

REPORT NO. 581

JANUARY 29, 2024

OFFICE OF
**INSPECTOR
GENERAL**

OFFICE OF AUDITS

**Opportunities Exist to
Strengthen the SEC's Office of
Equal Employment Opportunity
Programs and Operations**

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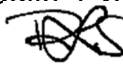
OFFICE OF
INSPECTOR GENERAL

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

M E M O R A N D U M

January 29, 2024

TO: Rita Sampson, Director, Office of Equal Employment Opportunity
Mark Reinhold, Chief Human Capital Officer, Office of Human Resources

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

SUBJECT: *Opportunities Exist to Strengthen the SEC's Office of Equal Employment
Opportunity Programs and Operations, Report No. 581*

Attached is the Office of Inspector General (OIG) final report detailing the results of our audit of the U.S. Securities and Exchange Commission's (SEC) equal employment opportunity programs and operations. The report contains 17 recommendations addressed to the Office of Equal Employment Opportunity and/or the Office of Human Resources that should further strengthen controls over the SEC's equal employment opportunity complaint program, anti-harassment program, and equal employment opportunity-related training.

On December 20, 2023, we provided management with a draft of our report for review and comment. In its January 19, 2024, response, management concurred with our recommendations. We have included management's response as Appendix IV in the final report.

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

We appreciate the courtesies and cooperation extended to us during the audit. If you have questions, please contact me or Eileen Kao, Audit Manager.

Attachment

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EXECUTIVE SUMMARY

Opportunities Exist to Strengthen the SEC's Office of Equal Employment Opportunity Programs and Operations

REPORT NO. 581 | JANUARY 29, 2024

WHY WE DID THIS AUDIT

Federal laws and executive orders require that all federal personnel decisions (including hiring, advancement, retention, and other terms, conditions, and privileges of employment) be made free of discrimination on the basis of race, color, religion, sex, national origin, age, disability, genetic information, parental status, or retaliation. Federal agencies must promote equal employment opportunity, evaluate overall equal employment opportunity program effectiveness, identify and eliminate discriminatory practices, and prevent and address harassment and other prohibited conduct before it becomes severe or pervasive. At the U.S. Securities and Exchange Commission (SEC or Agency), the Office of Equal Employment Opportunity (OEEO) seeks to create and apply best practices to achieve equal employment opportunity in the SEC workplace and to support compliance with anti-discrimination laws.

We conducted this audit to assess the effectiveness and compliance of OEEO's operations and controls in support of the SEC's equal employment opportunity program, including OEEO's coordination and collaboration with other SEC offices and management. Specifically, we reviewed OEEO's Equal Employment Opportunity Program, Anti-Harassment Program, and Barrier Analysis Program for the period between fiscal year 2021 and fiscal year 2022 (that is, October 1, 2020, through September 30, 2022).

WHAT WE RECOMMENDED

We made 17 recommendations to further strengthen the SEC's controls over its equal employment opportunity complaint program, anti-harassment program, and equal employment opportunity-related training. 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 equal employment opportunity programs. We redacted the non-public information to create this public version.

WHAT WE FOUND

We found that the SEC implemented components of the U.S. Equal Employment Opportunity Commission's (EEOC) model equal employment opportunity program. Nonetheless, opportunities exist to strengthen the SEC's OEEO programs and operations.

For example, we evaluated a sample of harassment allegation cases initiated in fiscal years 2021 and 2022 and other aspects of the SEC's anti-harassment program and concluded that improvements are needed to enhance the SEC's anti-harassment program. Namely, the Agency failed to (a) prevent an appearance of a conflict of interest in its management of the anti-harassment program; (b) follow anti-harassment program policies and procedures; (c) establish guidance for processing conflict-of-interest cases in its anti-harassment program; (d) maintain complete and accurate anti-harassment program documentation; (e) conduct training in response to harassment trends; and (f) maintain a required Privacy Act System of Records Notice for the anti-harassment program.

We also concluded that the SEC's equal employment opportunity complaint program needs improvement because we identified (a) noncompliance with applicable federal and EEOC requirements, management directives, and/or guidance; (b) outdated and incomplete standard operating procedures; (c) participation in the SEC's alternative dispute resolution program that fell short of the EEOC's goal; (d) a lack of participant feedback to help assess program efficacy; and (e) annual equal employment opportunity policy statements that did not include all required principles.

Several factors caused these conditions, including ineffectively designed and/or implemented controls, which impeded the effective functioning of the SEC's anti-harassment and equal employment opportunity efforts.

In addition, because of employee turnover and other competing OEEO priorities, the SEC did not timely conduct equal employment opportunity training. Specifically, in 2022, the Agency did not offer No FEAR Act training to employees within two years as required. Further, OEEO did not timely provide all new managers and supervisors with an equal employment opportunity briefing. Without timely training, SEC employees may not be aware of their rights, and supervisors may unknowingly engage in unlawful behavior or improperly act upon or respond to an employee's equal employment opportunity concern.

Lastly, we identified challenges relating to OEEO's work environment and its impact on the Office's operational effectiveness. Resolution of these matters is beyond the scope of our work, however, information brought to our attention may hinder OEEO's programs and operations and warrants management's attention. We encouraged management to assess OEEO's organizational culture and determine what opportunities and resources may assist in its organizational transformation efforts.

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Abbreviations

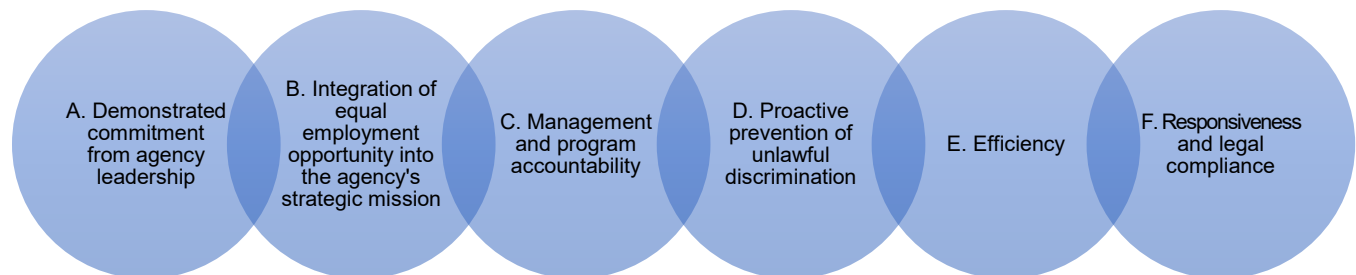
EEOC	U.S. Equal Employment Opportunity Commission
FY	fiscal year
GAO	U.S. Government Accountability Office
MD	Management Directive
MOU	Memorandum of Understanding
No FEAR Act	Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
OEEEO or Office	Office of Equal Employment Opportunity
OIG	Office of Inspector General
SEC or Agency	U.S. Securities and Exchange Commission
SECOP	SEC Standard Operating Procedures
SORN	System of Records Notice

Background and Objectives

BACKGROUND

Federal laws and executive orders require that all federal personnel decisions (including hiring, advancement, retention, and other terms, conditions, and privileges of employment) be made free of discrimination on the basis of race, color, religion, sex, national origin, age, disability, genetic information, parental status, or retaliation.¹ The United States government promotes equal employment opportunity not simply as a matter of fairness, but as an economic imperative, to attract, develop, and maintain the best available talent.² Guidance and regulations issued by the U.S. Equal Employment Opportunity Commission (EEOC) require Federal agencies to promote equal employment opportunity, evaluate overall equal employment opportunity program effectiveness, identify and eliminate discriminatory practices, and prevent and address harassment and other prohibited conduct before it becomes severe or pervasive.³ The EEOC's Management Directive 715 (MD-715) sets forth six essential elements of an effective equal employment opportunity program and requires agencies to report annually on their progress.⁴

Figure 1. Elements of a Model Equal Employment Opportunity Program



Source: Office of Inspector General (OIG)-generated based on the EEOC's Instructions to Federal Agencies for MD-715, Section I, The Model EEO Program.

The U.S. Securities and Exchange Commission's (SEC or Agency) equal employment opportunity policy expresses the Agency's commitment to maintaining a workforce that is diverse, inclusive, and fosters a sense of belonging, wherein everyone enjoys equality of employment opportunity. The SEC's Office of Equal Employment Opportunity (OEEO or Office) supports the implementation of this policy through creating and applying best practices to achieve equal employment opportunity in the SEC workplace and

¹ The Civil Rights Act of 1964, as amended, P.L. 88-352, 42 U.S.C. § 2000e, et seq. (July 2, 1964); Section 501 of the Rehabilitation Act of 1973, as amended, P.L. 93-112, 29 U.S.C. § 791 (September 26, 1973); the Americans with Disabilities Act Amendments Act of 2008, P.L. 110-325, amending 42 U.S.C. § 12101, et seq. (September 25, 2008); Genetic Information Nondiscrimination Act of 2008, P.L. 110-233, 42 U.S.C. § 2000ff, et seq. (May 21, 2008); Executive Order 13152 (May 2, 2000).

² MD-715, Section 1, Element B. Furthermore, EEOC regulation mandates federal agency compliance with all EEOC-issued management directives and bulletins. 5 C.F.R. § 1614.102(e).

³ 29 C.F.R. §§ 1614.101-1614.110, U.S. Equal Employment Opportunity Commission Regulations, *Federal Sector Equal Employment Opportunity, Subpart A—Agency Program to Promote Equal Employment Opportunity* and the EEOC's *Instructions to Federal Agencies for MD-715, Section I, The Model EEO Program*.

⁴ The MD-715 model equal employment opportunity program was drafted pursuant to the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791; and the Americans with Disabilities Act Amendments Act of 2008, P.L. 110-325, amending 42 U.S.C. § 12101, et seq.

supporting compliance with anti-discrimination laws.⁵ The Equal Employment Opportunity Director reports directly to the SEC Chair. By its charter, the Office is required to remain neutral and does not represent either management or employees.⁶ OEEO supports the SEC's goals by leading and/or participating in the Agency's (1) Equal Employment Opportunity Complaint Program, (2) Policy on Preventing Harassment Program (referred to hereafter as the "anti-harassment program"), and (3) Barrier Analysis Program.⁷

Equal Employment Opportunity Complaint Program. OEEO is exclusively responsible for the SEC's equal employment opportunity complaint program, which focuses on processing, resolving, and/or adjudicating complaints of unlawful employment discrimination in a neutral forum.⁸ This program offers multiple pathways to address a complaint. Informal approaches include counseling by an equal employment opportunity counselor or mediation through the SEC's alternative dispute resolution program, referred to as the Conflict-to-Resolution program.⁹ If the matter is not resolved, the complainant may elect to proceed formally, with a fact-gathering investigation, culminating in a final written agency decision by an OEEO official.¹⁰ An aggrieved individual may also request a hearing before an EEOC administrative judge.¹¹

Anti-Harassment Program. The SEC's anti-harassment program is intended to stop potentially harassing conduct before it rises to the level of harassment by becoming severe and/or pervasive.¹² OEEO is authorized to receive harassment allegations, but SEC policy limits its role to documenting allegations, sharing allegations with SEC managers, and conducting training and outreach to educate the SEC workforce about harassment prevention and applicable legal requirements.

Barrier Analysis Program. OEEO's Barrier Analysis Team studies whether Agency policies, procedures, or working conditions have inadvertently resulted in barriers for persons belonging to protected classes. The Barrier Analysis Team reports their results to SEC senior management, including

⁵ OEEO Overview, <https://www.sec.gov/page/eeosectionlanding> (last accessed on September 19, 2023).

⁶ Along with OEEO, the SEC's Office of Minority and Women Inclusion and Office of Human Resources have specific and interrelated responsibilities to foster equal employment opportunity and focus on equal opportunity and diversity-related efforts in the Agency's workforce.

⁷ The equal employment opportunity complaint program is administered by OEEO's Compliance and Resolution Branch.

⁸ The equal employment opportunity process seeks to bring "full relief" to a prevailing complainant by placing them in the same position they would have been in had the discrimination not occurred. Full relief may be provided with remedies such as reinstatement, back pay, compensatory damages, and attorneys fees to the complainant; and corrective actions, such as requiring training and considering disciplinary actions for the offender and responsible management official.

⁹ The SEC generally uses mediation as the alternative dispute resolution technique to help de-escalate and resolve workplace disputes that include allegations of employment discrimination.

¹⁰ The complainant can appeal the final agency decision to the EEOC's Office of Federal Operations no later than 30 days after the final order is received. During the scope of our work, either OEEO's Deputy Director, Acting Director, or Director approved the SEC's final agency decisions.

¹¹ See Figure 3 in Appendix II for a graphical representation of the pathways available to a complainant and the deadlines applicable to each. Some of these deadlines are jurisdictional, meaning that a complainant may forfeit rights if they fail to act timely. See, e.g., 29 C.F.R. § 1614.105(a)(1). The employee must contact the SEC's Equal Employment Opportunity Counselor within 45 days of alleged discriminatory action.

¹² SECOP 27-1, *Procedures to Implement the SEC's Policy on Preventing Harassment* (April 6, 2021), defines equal employment opportunity-based harassment as any conduct that a reasonable person would consider offensive (or unwelcome based on a protected equal employment opportunity category (e.g., race, sex, national origin, etc.)). See SECOP 27-01, Section 9.4.

the Agency Chair, Chief Operating Officer, and the directors of the Office of Human Resources and the Office of Minority and Women Inclusion.

Staffing and Resources. During fiscal years (FY) 2021 and 2022, OEEO's organizational structure included 13 full-time government positions (three management and ten staff) and four contactor positions.¹³ Notwithstanding these approved slots, OEEO has faced turnover and vacancies in key positions. Two out of three management positions—the Director and Branch Chief positions—were vacant in FY 2021 and part of FY 2022. On April 30, 2021, the then OEEO Director transitioned to a new role in another SEC office and OEEO's Deputy Director assumed the role of Acting Director while also retaining the responsibilities of Deputy Director. A permanent Director joined the SEC in February 2022. The Branch Chief position was also vacant for more than a year, requiring other OEEO personnel to absorb additional responsibilities. Lastly, between FY 2021 and August 2023, seven OEEO personnel left the Agency or moved to other SEC offices.¹⁴

EEOC Technical Review. As part of the EEOC's oversight responsibility of federal agencies' equal employment opportunity programs, the EEOC assesses agencies' compliance with its regulations and management directives. On February 22, 2023, the EEOC completed an assessment of the SEC's compliance with EEOC regulations and management directives and identified deficiencies in the SEC's equal employment opportunity program.¹⁵ Specifically, the EEOC found that (1) the SEC's equal employment opportunity policy statement did not comply with EEOC guidance; (2) the SEC did not complete timely equal employment opportunity investigations in FY 2022; (3) the SEC did not issue timely final agency decisions on the merits during FYs 2021 and 2022; and (4) the SEC's alternative resolution participation in the pre-complaint stage fell below the EEOC's goal of 50 percent in FY 2022.¹⁶ On May 9, 2023, OEEO responded to the EEOC's findings with additional information and plans to address the deficiencies identified. In a November 6, 2023 letter, the EEOC noted that the SEC had demonstrated progress and was expected to establish plans with activities sufficient to make meaningful progress toward eliminating these deficiencies in its FY 2023 MD-715 report.¹⁷

OBJECTIVES

We conducted this audit to assess OEEO's operations and controls in support of the SEC's equal employment opportunity program—including coordination and collaboration with other SEC offices and management—to determine whether OEEO complies with applicable laws, regulations, guidelines, and reporting requirements and effectively supports the Agency's strategic goals.

¹³ Table 2 in Appendix III summarizes the OEEO organization, including positions and responsibilities.

¹⁴ This includes retirements and transfers to other Federal agencies.

¹⁵ While the EEOC assessed OEEO's compliance with EEOC regulations and management directives, the scope of its assessment differed from ours. The EEOC's assessment was based on reports provided by OEEO, such as the annual Report on Equal Employment Opportunity Program, and the annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints. As described in this report, our audit scope included a more in-depth review of the SEC's equal employment opportunity complaint program, the anti-harassment program, and the barrier analysis program.

¹⁶ The EEOC also questioned whether the SEC's reporting structure complied with the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (H.R. 6395, Subtitle B), which amended the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, P.L. 107-174. The EEOC later concluded that the SEC's reporting structure was compliant.

¹⁷ The EEOC MD-715 report is due by February 28 following the end of the FY that is being reported.

Our audit included OEEO's activities between FYs 2021 and 2022 (that is, October 1, 2020, through September 30, 2022). We also monitored for updates in OEEO policies, procedures, and processes. Appendices I, II, and III of this report provide information about our methodology, our review of relevant internal controls, and prior coverage; the equal employment opportunity complaint process and timeframes; and the OEEO organization during FYs 2021 and 2022.

Results

The SEC implemented portions of each of the six elements of the EEOC’s model equal employment opportunity program in FYs 2021 and 2022 but did not implement any of the elements in its entirety. In particular, we identified opportunities to improve the management of the SEC’s anti-harassment program and also found noncompliance with statutory requirements and federal guidelines concerning the SEC’s equal employment opportunity complaint program and related training. We discuss each of these issues in the report Finding sections referenced in Table 1 below.

Table 1. Summary of OIG Analysis

Legend: ● “Follows”—SEC policy or actions are consistent with EEOC guidelines.

◐ “Partially Follows”—SEC policy or actions are consistent with some, but not all, EEOC guidelines.

Selected Model Equal Employment Opportunity Program Elements and Related Compliance Indicators	SEC Status	Report Finding
Element A: Demonstrated Commitment from Agency Leadership		
A.1 Issue an effective, up-to-date equal employment opportunity policy statement	◐	
Measure Not Met: The policy statement must include principles covered in EEOC MD-715		3
A.2 Communicate equal employment opportunity policies and procedures to all employees	●	1
Element B: Integration of Equal Employment Opportunity into the Agency’s Strategic Mission		
B.1 Reporting structure of the equal employment opportunity program complies with certain guidelines	●	1
B.2 Issue strategic plan that references equal employment opportunity, diversity, and inclusion	●	1
B.3 Sufficient budget and staffing exists to support the equal employment opportunity program	◐	
Measure Not Met: Ensure timely, thorough, and fair processing of equal employment opportunity complaints		3
Measure Not Met: Provide workforce with training on the equal employment opportunity program		4
Measure Not Met: Manage an effective anti-harassment program		2
Measure Not Met: Investigators receive 8 hours of refresher training		3
Element C: Management and Program Accountability		
C.1 Establish procedures to prevent all forms of equal employment opportunity discrimination	◐	
Measure Not Met: Require prompt inquiry of all harassment allegations		2
Measure Not Met: Establish a firewall between the Equal Employment Opportunity Director and the Anti-Harassment Coordinator		2
Measure Not Met: Ensure that the anti-harassment program is informed of all equal employment opportunity counseling activity alleging harassment		3
Element D: Proactive Prevention of Unlawful Discrimination		
D.1 Conduct a reasonable assessment to monitor progress toward achieving equal employment opportunity	◐	
Measure Not Met: Measure the efficacy of the equal employment opportunity program through feedback		3
D.2 Identify areas where barriers may exclude equal employment opportunity groups	●	1
Element E: Efficiency		
E.1 Establish a neutral equal employment opportunity process	●	1
E.2 Establish and encourage widespread use of a fair alternative dispute resolution program	◐	
Measure Not Met: Annually evaluate the effectiveness of the alternative dispute resolution program		3
E.3 Have effective and accurate data collection systems to evaluate the equal employment opportunity and anti-harassment programs	◐	
Measure Not Met: Have systems to accurately collect and monitor harassment allegations		2
Element F: Responsiveness and Legal Compliance		
F.1 Comply with the law, including applicable regulations, management directives, and other written instructions	◐	
Measure Not Met: Comply with all applicable requirements of 29 C.F.R. Part 1614		3

Source: OIG-generated based on OIG fieldwork and aspects of the EEOC’s Instructions to Federal Agencies for MD-715, Section I, The Model EEO Program, as further discussed in this report. This table does not follow the organizational structure in EEOC MD-715, as it reflects elements and compliance indicators reviewed by the OIG.

Findings

FINDING 1. THE SEC IMPLEMENTED COMPONENTS OF EEOC'S MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The SEC took significant steps to implement portions of the EEOC's six elements for a model equal employment opportunity program. In FYs 2021 and 2022, the Agency:

1. Communicated equal employment opportunity policy statements to all employees.
2. Maintained a reporting structure in which the OEEO Director reported to the SEC Chair.
3. Issued strategic plans that referenced equal employment opportunity, diversity, and inclusion.
4. Followed a neutral equal employment opportunity process.
5. Met reporting requirements, including those applicable to:
 - the annual Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) report;
 - public posting of the Agency's quarterly No FEAR Act data;
 - the annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC Form 462); and
 - the annual Report on Equal Employment Opportunity Program (MD-715 report).¹⁸

Federal regulation and the EEOC's MD-715 require agencies to conduct barrier analyses to identify the root causes of disparities in equal employment opportunity so that federal agencies can take actions to remedy the policies, procedures, and practices that lead to such disparities.¹⁹ During FYs 2021 and 2022, OEEO completed two barrier analysis studies, one for accountants and one for attorneys. Neither identified barriers arising from any SEC policy, practice, procedure, or condition.²⁰

In September 2021, OEEO finalized its first strategic plan to support the Agency's strategic plan and to serve as a blueprint for the SEC to promote equal opportunity in employment. However, the plan, which covered FY 2022 through FY 2024, did not include performance measures to gauge program success. During our audit, in June 2023, OEEO adopted a new strategic plan for FY 2023 through FY 2026 that includes measures of program effectiveness, such as quarterly reviews of the (1) percentage of counseling cases completed within 30 days or less; (2) number of report of investigations issued within

¹⁸ The No FEAR Act, Public Law 107-174 (May 15, 2002), requires that federal agencies be publicly accountable for violations of anti-discrimination and whistleblower protection laws. Agencies must publicly report statistical data relating to equal employment opportunity complaints on a quarterly basis, with a comprehensive report to Congress on an annual basis. Furthermore, agencies use EEOC Form 462 to report information on pre-complaint and formal complaint activities, the status of complaint processing, and the disposition of complaints to the EEOC. Finally, EEOC MD-715 requires federal agencies to submit an annual report to the EEOC that evaluates whether agencies are establishing and maintaining effective equal employment opportunity programs.

¹⁹ 29 C.F.R. § 1614.102(a)(3) and MD-715, Section I, Element B(D)(1)(b).

²⁰ OEEO completed an accountant barrier analysis and an attorney barrier analysis study on May 28 and December 9, 2021, respectively.

the applicable timeframe; (3) number of days it takes to complete complex and amended investigations; (4) number of final agency decisions issued within the applicable timeframe; (5) percentage of new supervisors OEEEO briefed within three months; and (6) percentage of employees who completed No FEAR Act training.

Despite these improvements in OEEEO's strategic planning and performance measures, as shown in Table 1 and as we note in Findings 2 through 4, the SEC has not fully implemented each of the six elements of a model equal employment opportunity program. Additional actions are needed to improve management of the Agency's anti-harassment program, its equal employment opportunity complaint program, and equal employment opportunity-related training.

FINDING 2. IMPROVEMENTS ARE NEEDED TO ENHANCE THE SEC'S ANTI-HARASSMENT PROGRAM

The SEC Standard Operating Procedures 27-1 (SECOP 27-1) establishes the SEC's anti-harassment program, allocating responsibilities for its implementation among OEEO, the Office of Human Resources, and the Office of the General Counsel. Harassment allegations may be reported to each of these offices and, in some circumstances, the OIG.²¹ The recipient then conducts intake, eliciting and reducing to writing the basic information about the events alleged.²² Promptly after assembling this information, representatives of OEEO, the Office of Human Resources, and the Office of the General Counsel meet to decide: (1) whether the alleged conduct falls within the policy; and (2) what next steps to take depending on whether the allegations if true could reasonably result in a personnel action.²³ If a personnel action may be warranted, the Office of Human Resources, the Office of the General Counsel, or a management official conducts an investigation, performing fact-gathering and reaching conclusions.²⁴

OEEO is barred from investigating, and its only role following intake is to conduct educational awareness, which consists of informing the parties and any relevant others of the terms and substance of the policy and procedures; the rights and responsibilities of the complainant and the alleged harasser; how the alleged harasser's behavior might have been perceived and affected others; and reminders to avoid retaliation.²⁵ Although OEEO may not prepare the final report on a matter, it does prepare a written summary of its educational awareness outreach, which is included in the final report.²⁶

To assess OEEO's participation in the SEC's anti-harassment program, we evaluated 27 harassment allegation cases, representing about 36 percent of all such cases initiated in FYs 2021 and 2022. We also assessed aspects of the anti-harassment program that were common to all cases, such as policies and procedures.

We found the following deficiencies in the SEC's management of its anti-harassment program. First, contrary to the EEOC guidance, OEEO did not prevent an appearance of conflict of interest in its management of the anti-harassment program. Second, OEEO did not (a) establish and follow clear anti-harassment program policies and procedures; (b) establish guidance for processing conflict-of-interest cases; (c) maintain complete and accurate anti-harassment program documentation as required by EEOC MD-715; (d) conduct training in response to harassment trends identified through the anti-harassment program; and (e) maintain a required Privacy Act System of Records Notice (SORN) for the

²¹ SECOP 27-1, Section 12.1.3.

²² SECOP 27-1, Section 12.1.3 (this basic information includes the names of all involved individuals; the alleged conduct at issue; any initial steps taken; and any other relevant information).

²³ SECOP 27-1, Sections 12.1.4; 12.2.1-2.

²⁴ SECOP 27-1, Sections 12.4.2; 12.4.3.

²⁵ SECOP 27-1, Sections 12.2.2; 12.3.

²⁶ SECOP 27-1, Section 12.3.1 (report on awareness activities); Section 12.2.2 (OEEO's involvement in inquiry is limited to sharing information from intake and educational awareness activities); Section 12.4.5 (OEEO will neither conduct investigations nor recommend corrective action); Section 12.7.1 (intake and educational awareness summaries prepared by OEEO may not serve as the final report).

anti-harassment program.²⁷ Several factors caused these conditions which impeded the effective functioning of the SEC's anti-harassment efforts.

2a. OEEO Management's Participation in the Anti-Harassment Program Created the Appearance of a Conflict of Interest

OEEO administers two channels for addressing workplace harassment allegations—the anti-harassment program and the equal employment opportunity complaint program. Although employees may use both simultaneously, OEEO's roles differ in the two programs. In the anti-harassment program, OEEO's activities with respect to specific allegations are limited to conducting intake and educational awareness, whereas in the equal employment opportunity complaint program, OEEO must remain neutral and may be called upon to investigate and make findings regarding the alleged misconduct. Additionally, the goal of these two programs differs. The goal of the anti-harassment program is to prevent or stop conduct that is offensive or unwelcome on the basis of a protected equal employment opportunity category before it rises to the level of illegal harassment. Conversely, the goal of the equal employment opportunity complaint program is to determine whether illegal discrimination or harassment occurred. Program officials administering the equal employment opportunity complaint program must remain neutral, and participation by those program officials in determining whether the anti-harassment policies were violated would compromise that neutrality.²⁸ For this reason, EEOC management directives and SEC policy require the decision makers in each program to remain independent of one another to prevent a conflict of interest.

EEOC guidelines state that if the anti-harassment program resides within the equal employment opportunity office, the agency should consider either establishing a firewall between the anti-harassment coordinator and the equal employment opportunity Director or assigning only the investigation function to the equal employment opportunity office and allowing another office to decide whether to take corrective action.²⁹ Moreover, EEOC MD-715 requires a firewall between the OEEO Director and Anti-Harassment Coordinator when the anti-harassment program resides within the equal employment opportunity office to prevent the equal employment opportunity Director from involvement in the day-to-day functions of the anti-harassment program.³⁰ At the SEC, the Office of Human Resources and OEEO have both conducted investigations into anti-harassment program matters; however, only the Office of Human Resources serves as the subject-matter expert regarding questions of misconduct and the imposition of disciplinary action.³¹ Agency policy states that OEEO has no authority to conduct investigations within

²⁷ MD-715, Section 1, Element E(D)(1); SECOP 27-1, Section 12.5.6; P.L. 93-579, 88 Stat. 1896, 5 U.S.C. § 552a (December 31, 1974).

²⁸ U.S. Equal Employment Opportunity Commission, *Model EEO Programs Must Have an Effective Anti-Harassment Program*, Appendix 3, <https://www.eeoc.gov/federal-sector/model-eeo-programs-must-have-effective-anti-harassment-program> (last accessed on January 31, 2023).

²⁹ U.S. Equal Employment Opportunity Commission, *Model EEO Programs Must Have an Effective Anti-Harassment Program*, Part I(C), <https://www.eeoc.gov/federal-sector/model-eeo-programs-must-have-effective-anti-harassment-program> (last accessed on January 31, 2023).

³⁰ MD-715, Section I, Element C(B)(1)(c).

³¹ SECOP 27-1, Section 11.3.

the anti-harassment program, nor may OEEEO recommend or impose disciplinary or corrective action, except with respect to OEEEO employees.³²

Further, because the OEEEO Director is responsible for providing timely counseling, investigations, and final agency actions related to the equal employment opportunity complaint program, EEOC MD-110 also requires the OEEEO Director to ensure that there is no conflict of interest or appearance of such in the investigation of complaints, as agencies must administer a fair and impartial investigative process designed to determine the validity of complaints, while employing affirmative efforts to root out discrimination and ensure equal employment opportunity.³³ SEC policy also prohibits OEEEO personnel who process complaints under the equal employment opportunity complaint program from performing duties in the anti-harassment program (except for referring concerns that came to their attention back to the Anti-Harassment Coordinator).³⁴ Doing so could allow for bias or contamination among program officials participating in both programs simultaneously, as the type of information shared in the anti-harassment program may differ from the equal employment opportunity complaint program.

Before FY 2022, OEEEO's firewall consisted of excluding the Deputy Director, who was responsible for the decision-making for the SEC's equal employment opportunity complaint program, from participating in anti-harassment program activities. However, during FY 2022, we found that OEEEO management involved in the equal employment

An effective firewall would prevent the OEEEO Director from involvement in the day-to-day functions of the anti-harassment program

opportunity complaint program also performed substantive duties in the anti-harassment program, which violated Agency policy.³⁵ Specifically, there were four instances in which OEEEO management had direct involvement with anti-harassment program cases. In one instance, the OEEEO Director was involved in meetings with SEC management and the alleged harasser and oversaw the preparation of the summary memorandum to SEC management detailing the circumstances of the case. In the second instance, at the request of SEC senior leadership, the OEEEO Director conducted an inquiry and prepared a summary report regarding an allegation of harassment. The summary report presented action plans discussed between the OEEEO Director and the involved parties and documented further recommended actions to be taken by the involved parties. In the third instance, the OEEEO Director met with the complainant, and in the fourth instance, the Branch Chief met with the individual alleging harassment because the Anti-Harassment Coordinator was on leave. Moreover, the Director and the two other OEEEO managers met weekly with anti-harassment program staff, where there were discussions of specific anti-harassment case information. The same leaders met weekly with the equal employment opportunity complaint team to discuss equal employment opportunity discrimination cases.

We did not find evidence that OEEEO officials reached a conclusion as to whether unlawful discrimination occurred in these four anti-harassment cases, or that the cases also proceeded in the equal employment

³² SECOP 27-1, Sections 9.9; 11.2.4.

³³ MD-110, Chapter 1, Part IV.

³⁴ SECOP 27-1, Section 11.2.3.2.

³⁵ SECOP 27-1, Section 9.9.

opportunity complaint program. Therefore, we did not identify an actual conflict of interest. However, given these circumstances, OEEO management's involvement in the anti-harassment program did not comply with EEOC MD-715 and MD-110 requirements, and their actions resulted in the appearance of a conflict of interest. EEOC guidance states that agency employees must have confidence that those agency officials processing equal employment opportunity complaints are neutral and are free from conflicts of interest, in appearance or fact.³⁶ The OEEO Director's participation in the anti-harassment program could erode employee confidence and the appearance of neutrality.

When interviewed, the OEEO Director justified her day-to-day involvement in anti-harassment cases on the ground that she is responsible for being aware of everything that occurs in the Office. OEEO's Director stated that these instances highlight why OEEO should not house the SEC's anti-harassment program and why one of her initiatives upon on-boarding as OEEO Director in February 2022 was to conduct a review of the placement of the anti-harassment program within OEEO. The review resulted in several recommendations, including a recommendation for placing the program outside of OEEO. Accordingly, in January 2024, the SEC plans to move the anti-harassment program to the Office of Human Resources, and OEEO's role will be limited to educating the workforce on harassment matters, as needed. Both offices are in the process of assessing the anti-harassment policy (discussed below in Finding 2b), infrastructure, and staffing needs for the evolving program.

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To better manage the SEC's anti-harassment program and depending on organizational responsibility for the program going forward, we recommend that OEEO or the Office of Human Resources:

1. Immediately establish processes, such as developing a firewall to prevent the OEEO Director from participating in the day-to-day functions of the anti-harassment program, in order to avoid any actual or appearance of a conflict of interest.

Management's Response. Management concurred with the recommendation. According to Agency officials, OEEO and the Office of Human Resources will work together to address the OIG's recommendations with respect to the Agency's anti-harassment program as it transitions to the Office of Human Resources and communicate these changes to the workforce as appropriate. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

³⁶ MD-110, Chapter 1, Part IV(C) and VI; U.S. Equal Employment Opportunity Commission, *Model EEO Programs Must Have an Effective Anti-Harassment Program*, Appendix 3, <https://www.eeoc.gov/federal-sector/model-eeo-programs-must-have-effective-anti-harassment-program> (last accessed on January 31, 2023).

2b. Anti-Harassment Program Policies and Procedures Were Unclear and Disregarded

The offices that share responsibility for administering the anti-harassment program (set forth in SECOP 27-1) had differing understandings of their respective roles and responsibilities, risking gaps in coordination and execution of the program. In part because of these disagreements, OEEO assumed additional programmatic responsibility, exceeding its charge during the period we reviewed.

According to SECOP 27-1, OEEO's role and responsibility with respect to the anti-harassment program is limited to conducting intake and educational awareness, when appropriate or when requested by SEC management.³⁷ We determined that OEEO's involvement expanded impermissibly into fact-gathering and investigatory activities. For example, in about 37 percent (ten out of 27) of the anti-harassment program cases we reviewed, the Anti-Harassment Coordinator contacted knowledgeable individuals, including witnesses, collected factual information and evidence, and prepared a report at the conclusion of the process.³⁸ (b)(5)

According to an OEEO official, their practices thereafter more closely adhered to SECOP 27-1.

OEEO personnel acknowledged conducting more than intake, which they justified on the ground that another SEC office did not have the subject matter expertise, bandwidth, support, or interest to conduct their assigned tasks related to the anti-harassment program. OEEO personnel further stated that an SEC office was not able to timely perform the investigatory activities contemplated by SECOP 27-1, leading OEEO's Anti-Harassment Coordinator to assume those responsibilities. Furthermore, staff in the various offices did not agree on where one office's responsibility ended and another's began and, when asked, program officials had various interpretations of terms (such as "intake" and "inquiry") used in SECOP 27-1. Although SECOP 27-1 states that non-OEEO staff conduct fact-gathering and fact-finding investigations, it does not identify who is responsible for the inquiry process when an investigation is not needed. As such, some non-OEEO program officials considered the subsequent gathering of information from knowledgeable individuals to be part of the intake process.³⁹

While the need for timeliness recurs throughout the policy, OEEO's assumption of post-intake responsibility did not guarantee timely processing of allegations. In 11 of the 27 cases we reviewed, OEEO personnel did not initiate an inquiry within the required ten calendar days. Instead, in these cases OEEO personnel took on average about 47 calendar days, ranging between 13 and 117 days, to initiate

³⁷ SECOP 27-1 indicates that "inquiry" includes steps the Agency takes to understand and respond to harassment allegations. This includes documenting information such as the person making the report, individuals who may be involved, the alleged conduct at issue, any initial steps taken in response to the alleged conduct, and any other relevant information. See SECOP 27-1, Section 12.1.3.

³⁸ SECOP 27-1 indicates that the investigator, the Office of Human Resources or the Office of the General Counsel representative, or management representative is required to prepare a report at the conclusion of the investigation, documenting (1) the alleged harassment; (2) the scope of fact-gathering (including witnesses interviewed and documents reviewed); and (3) the investigator's or management's findings. See SECOP 27-1, Section 12.4.3.8.

³⁹ SECOP 27-1 provides examples of knowledgeable individuals, such as the person who reported the conduct, the alleged subject, and the supervisor(s) of the alleged harasser and subject. See SECOP 27-1, Section 12.4.1.

contact with a knowledgeable individual.⁴⁰ Although the Anti-Harassment Coordinator was unable to explain or justify these delays, another OEEO official explained that the Anti-Harassment Coordinator's unavailability was a contributing factor.

Untimely inquiries into alleged harassment may impact management's ability to respond and investigate as appropriate

Arguably, the lack of understanding in the program officials' roles and responsibilities contributed to misunderstandings and noncompliance with SECOP 27-1. The policy emphasizes timeliness indicating that the program goal is to work as swiftly as possible and to prevent potentially offensive conduct from escalating and/or recurring.

Therefore, without a prompt response to alleged harassments, those knowledgeable about the events may become unavailable in the interim or their recollections may be impaired, undermining the SEC's ability to reach fair, thorough, and reliable conclusions. Not only is it in the interest of the complainant and the accused that matters be resolved promptly; unresolved allegations may also affect the functioning of the affected offices.

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To better manage the SEC's anti-harassment program and depending on organizational responsibility for the program going forward, we recommend that OEEO and/or the Office of Human Resources:

2. Coordinate with SEC offices and management who share responsibilities in the anti-harassment program to (a) update the policies and procedures to clarify key terms, roles, and responsibilities; (b) educate program officials on their roles and responsibilities; and (c) ensure established timelines are met.

Management's Response. Management concurred with the recommendation. According to Agency officials, OEEO and the Office of Human Resources will work together to address the OIG's recommendations with respect to the Agency's anti-harassment program as it transitions to the Office of Human Resources and communicate these changes to the workforce as appropriate. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

⁴⁰ In another instance, OEEO made several attempts to contact the reporting individual but was unable to do so because the employee was on extended leave. However, OEEO personnel did not attempt to contact other knowledgeable individuals in a timely manner, resulting in an inquiry process of over 200 days.

2c. Guidance for Processing Conflict-of-Interest Cases Is Needed in the Anti-Harassment Program

During our audit, the SEC's anti-harassment program received three allegations that presented a conflict of interest for OEEO. EEOC MD-110 and SECOP 27-1 state that a conflict of interest, real or perceived, can arise when the responsible management official who is alleged to have engaged in discriminatory conduct is within the equal employment opportunity office or has undue influence over agency personnel (such as the agency head).⁴¹ The EEOC further directs federal agencies to describe their processes for handling conflict-of-interest cases and to establish at least one official outside of the employees' chain of command to receive claims of harassment.⁴² Additionally, the EEOC recommends that agencies define a conflict-of-interest case, create written policies and standard operating procedures for processing such cases, ensure confidentiality with respect to such cases, and create a detailed Memorandum of Understanding (MOU) between agencies who agree to mutually handle each other's conflict-of-interest cases. Although SECOP 27-1 states that conflict-of-interest cases at the SEC will be handled in accordance with EEOC guidelines, the policy does not set forth how to accomplish this.⁴³ During FYs 2021 and 2022, the SEC's anti-harassment program did not have an MOU in place with another agency to handle conflict-of-interest cases.⁴⁴

An OEEO official told us that the Office had not established an MOU for conflict-of-interest cases in the anti-harassment program because, in their view, other SEC management (such as management from the Office of Human Resources) should oversee the development of such an MOU without OEEO's involvement. After a conflict-of-interest case was filed in FY 2023, the Office of Human Resources signed an MOU with another federal agency to handle that particular investigation. Although not intended as a blanket MOU for future conflict-of-interest cases, the January 2023 MOU was used to handle two additional conflict-of-interest cases that arose later that year.

During FYs 2021 and 2022, the SEC did not have an MOU in place to handle harassment allegations that posed a conflict of interest

Without established policies and procedures to address such allegations, the SEC may lose the opportunity to intervene to detect and prevent problems that may interfere with the Agency's operations. Furthermore, an employee who believes that they have experienced harassment by a superior in the office in charge of the anti-harassment program may be understandably reluctant to report that harassment within that office. The staff may be subject to offensive and inappropriate conduct without

⁴¹ MD-110, Chapter 1, Part IV.(B); SECOP 27-1, Section 13.

⁴² U.S. Equal Employment Opportunity Commission, *Best Practices in EEO Conflict Case Management for Federal Agencies*; June 2020 and the EEOC's *Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors*, Section V(C); June 1999.

⁴³ MD-110, Chapter 1, Part IV(B) states that, for example, when an equal employment opportunity complaint alleges that the Equal Employment Office Director or a member of his or her immediate staff discriminated, the Director shall recuse himself or herself and retain a third party to conduct the counseling and investigation and draft the final agency decision for the agency head to issue.

⁴⁴ During the period we reviewed, OEEO had four MOUs for assistance with various matters related to the equal employment opportunity complaint process. However, the MOUs did not cover anti-harassment program cases.

redress. When these issues are raised, handling them in an ad hoc manner can lead to delays and inconsistencies.

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

To better manage the SEC's anti-harassment program and depending on organizational responsibility for the program going forward, we recommend that OEEO and/or the Office of Human Resources:

3. Establish, implement, and communicate policies and procedures to process anti-harassment program cases that present a conflict of interest, and ensure the procedures align with EEOC requirements and guidance for anti-harassment programs.
4. Establish a blanket Memorandum of Understanding with another federal agency and/or enter into other written agreements with other entities to process conflict-of-interest harassment cases in a timely manner.

Management's Response. Management concurred with the recommendations. According to Agency officials, OEEO and the Office of Human Resources will work together to address the OIG's recommendations with respect to the Agency's anti-harassment program as it transitions to the Office of Human Resources and communicate these changes to the workforce as appropriate. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendations will be closed upon completion and verification of the proposed actions.

2d. OEEO Did Not Maintain Complete and Accurate Anti-Harassment Program Documentation

The EEOC's model program requires that agencies have effective and accurate systems to collect, monitor, and analyze harassment allegations.⁴⁵ The SEC's anti-harassment system is comprised of a spreadsheet to record and track harassment allegations and case files to store communications, including summaries and conclusion reports.⁴⁶ Notably, SECOP 27-1 advises anti-harassment program officials to document, to the extent possible, information such as (1) the person who made the report; (2) the individual(s) who may be involved; (3) the alleged conduct at issue; (4) the date(s) of occurrence; (5) the protected equal employment opportunity basis, if applicable; and (6) any initial steps taken in response to the alleged conduct.⁴⁷ Nonetheless, we determined that the SEC's anti-harassment system did not

⁴⁵ MD-715, Section 1, Element E(D)(1).

⁴⁶ Information recorded and tracked includes case file numbers, the name of the OEEO employee who handled the concern, the division/office where the concern originated, the relevant equal employment opportunity basis(es), the date the case was opened, the date OEEO contacted the person who reported the conduct, the date the matter was closed, and the total days open.

⁴⁷ SECOP 27-1 clarifies that, under individual(s) who may be involved, program officials should document: name, position, employment status (*i.e.*, staff or contract personnel), office/work location of the person making the report, the subject(s) of the alleged conduct (if different from the person making the report), the alleged harasser(s), and any witness(es) or others who may have knowledge of the conduct. See SECOP 27-1, Section 12.1.3.1.

completely or accurately capture data reported to OEEEO, and case file documentation was not properly maintained.

Complaint Tracking Information Was Incomplete and Inaccurate. OEEEO's tracking spreadsheet was missing data or contained inaccurate information—including key dates and the equal employment opportunity bases of the allegations—for about 81 percent (22 out of 27) of the cases that we reviewed. When asked, OEEEO personnel stated inconsistencies and errors in documentation were caused by human error and due to a lack of standardized procedures to record information in the anti-harassment system. Additionally, OEEEO does not conduct quality assurance reviews of the tracking data.

Case File Documentation Was Incomplete and Inconsistent. SEC policy requires program officials to document the details of the alleged harassment during the intake process. Program officials rely on this information to decide whether an allegation is covered by the anti-harassment program and to determine next steps (*i.e.*, investigation vs. another form of inquiry).⁴⁸ We found that about 78 percent of the case files that we reviewed (21 out of 27) omitted available data supposed to be captured at the intake stage. In 17 of the 27 case files we reviewed (about 63 percent), OEEEO did not document whether the allegations fell within the program. OEEEO management attributed the omissions and inconsistencies in documentation to OEEEO personnel's lack of understanding of their roles and responsibilities related to the anti-harassment program.

Furthermore, SEC policy dictates that, if 30 days have passed from when a decision was made on how to handle an allegation, all parties involved—reporting personnel, alleged harasser, and intake employee—shall be provided with regular updates on the investigation status. Nineteen of the cases we reviewed exceeded the 30-day timeframe and, in 12 of these 19 cases (about 63 percent), OEEEO did not request, receive, or document investigative updates from SEC management. An OEEEO staff member stated that, once SEC management takes the lead on the allegation, OEEEO's approach is to let SEC management handle the matter.

Finally, we identified an instance in which OEEEO staff did not maintain a case file documenting an allegation of harassment. The allegation was recorded in the tracking spreadsheet; however, the Anti-Harassment Coordinator was unable to locate the corresponding case file and stated that it may have been electronically mislabeled, misfiled, or never created due to the transition between contractor

OEEEO could not locate one case file documenting an allegation of harassment

personnel assisting with the program at the time the allegation was made. The Anti-Harassment Coordinator believes the matter was addressed, as the case involved coordination with individuals outside of OEEEO who would have otherwise notified OEEEO if the matter was still outstanding.

Without complete and accurate anti-harassment program tracking information and case files, including thorough documentation of harassment allegations and determinations that allegations were covered by

⁴⁸ SECOP 27-1 states that program officials determine whether the allegations are covered by the anti-harassment program and, given the circumstances, determine whether an inquiry, investigation, intervention by management, and/or educational awareness is a sufficient response to address the harassment allegation. See SECOP 27-1, Section 12.2.3.

the program, program officials cannot assess what subsequent steps are appropriate, if any, to address the allegations. Further, without updates on investigations and reports from management, OEEO lacks assurance that corrective actions were prompt and appropriate to resolve allegations and prevent them from escalating.⁴⁹

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To better manage the SEC's anti-harassment program and depending on organizational responsibility for the program going forward, we recommend that OEEO and/or the Office of Human Resources

5. Develop and implement policies and procedures to ensure anti-harassment cases are consistently and accurately tracked and documented, including internal review processes.

Management's Response. Management concurred with the recommendation. According to Agency officials, OEEO and the Office of Human Resources will work together to address the OIG's recommendations with respect to the Agency's anti-harassment program as it transitions to the Office of Human Resources and communicate these changes to the workforce as appropriate. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

2e. OEEO Did Not Offer or Conduct Training in Response to Harassment Trends

According to SECOP 27-1, OEEO offers training as part of the SEC's proactive harassment prevention program. Moreover, division or office-wide training may be an appropriate corrective action if, for example, more than one employee in an SEC division or office has engaged in inappropriate conduct, does not know what conduct is appropriate and permissible, or appears unaware of how to properly respond to harassing conduct.⁵⁰

OEEO conducted some trainings in FYs 2021 and 2022; however, the trainings did not cover SEC-specific harassment allegation topics reported in those years.⁵¹ For example, during those years, OEEO received 74 harassment inquiries, 17 of which (about 23 percent) were on the basis of sex. Despite this trend, OEEO trainings provided to the SEC workforce during the same time did not address that topic in its entirety. Furthermore, the training OEEO offered did not address in detail other protected equal employment opportunity bases,

OEEO did not provide training that addressed recurring harassment allegations

⁴⁹ OEEO personnel stated that the SEC is working to acquire a case management application for the anti-harassment program.

⁵⁰ SECOP 27-1, Section 12.5.6; U.S. Equal Employment Opportunity Commission, *Promising Practices for Preventing Harassment*, p. 12, April 20, 2023.

⁵¹ We observed that OEEO provides trainings and/or briefings on the following occasions: (1) when new employees are onboarded; (2) when new supervisors are promoted; (3) when providing mandated No FEAR Act training; and (4) by request from SEC division and office management. Furthermore, in FYs 2021 and 2022, OEEO conducted a Preventing Harassment and Retaliation presentation to some SEC offices.

specifically those that were among the most frequent bases for harassment at the Agency. Lastly, although we saw patterns of repetitive harassment allegations in some SEC offices, our review of anti-harassment program case files did not find evidence that OEEO offered or provided those divisions or offices with educational awareness training responsive to the recurring issues. OEEO personnel explained that, since responsible management officials (not OEEO) determine appropriate corrective action(s), training is not provided unless requested by division or office management.

Without proactive and responsive training that is targeted or tailored to the SEC's current harassment allegations and/or trends, opportunities may be missed to enhance the Agency's compliance efforts and prevent workplace harassment. Furthermore, employees may not recognize and prevent potentially offensive conduct or promptly report such conduct, which could impact the SEC's ability to promote a work environment that is respectful and inclusive and allows employees to deliver maximum performance in support of the SEC's mission.⁵²

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To better manage the SEC's anti-harassment program and depending on organizational responsibility for the program going forward, we recommend that OEEO and/or the Office of Human Resources:

6. Establish, as part of proactive prevention efforts, a process to periodically review reported harassment concerns and coordinate with divisions and offices to determine whether tailored training is needed, and then offer such training agencywide and/or to divisions and offices, as appropriate.

Management's Response. Management concurred with the recommendation. According to Agency officials, OEEO and the Office of Human Resources will work together to address the OIG's recommendations with respect to the Agency's anti-harassment program as it transitions to the Office of Human Resources and communicate these changes to the workforce as appropriate. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

2f. OEEO Did Not Maintain a Privacy Act SORN for the Anti-Harassment Program

The Privacy Act of 1974, as amended (Privacy Act) provides safeguards against the misuse of records federal agencies maintain about individuals and requires agencies to notify the public about each system of records they maintain.⁵³ Specifically, agencies must publish in the Federal Register a System of Records Notice (referred to as a SORN) that identifies the purpose of each system of records, the

⁵² On October 19, 2023, an OEEO official stated that the Office is working to develop harassment prevention training for the entire SEC workforce beginning in FY 2024, as well as updating the Agency's No FEAR Act training, to incorporate more content on harassment prevention and response.

⁵³ P.L. 93-579, 88 Stat. 1896, 5 U.S.C. § 552a (December 31, 1974). A "system of records" is "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5).

individuals covered by information in each system of records, the categories of records maintained about individuals, and the ways in which the information is shared. SORNs also notify the public of their rights and procedures under the Privacy Act for accessing and collecting information maintained by the agency on an individual.

OEEO relied on a government-wide SORN that did not identify or protect information maintained under the SEC's anti-harassment program

Historically, OEEO used the EEOC's government-wide SORN (EEOC/GOVT-1) for the SEC's anti-harassment and equal employment opportunity complaint programs and did not have its own SORN for either program.⁵⁴ However, the EEOC's government-wide SORN does not cover information collected or maintained under the

SEC's anti-harassment program. Without a SORN specific to the anti-harassment program, the SEC was not in compliance with the Privacy Act.⁵⁵ The lack of a SORN means the SEC had not notified those individuals whose information was collected under the SEC's anti-harassment program and those SEC employees serving as custodians of that information of how that information may be legally collected, maintained, and disseminated. Ultimately, this means that sensitive information collected as part of the SEC's anti-harassment program—including the names, positions, and employment status of individuals and witnesses who may be involved, the protected equal employment opportunity bases, and the allegations themselves—was at risk for compromise or misuse.

Shortly after the arrival of the new OEEO Director in February 2022, the Office drafted a SORN for the SEC's anti-harassment program. During our audit, the SORN was approved by the Commission and was posted as a Federal Register Notice on October 31, 2023.

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To better manage the SEC's anti-harassment program, we recommend that, after the program is moved to the Office of Human Resources, the Office of Human Resources:

7. Review and update, as needed, the System of Records Notice for the anti-harassment program to ensure it reflects accurate information and safeguards all records collected under the program.

Management's Response. Management concurred with the recommendation. According to Agency officials, OEEO and the Office of Human Resources will work together to address the OIG's recommendations with respect to the Agency's anti-harassment program as it transitions to the Office of Human Resources and communicate these changes to the workforce as appropriate. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

⁵⁴ EEOC/GOVT-1 Equal Employment Opportunity in the Federal Government Complaint and Appeals Records, 67 FR 49338, July 30, 2002, modified on November 17, 2016.

⁵⁵ 5 U.S.C. § 552a(e)(4).

FINDING 3. THE SEC'S EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROGRAM NEEDS IMPROVEMENT

Federal agencies are prohibited from engaging in discrimination on the basis of race, color, religion, sex, national origin, age, disability, genetic information, parental status, or retaliation.⁵⁶ EEOC regulations implement the federal workforce discrimination laws, and the EEOC's management directives instruct federal agencies on administrative procedures for federal employee or applicant claims of employment discrimination.⁵⁷ Furthermore, EEOC guidance addresses important legal issues and explains how the laws and regulations apply to specific workplace situations.

An SEC employee, former employee, or job applicant who believes they have been discriminated against has the right to file an equal employment opportunity complaint with OEEO. The equal employment opportunity complaint process consists of an informal and a formal stage. The goal of the informal stage is to resolve the dispute(s) through equal employment opportunity counseling or alternative dispute resolution, which OEEO is responsible for offering. If the counseling or alternative dispute resolution does not resolve the dispute(s), the aggrieved individual may decide to proceed with filing a formal complaint with OEEO.

To assess OEEO's management of the equal employment opportunity complaint program, we reviewed 12 informal complaints and 12 formal complaints, representing about 38 percent of all complaint cases initiated in FYs 2021 and 2022. We also assessed aspects of the SEC's equal employment opportunity complaint program, such as policies and procedures, and program effectiveness.

We found the following deficiencies in the SEC's management of the equal employment opportunity complaint program. First, OEEO did not comply with federal and EEOC requirements, management directives, and/or guidance, as we found (a) instances where the written counselor report was not provided to the complainant; (b) a lack of referral to the Anti-Harassment Coordinator of a harassment claim brought during the counseling stage; (c) a missing acknowledgement letter or late acknowledgements to formal complaints of discrimination; (d) a lack of evidence that contracted investigators were properly trained; (e) an untimely equal employment opportunity investigation; and (f) incomplete complaint files. Second, OEEO's informal and formal complaint standard operating procedures were outdated and did not cover all aspects of the equal employment opportunity complaint process. Third, the Agency's use of the SEC's alternative dispute resolution program at the informal complaint stage in FYs 2022 and 2023 was below the EEOC's goal of 50 percent. Fourth, OEEO did not request participant feedback to measure the success of the equal employment opportunity complaint program. Lastly, contrary to EEOC requirements for the equal employment opportunity policy statement, the SEC's FYs 2021 and 2022 policy statements omitted certain required principles.

⁵⁶ The Civil Rights Act of 1964, as amended, P.L. 88-352, 42 U.S.C. § 2000e, et seq. (July 2, 1964); Section 501 of the Rehabilitation Act of 1973, as amended, P.L. 93-112, 29 U.S.C. § 791 (September 26, 1973); the Americans with Disabilities Act Amendments Act of 2008, P.L. 110-325, amending 42 U.S.C. § 12101, et seq. (September 25, 2008); Genetic Information Nondiscrimination Act of 2008, P.L. 110-233, 42 U.S.C. § 2000ff, et seq. (May 21, 2008); Executive Order 13152 (May 2, 2000).

⁵⁷ The primary regulations addressing federal workplace discrimination claims are found in Title 29 of the Code of Federal Regulations (C.F.R.). 29 C.F.R. Part 1614.

These conditions occurred because OEEO's controls over the SEC's equal employment opportunity complaint program were ineffectively designed and/or implemented. The absence of effective controls and program evaluation measures creates a heightened risk of recurring errors and noncompliance in the handling of future complaints.

3a. OEEO Did Not Comply with Equal Employment Opportunity Regulations and EEOC Management Directives and Guidance

In FYs 2021 and 2022, aggrieved SEC employees or applicants filed 39 informal complaints and 25 formal complaints.⁵⁸ We reviewed 12 of each type (or about 38 percent of all complaint cases) by verifying OEEO's compliance with 29 C.F.R. Part 1614, applicable EEOC regulations, management directives, and guidance. As further described below, we observed a half dozen ways in which OEEO did not comply with statutory requirements, EEOC regulations, management directives, and/or guidance when processing informal and formal equal employment opportunity complaints.

Written Counselor Report Was Not Always Provided. Federal regulations state that, when a complainant files a formal complaint, the Equal Employment Opportunity Counselor has 15 days to submit a written counselor report to the agency and the complainant.⁵⁹ The report must include the claim(s) and basis(es) identified by the individual and the actions taken during counseling. However, we identified two instances in which OEEO did not comply with this requirement. In one of the instances, OEEO was unable to demonstrate that the counselor report was submitted to the complainant. In the other instance, the counselor provided the written report to the complainant 21 days after the filing of the formal complaint (or six days beyond the required timeframe). OEEO officials explained that the Equal Employment Opportunity Specialist was on leave when the formal complaint was filed and could not recall the circumstances surrounding the delay in issuing the counselor report. Without a timely counselor report detailing the counseling activities, the Agency and the complainant may not be able to determine whether all required counseling actions were taken, including whether the complainant opted to participate in traditional equal employment opportunity counseling or the Agency's alternative dispute resolution program, where applicable.

Anti-Harassment Coordinator Did Not Receive Notice of Harassment Allegations. According to EEOC MD-715, the equal employment opportunity office is required to notify the Anti-Harassment Coordinator when a complainant alleges harassment based on an equal employment opportunity protected class during the counseling process.⁶⁰ In one instance, we found no record of such notice and OEEO was unable to provide an explanation for the lack of referral to the Anti-Harassment Coordinator.

Further, OEEO has a harassment referral tracker to document equal employment opportunity complaint cases that were referred to the anti-harassment program and other SEC offices; however, this tracker was not used consistently. An OEEO staff member stated that the use of the tracker was not enforced

⁵⁸ This reflects complaints and the status of complaints initiated during our audit scope and may differ from information subsequently reported by OEEO.

⁵⁹ 29 C.F.R. § 1614.105(c); MD-110, Chapter 2, Part IX, *The EEO Counselor's Report*.

⁶⁰ MD-715, Section I, Element C(B)(1)(d).

throughout the Office and no new instructions were provided after the change in OEEO management. However, an OEEO official stated new leadership saw no need for additional direction as the standard for referral was unchanged and the tool remained available to the staff.

Formal Complaints of Discrimination Were Not Always Acknowledged or Timely Acknowledged.

EEOC MD-110 requires agencies to immediately acknowledge, in writing, their receipt of a formal complaint of discrimination.⁶¹ When asked, EEOC officials clarified that the expectation is that the acknowledgement occur at least within two weeks. On average, OEEO provided written acknowledgement within nine days.⁶² However, we found three instances in which OEEO personnel either never acknowledged receipt of a complaint or did not acknowledge it in a timely manner.

In one instance, OEEO personnel did not provide the required acknowledgment letter to the complainant. OEEO took the position that, where the matter is outsourced to a third party due to OEEO's conflict of interest, the third party is responsible for issuing the acknowledgment letter. Although the SEC's MOU states that the third-party agency is responsible for providing all required documents in conflict-of-interest cases, the EEOC clarifies that the requesting agency is responsible for ensuring the third party adheres to the requirements established in the EEOC's management directives.⁶³

Moreover, we identified two cases in which the acknowledgment letter was issued more than 30 days after OEEO received the formal complaint. In the first case, OEEO sent the acknowledgment letter 32 days after receiving the formal complaint. OEEO personnel explained that work demands of an OEEO staff member balancing multiple priorities caused the delay during a period of management turnover. In the second case, the acknowledgement letter was sent 47 days after receiving the formal complaint. The delay occurred because OEEO was unable to timely execute an MOU with a federal agency to which it planned to outsource the matter and instead reverted to an agency with which it had previously entered into a case-specific MOU.⁶⁴

OEEO Lacked Evidence That Contracted Investigators Were Properly Trained. OEEO is required to certify annually to the EEOC that all equal employment opportunity counselors and investigators, whether contractors or SEC employees, are properly trained.⁶⁵ We identified seven instances in which OEEO was unable to provide evidence of training certifications for the SEC's contracted investigators. OEEO personnel justified this by stating that contractors agreed through contractual terms to maintain required certifications when providing investigative services. However, OEEO is responsible for certifying to the EEOC that its contract staff are properly trained. Without requesting and maintaining training certifications for contracted investigators, OEEO lacks assurance that its certifications are accurate.

⁶¹ MD-110, Chapter 5, Part I.

⁶² This average was calculated using 11 of the formal complaint files we reviewed, as OEEO was unable to provide the acknowledgement letter for the remaining complaint.

⁶³ MD-110, Chapter 1, Part IV(C)(1).

⁶⁴ As of July 6, 2023, OEEO had five MOUs with other federal agencies for the processing of conflict-of-interest cases. According to OEEO officials, the Office sought to expand the cadre of federal agencies with which it could work expeditiously to provide maximum flexibility.

⁶⁵ EEOC Form 462, Part III Section B, *Agency and Contract Staff Training*. As defined in 29 C.F.R. § 1614.103(b), all federal agencies and departments are required to file the EEOC Form 462 Report.

Equal Employment Opportunity Investigation Was Untimely. Equal employment opportunity investigations should be completed within 180 days of the date of filing of an individual complaint.⁶⁶ However, we identified an instance in which an investigation exceeded the 180-day timeline by one day but was reported to the EEOC as timely. OEEEO acknowledged that the investigation was untimely and stated that it was because of a due date miscalculation. After this matter was brought to OEEEO's attention, the Office updated the SEC's FY 2023, Quarter 2 No FEAR Act report to reflect the investigation as untimely.

Complaint Files Were Incomplete. EEOC requirements state that equal employment opportunity complaint files must include all documents pertinent to the complaint.⁶⁷ We observed seven instances in which the SEC's equal employment opportunity complaint files were incomplete. Specifically, on five occasions, complaint files were missing the notice of incomplete investigation letter, in one instance the notice of right to file was missing; and in another instance the file was missing the required acknowledgment letter.⁶⁸ OEEEO personnel stated that they inadvertently did not complete or properly file the missing documents.

Noncompliance affects the SEC's ability to administer an effective equal employment opportunity program

Noncompliance with federal regulations, EEOC regulations, management directive and/or guidelines, including inconsistent complaint processes and/or incomplete documentation, affects the SEC's ability to administer a successful and effective equal

employment opportunity program that secures appropriate relief for discrimination.

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

To improve the SEC's equal employment opportunity complaint program, we recommend that OEEEO:

8. Develop and implement a review, monitoring, and validation process to ensure complaints, including those handled by other third-party agencies, are processed and files are maintained in accordance with all statutory and EEOC requirements.
9. Develop and implement a process to ensure harassment allegations raised during the complaint process are tracked and promptly referred to the anti-harassment program.

⁶⁶ 29 C.F.R. § 1614.108(e) and (f) state that a fact-gathering investigation should be completed within the earlier of 180 days after the filing of the last amendment to the complaint or 360 days after the filing of the original complaint. Regardless of amendment or consolidation of complaints, the investigation shall be complete in not more than 360 days.

⁶⁷ MD-110, Chapter 6, Part VIII(A) and (E).

⁶⁸ 29 C.F.R. § 1614.108(f) and (g) states that if the agency is unable to complete the investigation within 180 days, as required, it shall issue a notice of incomplete investigation to the complainant. In cases where a complainant amends their complaint, the agency is provided with additional time to investigate, which is the shorter of 180 days from the date of the amendment, or 360 days from the date of the original complaint. However, the agency is still required to issue the complainant notice of the incomplete investigation due to the time extension resulting from the amendment. Also, 29 C.F.R. § 1614.105(d) states that a notice of right to file a discrimination complaint shall be sent to the complainant within 30 days of the date the complainant contacted the counselor if the matter was not resolved in the pre-complaint phase.

10. Develop and implement a process to ensure contractor training certifications (such as those for contracted counselors, mediators, and investigators) are requested and retained.

Management's Response. Management concurred with the recommendations. According to OEE0's Director, in addition to implementing the OIG's recommendations, OEE0 will implement initiatives under its new strategic plan to timely resolve all equal employment opportunity concerns, maintain neutrality in adjudication of equal employment opportunity complaints, conduct analysis, and educate the workforce. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

3b. Standard Operating Procedures Were Outdated and Incomplete

Although informal and formal complaint standard operating procedures were available during the period we reviewed, the procedures were outdated and did not cover all aspects of the equal employment opportunity complaint process.⁶⁹ Specifically, the SEC did not update its equal employment opportunity counseling standard operating procedures to reflect changes in outsourcing certain Office functions.

The standard operating procedures provided to us state that the SEC strives to have enough collateral-duty equal employment opportunity counselors located throughout the country to handle all counseling matters at the Agency, ideally consisting of six counselors at headquarters and one or two at each regional office. The standard operating procedures were not updated when, in FY 2019, OEE0 outsourced the counseling function. They were likewise not updated when, in March 2022, OEE0 management moved counseling back in-house and consolidated counseling responsibility for headquarters and the regional offices under OEE0's only Equal Employment Opportunity Specialist.

Furthermore, OEE0 has not updated the formal complaint standard operating procedures in more than nine years, and the procedures do not address the processing of conflict-of-interest cases. An OEE0 official explained that changes

*Employee turnover, including
changes in management, delayed
updates to OEE0 procedures*

in personnel, including management officials, and other competing needs, such as transitioning to a new complaint system, delayed updates to the standard operating procedures.

OEE0's policies and procedures must be updated to reflect its current practices. Otherwise, the Office risks errors when processing complaints. OEE0's Director stated that updating policies and procedures was an organizational priority and indicated that the Office drafted new internal standard operating procedures and an operations manual, which will include a chapter on handling conflict-of-interest cases.

⁶⁹ OEE0 procedures include (1) *Standard Operating Procedures EEO Counseling* (revised April 19, 2018); (2) *Standard Operating Procedures Alternative Dispute Resolution* (revised February 2019); (3) *Standard Operating Procedures Formal Complaints* (revised March 13, 2014); and (4) *Standard Operating Procedures for Barrier Analysis* (dated April 2015).

Moreover, the Office is drafting an SEC administrative regulation covering the complaint process and finalizing an SEC administrative regulation for the Agency's alternative dispute resolution program.

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

To improve the SEC's equal employment opportunity complaint program, we recommend that OEEO:

11. Finalize and distribute updated standard operating procedures for all complaint processes and ensure the policies align with OEEO's current processes, to include defining conflict-of-interest cases and steps for processing such cases.
12. Finalize and distribute the SEC administrative regulations for filing complaints of discrimination and the Agency's Conflict-to-Resolution alternative dispute resolution program.

Management's Response. Management concurred with the recommendations. According to OEEO's Director, in addition to implementing the OIG's recommendations, OEEO will implement initiatives under its new strategic plan to timely resolve all equal employment opportunity concerns, maintain neutrality in adjudication of equal employment opportunity complaints, conduct analysis, and educate the workforce. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

3c. Participation in the SEC's Alternative Dispute Resolution Program Has Not Met the Federal Goal

The EEOC encourages the use of alternative dispute resolution to offer parties to discrimination and harassment allegations an opportunity for an early, informal resolution of disputes in a mutually satisfactory fashion.⁷⁰ Federal regulations require agencies to establish or make available an alternative dispute resolution program during both the informal and formal complaint processes.⁷¹ In fact, an agency should aspire to use alternative dispute resolution in 50 percent of its informal complaints.⁷²

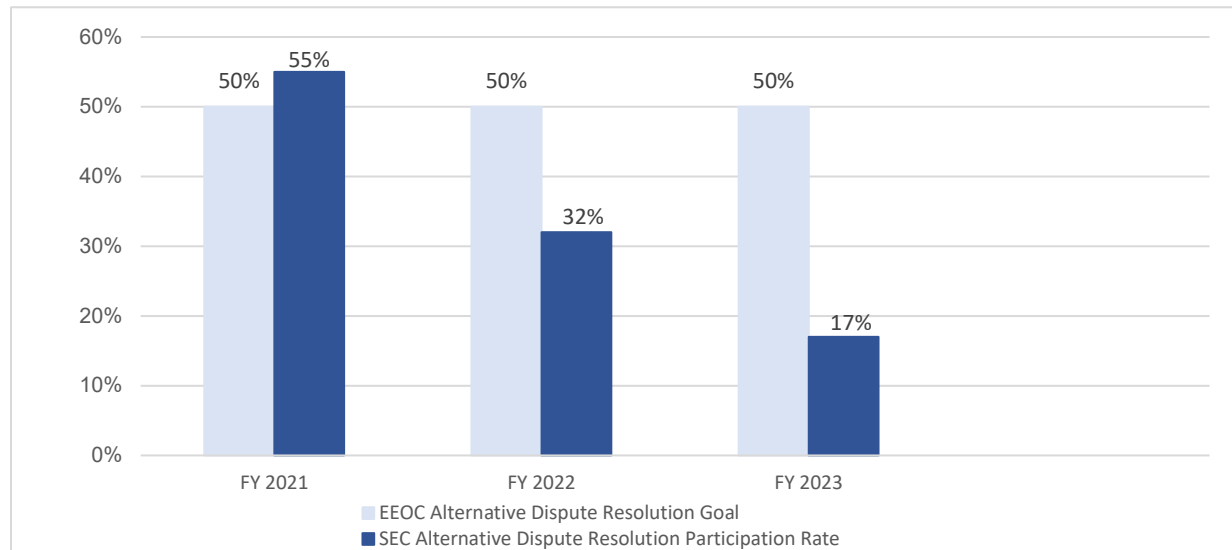
Use of the SEC's alternative dispute resolution program at the informal complaint stage has declined in recent years and was below the EEOC's goal of 50 percent for FY 2022 and FY 2023. See Figure 2. As discussed in the background section of this report, the EEOC's most recent technical review of OEEO also cited the SEC's decrease in alternative dispute resolution in FY 2022 as a source of concern.

⁷⁰ MD-110, Chapter 3, Part I.

⁷¹ 29.C.F.R § 1614.102(b)(2).

⁷² U.S. Equal Employment Opportunity Commission, *ADR Report: Part I – Alternative Dispute Resolution FY 2003 – FY 2004* (September 2005).

Figure 2. SEC Alternative Dispute Resolution Participation Rate^a vs. EEOC Goal, FY 2021 to FY 2023



Source: OIG-generated based on OEEO’s Complaint Dashboard through September 30, 2023.

^a The participation rate represents alternative dispute resolution conducted at the informal complaint stage based on total counseling cases. We rounded the rates presented to the nearest percentage point.

OEEO staff told us that they attributed the limited use of alternative dispute resolution to their management’s preference for counseling, which can be completed more quickly. OEEO management reported that they offer alternative dispute resolution whenever management’s experience and analysis of a case suggests that it would be useful. OEEO provided a similar response to the EEOC, noting that, among other things, written materials provided during equal employment opportunity counseling explain the option of mediation.

In its May 9, 2023, response to the EEOC, OEEO reported that the SEC’s alternative dispute resolution program was being revised under the leadership of an Alternative Dispute Resolution Program Manager—a senior attorney who is also an experienced mediator—expressing the expectation that the redesign and new training would encourage higher participation in mediation. Since that time, however, the Alternative Dispute Resolution Program Manager retired and has not been replaced.⁷³

The program manager responsible for revising the SEC’s alternative dispute resolution program retired and has not been replaced

Without OEEO leveraging circumstances in which alternative dispute resolution could provide a successful outcome, the SEC may miss opportunities to resolve disputes cooperatively, in a manner satisfactory to both parties, without formal, adversarial proceedings.

⁷³ On November 1, 2023, an OEEO official informed us that the Conflict Resolution Program Manager interview process was placed on hold due to an SEC-wide hiring freeze.

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To improve the SEC's equal employment opportunity complaint program, we recommend that OEE0:

13. Reassess the SEC's equal employment opportunity alternative dispute resolution program to (a) identify and leverage circumstances in which alternative dispute resolution is most successful during both informal and formal complaint processes; and (b) refresh and implement training for SEC managers and employees to encourage higher participation in the Agency's alternative dispute resolution program.

Management's Response. Management concurred with the recommendation. According to OEE0's Director, in addition to implementing the OIG's recommendations, OEE0 will implement initiatives under its new strategic plan to timely resolve all equal employment opportunity concerns, maintain neutrality in adjudication of equal employment opportunity complaints, conduct analysis, and educate the workforce. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

3d. Participant Feedback Is Needed to Assess the Equal Employment Opportunity Complaint Program Effectiveness

The EEOC requires agencies to annually assess whether their equal employment opportunity complaint program complies with federal guidelines.⁷⁴ According to OEE0 management, the Office measures the effectiveness of its programs by completing the MD-715 annual self-assessment. We obtained and reviewed OEE0's self-assessments for FYs 2021 and 2022 and concluded that OEE0 could better assess its complaint process efficacy by soliciting feedback from equal employment opportunity complaint program participants.

Participant feedback is a critical tool for evaluating the success of an equal employment opportunity program.⁷⁵ In FYs 2021 and 2022, OEE0 had, but did not use, forms to survey participants in its counseling and alternative resolution programs. OEE0 attributed the lack of survey distribution to an oversight and changes in key employees in the alternative resolution program.

In March 2023, OEE0 backfilled a vacant Industrial/Organizational Psychologist position, whose responsibilities include developing new surveys for use after counseling, to assess alternative dispute

⁷⁴ EEOC's *Instructions to Federal Agencies for MD-715*, Section I, *The Model EEO Program*.

⁷⁵ U.S. Equal Employment Opportunity Commission, *An Evaluation of the Equal Employment Opportunity Commission Mediation Program*, Section II (B), September 20, 2000 and OEE0's counseling and mediation evaluation forms.

resolution participation, and post-investigation. As of November 1, 2023, OEEO was developing new internal surveys to request participant feedback of the SEC's equal employment opportunity programs.⁷⁶

Without surveying program participants or otherwise obtaining feedback on OEEO's informal counseling, alternative dispute resolution, and formal complaint processes, OEEO may miss opportunities to improve the SEC's equal employment opportunity program.⁷⁷

OEEO did not solicit participant feedback for the equal employment opportunity complaint program in FYs 2021 and 2022

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To improve the SEC's equal employment opportunity complaint program, we recommend that OEEO:

14. Implement the use of participant surveys and/or other methods to solicit feedback from individuals who participated in the equal employee opportunity complaint program.

Management's Response. Management concurred with the recommendation. According to OEEO's Director, in addition to implementing the OIG's recommendations, OEEO will implement initiatives under its new strategic plan to timely resolve all equal employment opportunity concerns, maintain neutrality in adjudication of equal employment opportunity complaints, conduct analysis, and educate the workforce. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

3e. The SEC's Annual Equal Employment Opportunity Policy Statements Did Not Include All Required Principles

The EEOC requires agencies to issue an annual policy statement of their commitment to five equal opportunity principles: (a) equal employment opportunity for all employees and applicants for employment, regardless of their race, religion, color, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, genetic information, or disability; (b) all employees will have the freedom to compete on a fair and level playing field with equal opportunity for competition; (c) equal

The SEC Chair issues an annual statement to declare and demonstrate a commitment to EEOC principles

employment opportunity covers all personnel/employment programs, management practices, and decisions, including, but not limited to, recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation; (d) workplace

⁷⁶ As of September 5, 2023, OEEO's contract mediators were required to send feedback surveys to alternative dispute resolution participants.

⁷⁷ As of September 5, 2023, OEEO's contract mediators were required to send feedback surveys to alternative dispute resolution participants.

harassment will not be tolerated and the agency will correct the harassing conduct before it becomes severe or pervasive; and (e) reprisal against one who engaged in protected activity will not be tolerated, and the agency supports the rights of all employees to exercise their rights under the civil rights statutes.⁷⁸

The SEC's statements for FYs 2021 and 2022 omitted certain elements. Specifically, the FY 2021 statement did not state that all employees will have the freedom to compete on a fair and level playing field with equal opportunity, and the FY 2022 statement did not explain that equal employment opportunity applies to all personnel actions, decisions, and conditions, including, but not limited to, recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation.

The EEOC's technical assistance review in February 2023 reached similar conclusions. When notified of these deficiencies, an OEEEO official stated that they were unaware that language was missing from the SEC's statements and sought clarification. OEEEO thereafter acknowledged the need to update the SEC's equal employment opportunity policy statement and included the missing language in the SEC's FY 2023 statement.⁷⁹

The SEC's annual equal employment opportunity policy statement, issued by the Chair, expresses the senior leadership's commitment to a workplace that is diverse, inclusive, and fosters a sense of belonging, where everyone enjoys equality of employment opportunities. To set an appropriate tone at the top, that statement should include every one of the principles identified as important by the EEOC.

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To improve the SEC's equal employment opportunity complaint program, we recommend that OEEEO:

15. Develop and implement a validation process to ensure all required principles are included in future equal employment opportunity policy statements.

Management's Response. Management concurred with the recommendation. According to OEEEO's Director, in addition to implementing the OIG's recommendations, OEEEO will implement initiatives under its new strategic plan to timely resolve all equal employment opportunity concerns, maintain neutrality in adjudication of equal employment opportunity complaints, conduct analysis, and educate the workforce. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

⁷⁸ MD-715, Section 1, Element A(A)(2).

⁷⁹ On October 19, 2023, the SEC Chair issued the Agency's FY 2023 Equal Employment Opportunity Policy Statement.

FINDING 4. THE SEC DID NOT TIMELY CONDUCT EQUAL EMPLOYMENT OPPORTUNITY TRAINING

To strengthen agency accountability for nondiscrimination and whistleblower protection laws, the No FEAR Act requires biennial training for federal employees in the rights and remedies available to them.⁸⁰ The SEC's No Fear Act training was delayed in FY 2022 and took place 28 months after the prior cycle, four months beyond the prescribed two-year period. The Office of Human Resources attributed the delay to personnel turnover. However, an OEEO official attributed it, at least in part, to OEEO's failure to request the training, due to an erroneous belief that the Office of Human Resources would provide it automatically through the Agency's training platform. The Office of Human Resources and OEEO told us that they now intend to assign No FEAR Act training to the SEC workforce every 18 months to be sure of meeting the two-year requirement.

Training informs employees of their rights and educates supervisors on legal requirements and prohibitions

OEEO likewise did not meet its goal of providing individualized briefings to new supervisors within three months of their entrance on duty. Although the SEC onboarded or promoted 232 new supervisors in FYs 2021 and 2022, as of June 2, 2023, more than half of them had not received the expected briefing. According

to OEEO staff, the briefings were not provided due to competing OEEO priorities, a lack of personnel to deliver the briefings, absence of responses from new supervisors, and/or separation of supervisors from the SEC at the time of outreach. OEEO is considering revising a module in the Agency's new supervisor training to integrate these subjects.

Without timely training, SEC employees may not be aware of their rights, and supervisors—who play a key role in the success of the SEC's equal employment opportunity program and are responsible for compliance with applicable laws, regulations, and policies—may unknowingly engage in unlawful behavior or improperly act upon or respond to an employee's equal employment opportunity concern.

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

To support equal employment efforts at the SEC, we recommend that OEEO:

16. Establish a process to timely coordinate with the Office of Human Resources to ensure No FEAR Act training is assigned and available to the SEC workforce no less than every two years.
17. Evaluate available resources and establish a plan to prioritize new supervisor briefings such that briefings are provided to all new SEC supervisors in a timely manner.

Management's Response. Management concurred with the recommendations. According to OEEO's Director, in addition to implementing the OIG's recommendations, OEEO will implement initiatives under its new strategic plan to timely resolve all equal employment opportunity

⁸⁰ P.L. 116-283, Title XI, Subtitle B (January 1, 2021) and 5 C.F.R. § 724.203(d).

concerns, maintain neutrality in adjudication of equal employment opportunity complaints, conduct analysis, and educate the workforce. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Other Matters of Interest

During our audit, we identified challenges relating to OEEO's work environment and its impact on the Office's operational effectiveness. Although resolution of these matters is beyond the scope of our work, we believe that these issues warrant management's attention.

As previously mentioned, OEEO experienced turnover in a number of positions during FYs 2021 and 2022, including at the management level, which affected priorities and strategic direction. In addition, during our audit (November 2022 to December 2023), four of OEEO's ten employees either retired or transferred to other SEC offices. OEEO personnel told us that they experienced (1) a lack of communication; (2) unwillingness of staff to assist peers with mission-related work; (3) a lack of management receptiveness to staff feedback, resulting in a loss of institutional knowledge; (4) employee burnout; (5) a culture of little to no trust; (6) micromanagement; (7) low job satisfaction; and (8) a lack of cohesion among OEEO management, among other things.

We observed that current management, in place since February and September 2022, has made efforts to transform the organization by drafting new policies and procedures, defining employees' roles and responsibilities, relying on in-house expertise versus contractors for complaint processing, and filling vacancies. Implementing large-scale change management is not a simple endeavor, and the "people" element should remain an Office priority, as employees define the organization's culture, drive its performance, and embody its knowledge base. Furthermore, as the U.S. Government Accountability Office (GAO) has reported, the key to a successful transformation is to implement strategies to help individuals maximize their full potential in the new organization, while simultaneously managing the risk of reduced productivity and effectiveness that often occurs as a result of the changes.⁸¹

Significant employee turnover, as OEEO has experienced, can result in decreased productivity or efficiency, which in turn can result in decreased employee morale. As discussed in the Finding sections of this report, some of the issues we identified were caused by attempts to balance multiple and often competing priorities, complicated by difficulties moving forward when individual employees were unavailable. As Table 2 in Appendix III shows, at the time of our fieldwork, OEEO had one Equal Employment Opportunity Specialist responsible for all equal employment opportunity counseling, one attorney responsible for conducting and producing fact-gathering investigations, and one employee administering the anti-harassment program. Although others informally supported these key roles from time to time, the lack of alternate employees contributed to human errors, delays, and additional pressure on personnel. Lengthy vacancies, which sometimes exceeded a year, may have played a role in employees' concerns, and created gaps in specialized knowledge, processes, and tasks, as well as in OEEO's coordination with other SEC offices.

Although we are not making recommendations related to these issues, we believe management should address them, including a focus on employee retention and creating contingency plans that assign

⁸¹ U.S. Government Accountability Office, *RESULTS-ORIENTED CULTURES Implementation Steps to Assist Mergers and Organizational Transformations* (GAO-03-669, July 2003).

responsibilities if a key role in OEE0 is vacated without advanced notice.⁸² Furthermore, we note that management is responsible for evaluating pressure on personnel to help personnel fulfill their assigned responsibilities in accordance with applicable standards of performance and conduct.⁸³ We encourage management to assess OEE0's organizational culture and determine what opportunities and resources may assist in its organizational transformation efforts.

⁸² U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Principle 3, Organizational Structure (3.03) and Principle 4, Demonstrate Commitment to Competence (4.08).

⁸³ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Principle 5, Enforce Accountability (5.08).

Appendix I. Scope and Methodology

We conducted this performance audit from November 2022 to January 2024, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives and Scope

The overall objective of this audit was to assess OEEO's operations and controls in support of the SEC's equal employment opportunity program—including coordination and collaboration with other SEC offices and management—to determine whether OEEO complies with applicable laws, regulations, guidelines, and reporting requirements and effectively supports the Agency's strategic goals. Specifically, we:

- Reviewed OEEO's Compliance and Resolution Program, including how complaints are received and addressed, and whether they are processed within the required timeframes;
- Assessed OEEO's Program for Preventing Harassment, including the intake and reporting processes and the Office's involvement in harassment prevention education; and
- Reviewed the OEEO Barrier Analysis Program's compliance with applicable laws, regulations, and guidelines, to include barrier analysis and reporting efforts.

The audit scope period included OEEO's activities between FY 2021 and FY 2022 (that is, October 1, 2020, through September 30, 2022). We also monitored for updates in OEEO policies, procedures, and processes. We did not review matters that involved OIG personnel or investigations.

Methodology

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

- Interviewed SEC personnel from OEEO, the Office of Human Resources, the Office of the General Counsel, and the offices of Minority and Women Inclusion and Information Technology.
- Interviewed EEOC officials to gain an understanding of agency roles and responsibilities with respect to managing an equal employment opportunity complaint program.
- Reviewed applicable federal regulations, EEOC regulation, management directives, and guidelines, and Agency and OEEO policies and procedures.
- Obtained access to and conducted walkthroughs of OEEO's system for case management and complaint tracking, as well as the anti-harassment system.

We also performed tests and assessments using judgmental or non-statistical samples of complaint and anti-harassment data. Specifically, we reviewed a judgmental sample of 12 of 39 informal complaints and 12 of 25 formal complaints initiated during our scope period. We obtained these populations from reports generated by OEEO's system for case management and complaint tracking, and we tested attributes to determine whether OEEO complied with applicable laws, regulations, and guidelines when handling pre-

complaints and formal complaints. We also reviewed a judgmental sample of 27 of 73 harassment allegations received by OEEO during our scope period.⁸⁴ We obtained the population of allegations from the anti-harassment system, and we tested attributes to determine whether OEEO complied with applicable policies, procedures, and guidelines when handling allegations of harassment.

Although these samples were non-statistical and our results cannot be projected to the total population for each test performed, the evidence we gathered helped support our findings, conclusions, and recommendations.

Internal Controls

We identified and assessed internal controls, applicable internal control components, and underlying principles significant to our objectives, as described below.

Control Environment. We interviewed OEEO management and personnel to gain an understanding of the control environment and assessed the functioning of key controls. As Findings 2 and 3 describe, we found deficiencies in the design and functioning of controls related to the SEC's anti-harassment program and the equal employment opportunity complaint program. We also identified deficiencies that may impact OEEO's operational effectiveness as noted in the Other Matters of Interest.

Risk Assessment. We obtained and reviewed OEEO's FY 2021 and FY 2022 risk control matrices, which identified risks and controls related to the equal employment opportunity process, the anti-harassment program, training and reporting requirements, and security of personally identifiable information. We assessed risks identified by the SEC and reviewed a system privacy plan, security assessment report, system security plan, system authorization to operate, and other information systems control documents for OEEO's system for case management and complaint tracking. We also interviewed SEC personnel to identify risks related to the Agency's equal employment opportunity complaint and anti-harassment programs.

Control Activities. We reviewed applicable federal laws, regulations, and guidance; SEC policies and procedures; and OEEO risk and control matrices to identify and test key control activities. As Findings 2 and 3 describe, we found deficiencies in the design and functioning of controls related to the SEC's equal employment opportunity complaint and anti-harassment programs. We also tested information systems access controls to ensure personally identifiable information was safeguarded.

Information and Communication. We met with personnel from other SEC offices to evaluate OEEO's coordination and collaboration efforts and reviewed numerous relevant SEC communications to employees, including annual policy statements, frequently asked questions, an information portal on the SEC's intranet, and information communicated via briefings and training. As Findings 2, 3, and 4 describe, there are opportunities to improve OEEO's communication with anti-harassment program officials, other SEC offices, all SEC employees, and newly appointed managers who play a key role in the Agency's equal employment opportunity complaint program.

⁸⁴ Between FYs 2021 and 2022, OEEO received 74 harassment allegations. One of those allegations related to OIG personnel. As a result, we removed the allegation from the population and selected 29 other allegations to review. We later determined that two of the 29 allegations we selected for review related to OIG investigations; therefore, we excluded those two allegations from our review.

Monitoring. We reviewed OEEO's internal control documentation, policies and procedures, and monitoring activities (including self-assessments and program reviews conducted by the EEOC) related to (1) the three OEEO programs we reviewed, and (2) OEEO's oversight of internal and external vendors. As Finding 3 discusses, there are opportunities to strengthen OEEO's monitoring activities to ensure complaints are processed and files are maintained in accordance with statutory requirements and EEOC guidance. We also identified opportunities for improved monitoring of OEEO's programs and operations through feedback from equal employment opportunity complaint program participants.

Based on the work performed, as noted in this report, we identified areas of potential improvement related to internal control deficiencies that were significant within the context of our audit objectives. Our recommendations, if implemented, should help OEEO better manage the anti-harassment program, comply with statutory requirements and guidance applicable to the equal employment opportunity complaint program, and implement equal employment opportunity training requirements.

Data Reliability

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

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

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

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

To address our objectives, we relied on computer-processed data from OEEO's system for case management and complaint tracking and anti-harassment data on OEEO's shared drive. Specifically, we:

- Interviewed knowledgeable OEEO and Office of Information Technology personnel responsible for entering data, managing access controls, and generating reports from relevant systems.
- Reviewed relevant system user manuals and associated policies.
- Reviewed the universe of informal and formal complaints and harassment allegations and tested for missing, duplicative, or irregular data or values.
- Tested a judgmental sample of informal and formal complaints and harassment allegations, tracing each to source documents to verify the completeness and accuracy of the data.

Based on the work we performed, we found the data sufficiently reliable for the purpose of this audit.

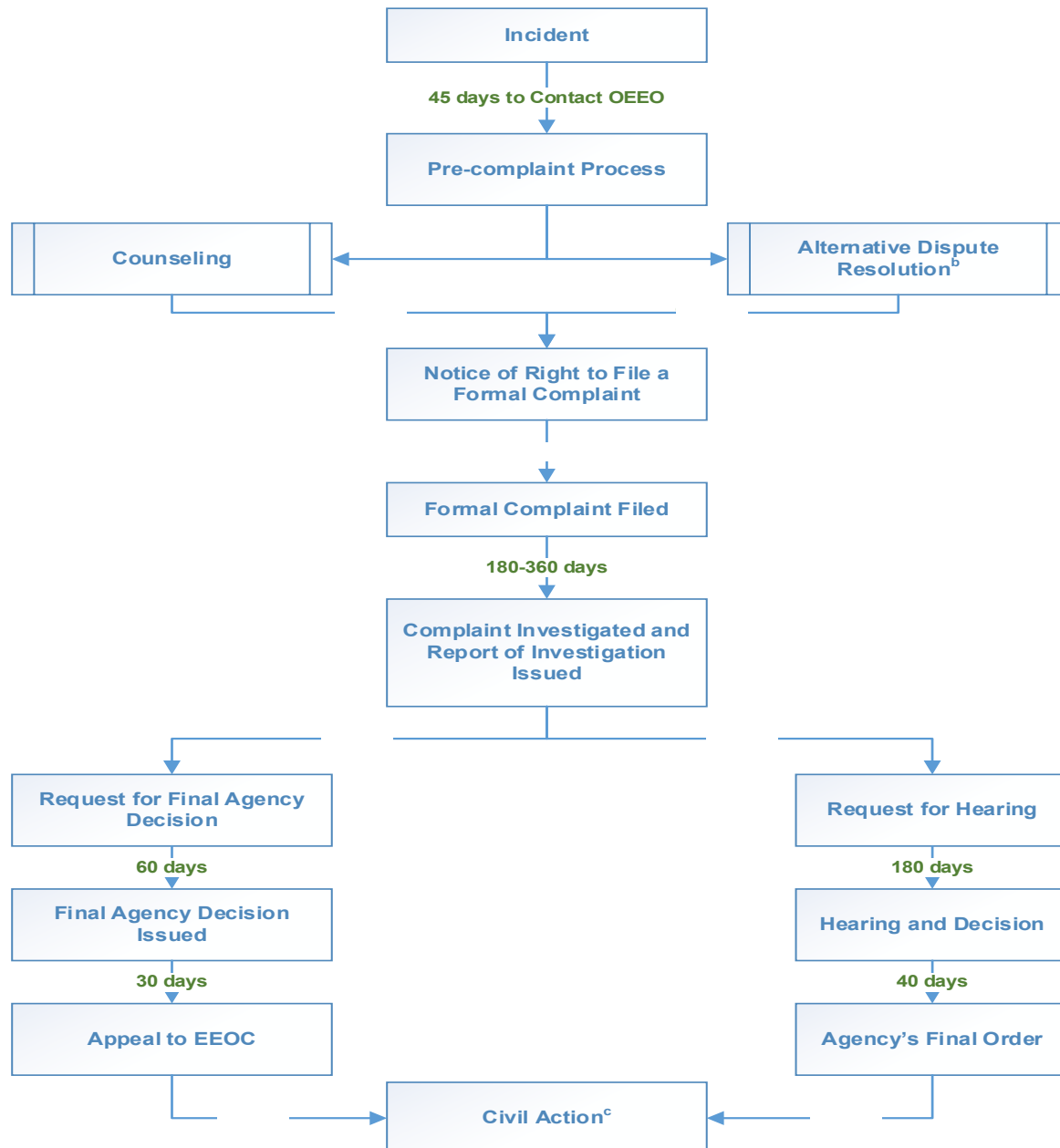
Prior Coverage

In 1996, the SEC OIG issued *Equal Employment Opportunity Office* (Report No. 224; November 2, 1996). GAO reports related to equal employment opportunity are available on [GAO's website](#).

Appendix II. Equal Employment Opportunity Complaint Process

This appendix summarizes the equal employment opportunity complaint process and includes required timeframes (in calendar days) per 29 C.F.R. Part 1614.

Figure 3. Equal Employment Opportunity Complaint Process and Timeline^a



Source: OIG-generated based on OEEEO complaint process flow chart.

^a This figure is not all inclusive. For related and alternative processes for addressing complaints, refer to 29 C.F.R. Part 1614, Subpart C, Related Processes.

^b Alternative dispute resolution is available at all stages of the complaint process.

^c Filing a civil action terminates EEOC processing of an appeal but not all cases result in a civil action.

Appendix III. OEEO Organizational Summary

This appendix summarizes the OEEO organization during FYs 2021 and 2022 and shows the status of its 13 full-time positions (three management and ten staff) as of November 27, 2023.

Table 2. OEEO Organizational Structure, FYs 2021 and 2022

OEEO Group	Position	Status (as of 11/27/23)	Responsibilities ^e
Management	Director ^a	Filled	Plans and establishes policy for the SEC’s equal employment opportunity program and directs, coordinates, controls, and evaluates the performance of OEEO staff operations.
	Deputy Director	Filled	Assists the Director in managing OEEO’s day-to-day operations and acts as an expert legal resource with respect to equal employment opportunity matters, providing authoritative legal advice and assistance.
	Branch Chief ^a	Filled	Responsible for execution of OEEO’s equal employment opportunity complaint program and anti-harassment program.
Equal Employment Opportunity Complaint Program	Attorney ^b	Vacant	Conducts formal investigations of complaints and serves as a legal adviser, rendering advice, counsel, and opinions to Agency officials regarding situations requiring an advanced level of experience and specialized knowledge of applicable law, regulations, policies, and precedent-setting cases.
	Attorney	Vacant	
	Equal Employment Opportunity Specialist	Filled	Conducts counseling and serves as a liaison for the SEC’s alternative dispute resolution program.
Anti-Harassment Program	Attorney	Filled	Serves as the Anti-Harassment Coordinator and conducts intake and training for that program.
Barrier Analysis Program	Senior Counsel	Filled	Conducts barrier analysis tasks and tasks in support of the SEC’s MD-715 report. Assumed some responsibilities of the Senior Counsel - Law, Education, and Policy when the individual who held that position retired.
	Industrial/Organizational Psychologist ^a	Filled	Designs, conducts, or directs studies in support of the SEC’s equal employment opportunity programs and operations.
	Management and Program Analyst	Filled	Designs research, including statistical methodologies, and oversees contractors for barrier analysis projects.
Program Support and Reporting	Management and Program Analyst	Filled	Manages compliance reporting and assumed some responsibilities of another Management and Program Analyst position when the individual who held that position transferred to another SEC office.
	Management and Program Analyst ^c	Vacant	Serves as a contracting officer’s representative and provides management and program analyses for OEEO program areas, including administrative services.
	Senior Counsel - Law, Education, and Policy ^d	Vacant	Responsible for internal and external policy, serves as a consultant on compliance-related matters, and is the OEEO record retention point of contact. Also serves as the Alternative Dispute Resolution Program Manager, assists with equal employment opportunity one-on-one briefings, and occasionally assists with the anti-harassment program.

Source: *OIG-generated based on OEEO’s organizational chart, performance work plans, and interviews with OEEO personnel.*

^a While these positions were filled as of August 2023, they were vacant at some point during FY 2021 and/or FY 2022.

^b This attorney position became vacant at the end of 2023.

^c This position was repurposed to an equal employment opportunity attorney position in July 2023.

^d OEEO plans to repurpose this position to a conflict resolution program manager position in the future.

^e This table lists the primary responsibilities of each position. It is not reflective of all responsibilities.

Appendix IV. Management Comments



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

MEMORANDUM

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

From: Rita M. Sampson, Director, Office of Equal Employment Opportunity
Mark Reinhold, Chief Human Capital Officer Reinhold, Mark
Mark

Date: January 19, 2024

Subject: Management Response to Draft OIG Report, *Opportunities Exist to Strengthen the SEC's Office of Equal Employment Opportunity Programs and Operations*

RITA
SAMPSON
Digitally signed by
RITA SAMPSON
Date: 2024.01.19
08:46:37 -0500

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Reinhold, Mark
Date: 2024.01.19
09:15:06 -0500

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft audit report relating to the Office of Equal Employment Opportunity (OEEO) program, covering Fiscal Years 2021 and 2022 (October 1, 2020, through September 30, 2022). Your report identifies (17) recommendations for further improvement by OEEO and/or the Office of Human Resources (OHR), with which we concur.

The SEC is committed to maintaining policies, programs, and practices to advance equal employment opportunity (EEO). The SEC's EEO program is strengthened by compliance with the law and U.S. Equal Employment Opportunity Commission (EEOC) regulations and directives. We therefore value the OIG's perspectives and concur with its recommendations. In addition to implementing the OIG recommendations, OEEO will implement initiatives under its new strategic plan to timely resolve all EEO concerns, maintain neutrality in adjudication of EEO complaints, conduct analysis, and educate the workforce. In addition, OEEO and OHR will work together to address OIG's recommendations with respect to the agency's anti-harassment program as it transitions to OHR and communicate these changes to the workforce as appropriate.

We appreciate the professionalism and courtesies provided by the OIG during this audit, and we look forward to working with your office to address the areas noted in your report.

cc: Ken Johnson, Chief Operating Officer
Shelly Luisi, Chief Risk Officer

Major Contributors to the Report

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Steve Encomienda, Auditor

Leann Harrier, Assistant Counsel to the Inspector General

Comments and Suggestions

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

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