's Performance, But Additional Actions Are Needed* (Report No. 565, issued February 24, 2021), we identified needed improvements in the SEC's oversight of its infrastructure support services (ISS) contract. The ISS contract is the SEC's largest contract valued at about \$362 million as of December 2020. It covers areas critical to the agency's IT program, including service desk support, network support, data center operations, contingency planning support, EA, and common services, among others. We determined that agency officials did not establish processes and controls for communicating contractor performance issues, monitoring the implementation of contractor corrective action plans, and documenting past performance assessments. As a result, we identified gaps in the SEC's oversight of key contract areas supporting the agency's IT program, among other findings and needed corrective actions further addressed on page 14 of this document.

Finally, as previously mentioned, we completed an audit in September 2021 to determine the extent to which the SEC has implemented an effective EA program (*Additional Steps Are Needed For the SEC to Implement A Well-Defined Enterprise Architecture*; Report No. 568, issued September 29, 2021). We found that although the SEC has efforts underway to develop an enterprise roadmap for future years, for FYs 2020 and 2021, the SEC did not (1) prepare and submit to the Office of Management and Budget (OMB) an up-to-date enterprise roadmap, and (2) fully develop or maintain a complete set of EA artifacts in accordance with OMB guidance. We also determined that the SEC's oversight of contracts for EA support services can be improved (further addressed on page 15 of this document). Lastly, OIT did not periodically assess IT investments in accordance with Federal and SEC guidance, and (as previously mentioned) did not document a formal strategy for the continued use and/or retirement of an enterprise platform that supports multiple critical SEC business applications. We made six recommendations to strengthen the effectiveness of the SEC's EA program. 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.

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 2022, we will continue to assess the SEC's efforts to secure its systems and data and mature its information security program. We will follow-up on related open recommendations, complete the ongoing FY 2021 FISMA evaluation, and initiate the FY 2022 FISMA evaluation. Also, as previously mentioned, we will initiate a review of the SEC's efforts to establish a secure environment and applications to use CAT data. We also plan to evaluate the design and implementation of controls over the use and handling of data collected as a result of the Investment Company Reporting Modernization Rule.

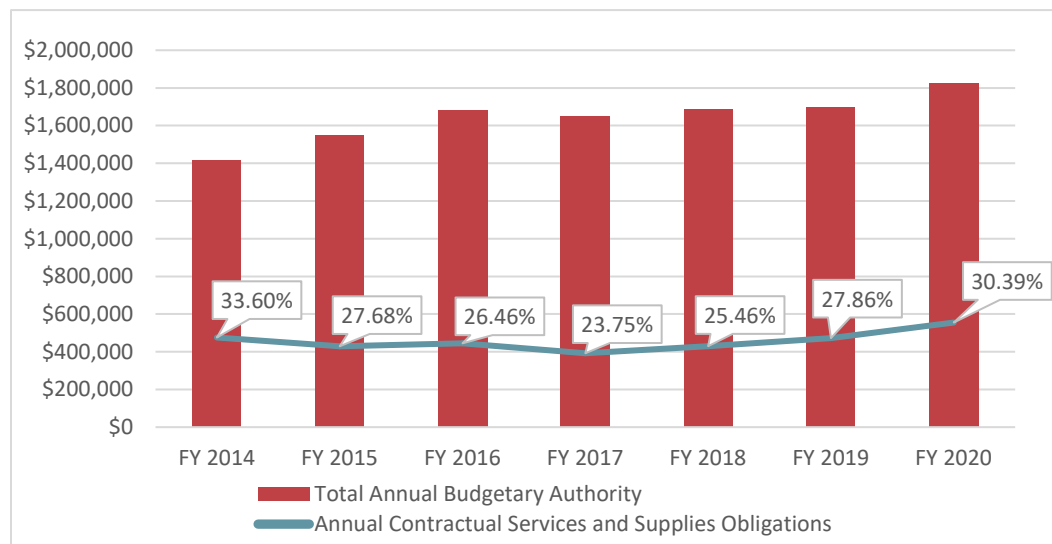


## CHALLENGE: Improving Contract Management

### Synopsis and Trends in SEC Contracting

To accomplish its mission, the SEC relies substantially on contractor support obtained through a variety of actions, including enterprise-wide contracts, General Services Administration multiple award schedule contracts, government-wide acquisition contracts, and multi-agency contracts. To fund its contract requirements, the SEC's FY 2022 budget request included over \$597 million for contractual services and supplies,<sup>25</sup> which represents nearly 30 percent of the total \$1.992 billion requested for agency operations. As we reported in our October 2020 statement on the SEC's management and performance challenges, although actual annual obligations for contractual services and supplies, when expressed as a percentage of the SEC's total annual budgetary authority, decreased from about 34 percent in FY 2014 to about 24 percent in FY 2017, that trend has reversed with the increases made over the last three fiscal years. (See Figure 2.) It is essential that the SEC (through its acquisition workforce) manage these resources, which consistently represent more than a quarter of its annual budget. Although the Office of Acquisitions (OA) is responsible for procuring all goods and services—except real property—for the agency, the SEC's acquisition workforce includes any employee playing a key role in the acquisition and contracting process, including contracting professionals in the 1102 job series, program and project managers, and contracting officer's representatives, who are responsible for most aspects of contract management and administration. Agency policy makes clear that members of the acquisition workforce must work together to ensure effective contract management.

**FIGURE 2. SEC Annual Contractual Services and Supplies Obligations, in Thousands, as a Percentage of Total Annual Budgetary Authority (FY 2014 – FY 2020)**



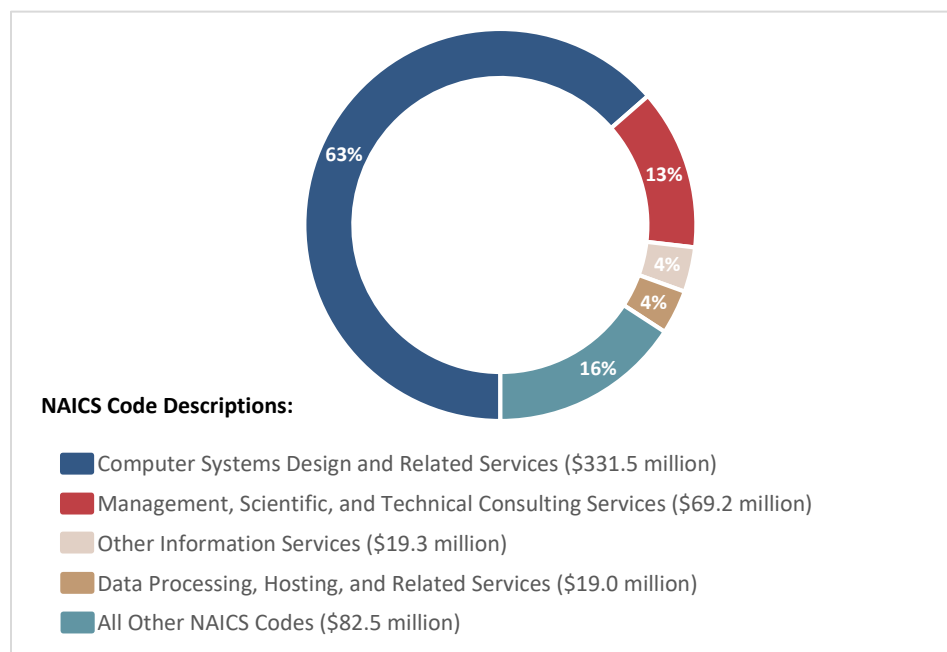
Source: OIG-generated based on SEC Congressional Budget Justifications for FY 2015 through FY 2022.

<sup>25</sup> According to OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget* (August 2021), 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).



Contractors provide the SEC with professional legal, case, and investigation-related services; support in the areas of accounting, analytics, compliance, and examinations; and business management and human resources support services. However, the majority of the SEC's contract support, by dollars obligated, is for IT services. These services include, among others, application management, business solutions delivery, IT infrastructure and operations management, information security, IT governance, data management, and hardware and software services. Indeed, a review of the top North American Industry Classification System (NAICS) codes<sup>26</sup> associated with SEC contracts in FY 2020 (as reported through [SAM.gov](https://sam.gov)<sup>27</sup>) shows that, of the nearly \$522 million obligated to contract actions that year, the SEC obligated about 67 percent (or about \$351 million) to vendors doing business under NAICS codes for computer systems design, data processing, hosting, and related services. (See Figure 3.)

**FIGURE 3. Top Five NAICS Codes Associated With the SEC's FY 2020 Contract Obligations**



Source: OIG-generated from data retrieved from [SAM.gov](https://sam.gov) on August 17, 2021.

The SEC procures many of these IT services through its One IT enterprise contract vehicle, which has a 10-year ordering period and contract ceiling of \$2.5 billion, and through which the agency has made over two dozen small and large business awards. Because IT support is paramount to agency operations, and IT support contracts make up the majority of the SEC's contract obligations, in FY 2021 we reviewed contracts managed by OIT and supporting the agency's IT program. Below, we describe needed improvements.

<sup>26</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. FAR 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.

<sup>27</sup> The System for Award Management (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.





"...contract management is the primary part of the procurement process that ensures the SEC gets what it pays for."

Source: SEC Operating Procedure SECOP 10-1, Acquisition Authority and Lifecycle, May 2019.

## Management of IT Support Services Contracts

In FY 2021, we completed two audits that involved four IT support contracts. The first was an audit of the SEC's oversight of its ISS contractor's performance. The ISS contract provides support for

a variety of tasks critical to the agency's IT program.<sup>28</sup> Next, we reviewed three EA support services contracts, including one issued through the SEC's One IT enterprise contract vehicle, during our audit of the SEC's efforts to implement an effective EA program. We also reviewed aspects of the ISS contract during this audit.<sup>29</sup> Each of these contracts required coordinated actions and oversight from multiple OA and OIT officials, and, as part of both audits, we recommended that OA and OIT implement corrective actions to improve their coordination and contract management.

In accordance with the Federal Acquisition Regulation (FAR) and SEC policies and procedures, the ISS contract included various surveillance tools to support the goal of timely, organized, and well-documented oversight. However, the SEC did not effectively implement tools for monitoring the contractor's performance to drive desired performance outcomes. Specifically, the SEC did not: (1) timely finalize or distribute a comprehensive quality assurance surveillance plan for the ISS contract; (2) ensure corrective action plans were fully implemented for two known contractor performance issues; and (3) timely prepare required contractor performance evaluations, or include details sufficient to accurately support the contractor's performance ratings. In addition, OA and OIT personnel did not clearly identify or track deliverables updates throughout the contract's performance.

These conditions occurred as the SEC did not prioritize establishing clear roles and responsibilities between OA and OIT officials to ensure compliance with quality assurance surveillance requirements, and did not establish processes and controls for a number of key contract management actions including communicating contractor performance issues, monitoring the implementation of contractor corrective action plans, and documenting past performance assessments. As a result, we found (1) errors in contractor service level agreement calculations; (2) untimely, unused, or inaccurate contract deliverables; and (3) missed opportunities to formally document contractor performance issues.

In 2020, the SEC took steps to strengthen its monitoring of the ISS contractor's performance, including reconciling ISS statement of work language to its deliverables attachment; creating an ISS governance board to prioritize initiatives and enhance communication; and updating OA's process to address overdue contractor performance evaluations. However, additional actions are needed to provide further assurance that efficient surveillance methods and effective cost controls are used for the

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*IT support contracts make up the majority of the SEC's contract obligations*

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<sup>28</sup> U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Has Taken Steps to Strengthen Its Monitoring of ISS Contractor's Performance, But Additional Actions Are Needed* (Report No. 565; February 24, 2021). This was the second in a series of audits related to the ISS contract. The first audit report was titled, *The SEC Can Better Manage Administrative Aspects of the ISS Contract* (Report No. 554; May 31, 2019).

<sup>29</sup> U.S. Securities and Exchange Commission, Office of Inspector General, *Additional Steps Are Needed For the SEC to Implement A Well-Defined Enterprise Architecture* (Report No. 568; September 29, 2021).



remaining life of the contract, and to ensure that the SEC safeguards the government's interest by complying with federal, agency, and contract requirements for quality assurance surveillance in the future.

We made seven recommendations to improve the SEC's contract management, including the oversight of the ISS contract. Management concurred with our recommendations, and, to date, has taken action sufficient to close five of the recommendations. The remaining two recommendations are open and will be closed upon completion and verification of corrective action taken.

Regarding our audit of the SEC's EA program, we reported that EA can help organizations realize cost savings and/or cost avoidance, enhance information sharing, and optimize service delivery. Additionally, attempting to modernize and evolve IT environments without an EA to guide and constrain investments often results in operations and systems that are duplicative, not well integrated, unnecessarily costly to maintain and interface, and ineffective in supporting mission goals. The SEC relies on contractors for EA support services, including developing EA artifacts, standards, processes, and guidelines and performing the SEC's annual EA self-assessment, and we determined that the SEC's oversight of EA support services contracts can be improved. Specifically, we found that:

- two EA support services contracts potentially overlapped as the SEC awarded a new contract for EA support services already covered under an existing contract;
- OIT tasked two contractors with reviewing artifacts, policies, procedures, and guidance the contractors helped create, which raises the potential of conflicting roles that might bias a contractor's judgment and impair its ability to be objective; and
- OIT did not adequately oversee contracts for EA support services to ensure the SEC's annual EA self-assessment results were adequately supported.

These conditions occurred, in part, because different OIT branches initiated and oversaw the SEC's EA support services contracts, and OIT did not define or establish robust processes for monitoring contractors' activities. In addition, OA did not clarify relevant contractual language to prevent the appearance of a potential organizational conflict of interest. As a result, between June and August 2020, the SEC spent more than \$1 million on two contracts for potentially duplicative application and data rationalization tasks. Also, contractors' objectivity might have been impaired with respect to performing the SEC's annual EA self-assessments, which may have misled agency officials about the state of the SEC's EA program. Without an accurate understanding of the design and operating effectiveness of EA core elements, responsible agency officials may invest or continue to invest in organizational operations and supporting technology infrastructures and systems that are duplicative, poorly integrated, unnecessarily costly to maintain and interface, and unable to respond quickly to shifting environmental factors. To improve the SEC's oversight of EA support services contracts, we made one recommendation addressed jointly to OIT and OA. Management concurred with our recommendation, which, as of the date of this document, is open and will be closed upon completion and verification of corrective action taken.

## **Use of Time-and Materials Contracts**

In our 2019 statement on the SEC's management and performance challenges, we reported on the SEC's use of time-and-materials (T&M) contracts (including labor-hour [LH] contracts) and, in 2020, we



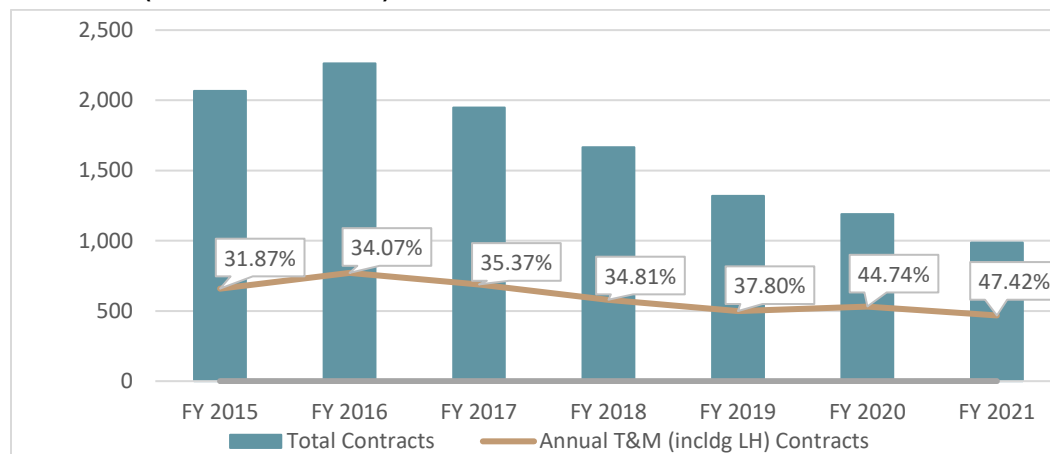
noted that such contracts represented an increasing percentage of all SEC contract actions.<sup>30</sup> In both years, we encouraged management to assess the SEC's use of T&M contracts and to formulate actions to reduce their use whenever possible because, as FAR Subpart 16.6, *Time-and-Materials, Labor-Hour, 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.”

Moreover, the SEC's operating procedure that prescribes the policies, responsibilities, and procedures for SEC acquisitions states that T&M contracts “are the least preferred contract type because it [sic] places maximum risk on the Government through payment for time delivered rather than a measurable outcome with measurable quality attributes.” The operating procedure also states that use of T&M contracts “must be limited to the maximum extent possible” as they “fail to incentivize the contractor to perform effectively or control costs” and place “a high administrative burden on the Government.”<sup>31</sup>

Nonetheless, SEC contract data reported through [usaspending.gov](https://usaspending.gov) shows that, despite the overall decrease in total contract actions each year since FY 2016, the government's risk from the SEC's use of T&M contracts has continued to increase. Specifically, the percentage of SEC T&M contracts relative to all SEC contract actions has increased again from about 45 percent in FY 2020 to about 47 percent in FY 2021. (See Figure 4.) In addition, as of September 30, 2021, the total amount obligated to T&M contracts represented about 53 percent of all SEC contract obligations.<sup>32</sup>

**FIGURE 4. Number and Percentage of SEC T&M Contracts Compared to Total SEC Contracts (FY 2015 – FY 2021)**



Source: OIG-generated from data retrieved from [usaspending.gov](https://usaspending.gov) on September 30, 2021.

<sup>30</sup> As stated in FAR 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>31</sup> SEC Operating Procedure 10-1, *Acquisition Authority and Lifecycle*; May 21, 2019.

<sup>32</sup> According to [usaspending.gov](https://usaspending.gov), total (that is, cumulative) award obligations for all active SEC contracts as of September 30, 2021, was \$2.14 billion, of which total award obligations for T&M contracts was \$1.12 billion.



In response to our October 2019 and October 2020 statements on the SEC's management and performance challenges, management reported that OA is continuing its Contract Management Excellence Initiative to further promote effective contract management. Regarding T&M contracts, these efforts include: a new independent government cost estimate guide (which addresses estimating T&M costs), T&M contracts training, contract file compliance reviews, and roundtables on invoicing.

Notwithstanding management's actions to mitigate the growing risk of its reliance on T&M contracts, recent audits of the SEC's management of the ISS contract—the agency's largest active contract, which is a T&M contract—have shown that contracting officials did not comply with FAR requirements for (1) preparing determination and findings statements, documenting that no other contract type was suitable;<sup>33</sup> and (2) conducting appropriate government surveillance of contractor performance to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.<sup>34</sup> Further increases in both the percentage and overall obligations associated with T&M contracts, particularly absent these key controls, is inconsistent with both the FAR and agency policy.

***Ongoing and Anticipated OIG Work.*** In FY 2022, we will continue to assess the SEC's contract management and acquisition processes. Furthermore, we will monitor the SEC's progress in addressing prior open audit recommendations related to contract actions. We will also initiate an audit of the SEC's small business contracting, and report on any acquisition-related matters identified as a result of other ongoing and planned reviews of SEC programs and operations. Lastly, we will continue to support the SEC's efforts to train contracting officers and contracting officers' representatives about the potential for procurement-related fraud.

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<sup>33</sup> U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Better Manage Administrative Aspects of the ISS Contract* (Report No. 554; May 31, 2019). See Other Matters of Interest.

<sup>34</sup> U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Has Taken Steps to Strengthen Its Monitoring of ISS Contractor's Performance, But Additional Actions Are Needed* (Report No. 565; February 24, 2021). See Finding 1.



## CHALLENGE: Ensuring Effective Human Capital Management

### Diversity, Equity, Inclusion, and Accessibility

In 2020, a series of events highlighting racial inequity in the United States brought to the forefront the obligation for employers throughout the country to evaluate and monitor their progress in advancing diversity, equity and inclusion, and preventing bias in the workplace. Additionally, as the White House recently noted, a growing body of evidence demonstrates that diverse, equitable, inclusive, and accessible workplaces yield higher-performing organizations.<sup>35</sup> The SEC's ability to cultivate such a workplace will be integral to its success in recruiting and retaining the best talent and to ensuring that it meets its organizational performance goals.

In its FY 2020-2022 Diversity and Inclusion Strategic Plan (DISP), the SEC recognized the importance of diversity, equity, and inclusion in the workplace, commenting that "[o]ur continued commitment to promoting diversity, inclusion, and equal opportunity is critical to allowing the Commission to attract and retain talent with the mix of skills and expertise needed to maximize our effectiveness."<sup>36</sup> As the SEC's FY 2020 Agency Financial Report notes, the DISP provides a framework to guide the agency's efforts to promote diversity, inclusion, and opportunity in the SEC's workforce; increase opportunities for minority-owned and women-owned businesses to contract with the agency; and develop standards for assessing the diversity policies and practices of firms regulated by the SEC. Agency leaders and managers have committed to implementing the initiatives outlined in the DISP with a focus on weaving diversity, inclusion, and opportunity into their work advancing the SEC's mission.<sup>37</sup>

In 2021, the White House also weighed in on the importance of the federal government, as the nation's largest employer, becoming a model for diversity, equity, inclusion, and accessibility. In issuing two Executive Orders on this topic,<sup>38</sup> the Administration placed strategic emphasis on the recruitment, hiring, development, promotion, and retention of diverse talent, as well as the removal of barriers to equal opportunity. The Orders also required federal agencies "to take an evidence-based and data-driven approach to determine whether and to what extent agency practices result in inequitable employment outcomes, and whether agency actions may help to overcome systemic societal and organizational barriers."<sup>39</sup>

Along these lines, on August 26, 2021, the OIG issued a management letter to the SEC Chair titled, *Review for Racial and Ethnic Disparities in the SEC's Issuance of Corrective and Disciplinary Actions from January 1, 2017 – August 31, 2020*. In June 2020, the SEC OIG Office of Counsel to the Inspector General initiated a review of the SEC's corrective and disciplinary action program. The purpose of this

<sup>35</sup> Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workplace*; June 2021.

<sup>36</sup> U.S. Securities and Exchange Commission, *Diversity and Inclusion Strategic Plan, Fiscal Years 2020-2022*.

<sup>37</sup> U.S. Securities and Exchange Commission, *Agency Financial Report Fiscal Year 2020*; November 12, 2020.

<sup>38</sup> Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*; January 2021. Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workplace*; June 2021. As an independent agency, the SEC is not bound by these Executive Orders; however, independent agencies are "strongly encouraged to comply" with their provisions. See Executive Order 13985, section 11(c); and Executive Order 14035, section 15(c).

<sup>39</sup> Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workplace*; June 2021.



review was to determine whether there was evidence of disparity—in particular, racial and ethnic disparity—when comparing the demographic composition of SEC employees who received a corrective or disciplinary action during the review period (that is, between January 1, 2017, and August 31, 2020) to the overall population of SEC employees. Although the sample size we reviewed was small and inconclusive, we believe opportunities exist for the agency to better track data to identify and analyze disparities in the issuance of corrective and disciplinary actions. To accomplish this, we suggested that the agency consider developing a plan to: better track data related to employee misconduct, corrective and disciplinary actions, and demographic information; develop a process by which data related to employee misconduct and corrective and disciplinary actions can be routinely compared with demographic variables (such as race, ethnicity, and gender); and reduce the potential for bias by standardizing processes and providing additional manager training.

We will continue to monitor the SEC's efforts to meet its strategic goals as outlined in the DISP as well as its legal obligations under Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, to develop standards for equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency, and to take specific affirmative steps to seek diversity in the workforce of the agency at all levels in a manner consistent with applicable law.

## Implementation of New Performance Management System

The SEC continues to take steps to address concerns raised with respect to its performance management system. Namely, according to GAO, the SEC has not taken action sufficient to close the outstanding priority recommendation from 2013, in which GAO

recommended that “the Chairman of SEC should direct the [Chief Operating Officer] and OHR to conduct periodic validations (with staff input) of the performance management system and make changes, as appropriate, based on these validations.”<sup>40</sup> As recently as 2019, a GAO-implemented survey highlighted employee dissatisfaction with the SEC's performance management system.<sup>41</sup> In addition, our outstanding recommendation from 2018 that the SEC “finalize standard operating procedures for the agency's performance management program” remains open.<sup>42</sup> In an effort to address these concerns, the SEC implemented a new two-tier performance management system. Under the new system, all SK employees are evaluated and rated as either “Accomplished Performer” or “Unacceptable.”

In conjunction with the new two-tier rating system, the SEC designed a new Performance Incentive Bonus (PIB) program through which supervisors can nominate high-performing employees for a bonus of up to



“The success of the SEC depends on an effective, highly-skilled workforce.”

Source: SEC Response to The Inspector General's Statement on the SEC's Management and Performance Challenges, October 2020.

<sup>40</sup> U.S. Government Accountability Office, *Securities and Exchange Commission: Improving Personnel Management Is Critical for Agency's Effectiveness* (GAO-13-621; July 18, 2013).

<sup>41</sup> U.S. Government Accountability Office, *Securities and Exchange Commission: Personnel Management Shows Improvement, but Action Needed on Performance Management System* (GAO-20-208; December 2019). See also U.S. Government Accountability Office, *Securities and Exchange Commission: Actions Needed to Address Limited Progress in Resolving Long-Standing Personnel Management Challenges* (GAO-17-65; December 29, 2016).

<sup>42</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). According to agency management, the SEC operating procedures will be finalized in March 2022.



\$10,000 once per calendar year. To help employees and supervisors understand the PIB program and its implementation, the Office of Human Resources (OHR) issued guidance on topics such as: employee eligibility, performance criteria for awards, determination of award amounts, how to construct a successful award narrative, holding conversations with staff regarding the PIB program, and the SEC's commitment to ensuring transparency, fairness, and equity in the PIB process.

According to agency management, in December 2020, the SEC engaged the Office of Personnel Management (OPM) to begin a 3-year evaluation of the recently implemented two-tier performance management program. As part of this evaluation, in June 2021, the SEC collaborated with OPM to develop a survey intended to gather employee feedback regarding their experiences with its two-tier performance management program. On June 14, 2021, OPM released the survey to SEC employees to gather feedback regarding their experiences with the current program. OHR management encouraged all employees to take the survey, asserting that employee feedback was critical to the program and would have an impact for years to come: "Your feedback will help us understand if the program, tools and guidance we have provided are useful, what is going well, and suggestions for improvement." The survey, open until July 19, 2021, would serve as a baseline for opinions regarding various aspects of the SEC's performance management program, including relevant tools, training, automation, and elements of the two-tier rating program. Feedback received on the new performance management system and the PIB program may help the SEC address overall employee concerns that differences in performance are not recognized in meaningful ways.

## 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 2021. Since the outset of the national public health 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 had been 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, the 2020 OPM Federal Employee Viewpoint Survey shows.<sup>43</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.

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

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Beginning August 9, 2021, the agency shifted to a voluntary return to the workplace program, in which vaccinated employees could return to the workplace on a voluntary basis. The SEC anticipates remaining in a voluntary return to workplace status through at least January 3, 2022.

As federal agencies contemplate a mandatory return to the workplace, the SEC must strategically plan around a number of key considerations to ensure it keeps employees and their families safe while meeting the organizational need to return to the workplace. On June 10, 2021, OMB issued a

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<sup>43</sup> Office of Personnel Management, *Government-wide Management Report: Results from the 2020 OPM Federal Employee Viewpoint Survey*, April 26, 2021.



memorandum titled, *Integrating Planning for A Safe Increased Return of Federal Employees and Contractors to Physical Workspaces with Post-Reentry Personnel Policies and Work Environment*.<sup>44</sup> In this document, OMB, along with OPM and the General Services Administration, laid out guidance for planning on a safe return to the workplace. The guidance included consideration of a phased return to work; promotion of flexible and agile personnel policies; collective bargaining obligations; ample notice to employees; and workplace safety. In accordance with this guidance, the SEC has developed a number of resources to aid managers and employees alike in navigating the return to workplace, even as the COVID-19 Delta variant threatens to delay mandatory return-to-workplace planning. Federal agencies continue to face challenges related to the pandemic telework posture and return-to-workplace planning in areas such as technology and remote access; security vulnerabilities; tracking of information such as vaccination status; and testing for COVID-19 infection in the workplace.<sup>45</sup> Grappling with this myriad of challenges will be at the forefront of agency operations for FY 2022 and perhaps even beyond.

**Ongoing and Anticipated OIG Work.** As the SEC continues to respond to the challenges created by COVID-19, we will monitor the agency's plans for ensuring safe and efficient reentry to the workplace. Furthermore, we will monitor the SEC's progress in addressing prior open audit recommendations and concerns raised about its new performance management system, including the new PIB program. To assess the SEC's efforts to promote diversity, equity, inclusion, accessibility, and opportunity, we will assess the operations and controls over the agency's equal employment opportunity program; small business contracting; and the Office of the Advocate for Small Business Capital Formation's operations, programs, and policies. We are also in the process of conducting an audit of the controls over the SEC's hiring actions, which is scheduled to conclude in FY 2022.

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<sup>44</sup> M-21-25. As an independent agency, the SEC was not required to follow all of the reporting requirements listed in this memorandum.

<sup>45</sup> Council of the Inspectors General on Integrity and Efficiency, *Top Management and Performance Challenges Facing Multiple Federal Agencies*; February 2021; The White House, *Fact Sheet: President Biden To Announce New Actions To Get More Americans Vaccinated and Slow the Spread of the Delta Variant*; July 29, 2021; and The White House, *Remarks by President Biden on Fighting the COVID-19 Pandemic*; August 3, 2021.



## EMERGING THEME: Strengthening Communication and Coordination Across Divisions and Offices

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.<sup>46</sup> Moreover, the strategic plan acknowledges that "effective and efficient partnership of staff across the agency" is critical to the SEC's ability to carry out its mission. To support the strategic plan's Goal 3—"Elevate the SEC's performance by enhancing our analytical capabilities and human capital development"—the SEC committed to the following initiative:

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

The SEC further committed to exploring new ways to promote effective collaboration and information sharing across the agency, and to reviewing the collaborations connected to the SEC's major functional areas.

Notably, GAO reported in December 2019 that, in response to a web-based survey administered by GAO, most SEC employees expressed positive views on whether SEC management encourages cross-divisional communication.<sup>47</sup> Similarly, the results of the SEC's 2020 OPM Federal Employee Viewpoint Survey estimated that 78 percent of employees agreed that managers support collaboration across work units to accomplish work objectives, and an estimated 75 percent agreed that managers promote communication among different work units.<sup>48</sup>

Nonetheless, during many of the audits, evaluations, and other oversight work completed in FY 2021, which encompassed a range of SEC programs and operations, we observed an emerging theme indicating an opportunity to strengthen communication and coordination across the SEC's divisions and offices. As the following page summarizes, we observed this in reviews related to investor assistance, TCR handling and triage, receipt and coordination of investor submissions, and Division of Economic and Risk Analysis (DERA) staff research and publications activities. We also noted opportunities to improve communication and coordination within and amongst SEC support organizations.

<sup>46</sup> U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2018-2022*; October 11, 2018.

<sup>47</sup> U.S. Government Accountability Office, *Securities and Exchange Commission: Personnel Management Shows Improvement, but Action Needed on Performance Management System* (GAO-20-208; December 19, 2019). GAO surveyed a representative sample of nonexecutive SEC employees in key occupations and all senior officers in nine key divisions and offices (with response rates of 64 and 63 percent, respectively). According to GAO, the results of the nonexecutive employee survey are generalizable to SEC's mission-critical employees.

<sup>48</sup> The 2020 Federal Employee Viewpoint Survey was open between September and October 2020 and, according to OHR, the SEC's overall response rate was nearly 79 percent.



## Summary of Relevant OIG Observations

OIG Report No. 564  
January 2021

### *The SEC's OIEA Could Benefit From Increased Coordination, Additional Performance Metrics, and Formal Strategic Planning*

- SEC regional office staff receive and respond to investor complaints and other matters independent of OIEA Office of Investor Assistance oversight. Previous OIG audits have consistently reported the need for improved coordination and communication in this area.

OIG Report No. 565  
February 2021

### *The SEC Has Taken Steps to Strengthen Its Monitoring of ISS Contractor's Performance, But Additional Actions Are Needed*

- The SEC did not prioritize establishing clear roles and responsibilities between OA and OIT officials to ensure compliance with quality assurance surveillance requirements and to implement updates to required contract deliverables. As a result, we identified gaps in the SEC's oversight of key contract areas supporting the agency's IT program.

OIG Report No. 566  
February 2021

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

- Opportunities exist to improve communication related to policies and procedures for assigning TCRs to Points of Contact from the SEC's various divisions and offices, and for handling of certain TCRs by personnel across the agency.

OIG Final  
Management Letter  
May 2021

### *Actions May Be Needed To Improve Processes for Receiving and Coordinating Investor Submissions*

- Key SEC divisions and offices, including OIEA, Enforcement, the Office of the Investor Advocate, and those responsible for maintaining the SEC's public-facing websites, should work together, as necessary, to address concerns related to the receipt and coordination of investor submissions.

OIG Report No. 567  
September 2021

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

- A third of respondents we surveyed from other SEC divisions and offices felt that DERA could better communicate and coordinate staff research and publication activities, allowing those divisions and offices to better assess and comment on research in progress.

OIG Report No. 568  
September 2021

### *Additional Steps Are Needed For the SEC to Implement A Well-Defined Enterprise Architecture*

- The SEC awarded two potentially overlapping EA support services contracts because, in part, the contracting officer's representatives who oversaw the two contracts were located in two different branches within OIT, demonstrating a lack of communication and coordination between these branches.

Management's early attention and, as needed, action in response to this emerging theme can be instrumental to (1) prevent the development of systemic and significant challenges, such as potential siloing or duplicative functioning, in the future, (2) continue positive trends in employee views on collaboration, and (3) achieve the goals established in the SEC's most recent strategic plan.



## 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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## TO REPORT

# fraud, waste, and abuse

Involving SEC programs, operations, employees,  
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