

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



THE OFFICE OF INSPECTOR GENERAL
U.S. SECURITIES AND EXCHANGE COMMISSION

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Abbreviations

AI	artificial intelligence
CISA	Cybersecurity and Infrastructure Security Agency
COVID-19	Coronavirus Disease 2019
DLP	data loss prevention
Dodd-Frank	Dodd-Frank Wall Street Reform and Consumer Protection Act
Enforcement	Division of Enforcement
FISMA	Federal Information Security Modernization Act of 2014
FSOC	Financial Stability Oversight Council
FY	fiscal year
GAO	U.S. Government Accountability Office
IT	information technology
Kearney	Kearney & Company, P.C.
LH	labor-hour
NAICS	North American Industry Classification System
NTEU	National Treasury Employees Union
OA	Office of Acquisitions
OHR	Office of Human Resources
OIG	Office of Inspector General
OMB	Office of Management and Budget
OMWI	Office of Minority and Women Inclusion
OWB	Office of the Whistleblower
SEC, agency, or Commission	U.S. Securities and Exchange Commission
T&M	time and materials (contract)
TCR	tips, complaints, and referrals

Introduction

The Reports Consolidation Act of 2000 requires the U.S. Securities and Exchange Commission (SEC), Office of Inspector General (OIG), to issue a report summarizing what we determine to be the most serious management and performance challenges facing the agency. The SEC is required to include this report in its annual agency financial report. This report represents the SEC OIG's independent perspective on the top management challenges facing the SEC in fiscal year 2024 and beyond.

To identify this year's top management challenges, we reviewed our Fiscal Year (FY) 2023 Top Management Challenges report and related progress made by the SEC, as well as the SEC's strategic plan and objectives. We also considered our recent oversight work (audits, evaluations, and investigations); general knowledge of the SEC's operations; and the reports of others, including the U.S. Government Accountability Office (GAO). Further, we conducted significant outreach to the SEC's leadership team and senior officials across the agency and considered their comments on a draft version of this report to leverage and incorporate their knowledge, experience, and perspectives regarding the SEC's progress to date and the challenges that the agency continues to face. Not surprisingly, some of the SEC's top management and performance challenges are shared by other federal agencies and institutions.

Similar to prior years, the SEC's top management and performance challenges are:

- Meeting Regulatory and Oversight Responsibilities
- Recruiting and Retaining a Skilled Workforce
- Protecting Systems and Data
- Synopsis and Trends in Contracting

The SEC OIG is committed to providing independent, objective, and comprehensive oversight of the SEC's programs and operations, to provide transparency for the public and to assist agency management in meeting the challenges to fulfill the SEC's mission on behalf of the American people. In FY 2024, we will continue to conduct work that focuses on the SEC's ongoing efforts to address these and other challenges.

Challenge

Meeting Regulatory and Oversight Responsibilities

The U.S. Securities and Exchange Commission (SEC, agency, or Commission) is charged with protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. This includes regulating and overseeing more than \$100 trillion in annual securities trading in the nation's equity markets, as well as the activities of more than 29,000 registered entities, including investment advisers, mutual funds, exchange-traded funds, broker-dealers, and transfer agents; ten credit rating agencies; and 24 national securities exchanges. The SEC also oversees the Public Company Accounting Oversight Board, the Financial Industry Regulatory Authority, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, and the Financial Accounting Standards Board.

With its three-part mission, the SEC plays an integral role in the nation's economy. Healthy capital markets support economic growth. And with 61 percent of Americans owning stocks or mutual funds, robust equity markets and investor protection are critical to the financial security of most individual Americans. It is essential that the SEC performs well and operates efficiently and with integrity. Agency management and the OIG recognize that the SEC's ability to fulfill its mission becomes more challenging as the markets, investment products, and participants within the SEC's purview increase in size, number, and complexity. We describe below the continuing challenges of (1) managing resources while meeting the SEC's regulatory agenda; (2) keeping pace with changing markets and innovations; and (3) leveraging technology and analytics to meet mission requirements and respond to significant developments and trends.

Managing Resources While Meeting the Regulatory Agenda

Last year, we identified challenges and risks posed by the SEC's substantial rulemaking agenda. Rulemaking is the public notice and comment process by which the SEC develops and promulgates regulations that govern the securities markets, and it is a key component in the agency's three-part mission. The SEC's strategic plan calls for developing and implementing "a robust regulatory framework that keeps pace with evolving markets, business models, and technologies."¹ Rulemaking typically involves developing a proposal to address a perceived issue, including analyzing the proposed rule's potential benefits and costs; publishing the proposal for public comment; considering the comments received; and finalizing agency action. Depending on the rulemaking, this work is largely accomplished by managers and staff from the divisions of Trading and Markets, Investment Management, Corporation Finance, and Economic and Risk Analysis, as well as personnel from the Office of the General Counsel, the Office of the Secretary, and the

Chair's policy team. Commissioners, supported by their staff, vote on placing proposed rules before the public for comment and on the adoption of final rules.

Our October 2022 report on the SEC's management and performance challenges² identified challenges and risks posed by the SEC's rulemaking agenda. By the end of 2022, the SEC had proposed 27 new rules, one of which was adopted.³ As of September 2023, the SEC finalized 11 rules and proposed 12 more, most with planned final action dates between October 2023 and April 2024.

At the start of the current Chair's tenure, 12 rules mandated by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and the Holding Foreign Companies Accountable Act had not yet been issued. As of September 2023, seven of these rules had been finalized, four were at the proposed stage, and the remaining one was awaiting action.

We reported last year the concerns that some SEC managers shared about the strains that this pace and workload posed for the workforce, and Congress explored these issues in hearings.⁴ The SEC, in its FY 2024 Congressional Budget Justification,⁵ requested 25 additional positions associated with the rulemaking agenda and 12 positions to support rulemaking roles.⁶ The requested positions include attorneys, economists, and data analysts, to be spread over the SEC's rulemaking divisions and other offices.

Since last fall when we first identified rulemaking as a top management challenge, we initiated an audit of key rulemaking issues. Specifically, we are reviewing the SEC's processes for (1) giving interested persons an opportunity to participate in rulemaking; and (2) assessing and documenting the impact(s) of proposed rules on competition, efficiency, and capital formation. We are also reviewing agency actions to ensure staff with sufficient and appropriate skills, experience, and expertise are involved in formulating and reviewing proposed rules. This work speaks to the SEC's rulemaking capacity and ability to sustain the current workload. We anticipate completing this work and reporting our results, together with any recommendations, in 2024.

The workload associated with rulemaking does not necessarily end upon the adoption of a rule. New rules may be challenged in court, demanding resources from the SEC's Appellate Litigation team. As cases work their way through the legal system, it may take a year or more to secure a definitive judgment about the validity of a given rule. Thus, the size of the rulemaking agenda may have longer-term implications for the SEC's litigation workload.

Keeping Pace with Changing Markets and Innovations

As we have reported in prior years, the SEC's ability to remain an effective regulator requires that it continuously monitor the market environment, and as appropriate, adjust and modernize its expertise, rules, regulations, and oversight tools and activities. In this regard, two emerging areas present certain challenges for the SEC: crypto assets and artificial intelligence (AI). Given the rapid rise in these and other innovations, the SEC must continuously adapt and build new expertise and capabilities.

CRYPTO ASSETS

The SEC recognizes the rapid growth in crypto assets as one of several “evolutionary risks.”⁷ Its FY 2024 Congressional Budget Justification asserts that crypto asset markets lack fundamental disclosures about both the assets and the firms that execute investor trades. The Chair has commented repeatedly on widespread noncompliance with existing securities laws by crypto asset market participants. The SEC has brought widely reported enforcement actions related to crypto assets, many of which are being vigorously contested by the defendants.

Nevertheless, as reported by the Financial Stability Oversight Council (FSOC)⁸ and GAO,⁹ gaps exist in the regulation of crypto asset activities in the United States. Specifically, no federal financial regulator has comprehensive authority to regulate the spot market for crypto assets that are not securities, and there are regulatory gaps in the oversight of certain stablecoins (crypto assets that aim to maintain a stable price and whose values typically are pegged to a reference asset, such as a fiat currency or an exchange-traded commodity). Accordingly, FSOC (which includes the Chair of the SEC) and GAO recommended that Congress consider legislation for federal oversight of these issues.¹⁰ Among other things, FSOC recommended bolstering its members’ capacities related to data and analysis, monitoring, supervision, and regulation of crypto asset activities. GAO has further recommended that the seven federal financial regulators establish or adapt an existing coordination mechanism.¹¹ The SEC’s comments on GAO’s draft report noted ongoing efforts to coordinate across federal financial regulators through FSOC, the President’s Working Group on Financial Markets, the Financial Literacy and Education Commission, joint participation in international bodies, and other bi-lateral and multi-lateral efforts.

For FY 2024, the SEC requested additional positions for the divisions of Examinations, Trading and Markets, and Enforcement, in part, to address critical and evolving risks associated with crypto assets. The Office of the General Counsel and the Office of International Affairs also sought additional positions to focus on crypto asset regulation, policy, and related matters. We address difficulties related to the recruitment of staff knowledgeable regarding crypto asset issues in connection with the SEC’s human capital management challenges, discussed later in this report.¹²

Additionally, caselaw concerning the application of the securities laws to crypto assets is limited and still developing. As recent decisions have illustrated, even judges in the same district can reach inconsistent decisions on similar facts or issues.¹³ It may take years before the law in this area crystalizes to the point where outcomes are reasonably predictable. This uncertainty may affect the SEC’s enforcement decisions and priorities.

ARTIFICIAL INTELLIGENCE

In his July 2023 remarks before the National Press Club, the SEC Chair noted that, “In finance, AI already is being used for call centers, account openings, compliance programs, trading algorithms, sentiment analysis, and more. . . . AI may heighten financial fragility . . . It also could exacerbate the inherent network interconnectedness of the global financial system.”¹⁴ Concerns about market integrity include the possibility that AI-generated recommendations may place adviser or broker interests ahead of their investors’ interests.

The SEC’s Investor Advisory Committee has shared its perspectives on the importance of establishing an ethical AI framework specifically for investment advisers. In an April 2023 letter to the SEC Chair, the Investor Advisory Committee encouraged any new AI guidance to investment advisers to follow the key tenets of equity, consistent and persistent testing, and governance and oversight. In the Committee’s view, doing so would support better financial outcomes for all. Finally, the Investor Advisory Committee encouraged the SEC to:

- consider best practices with which advisory firms may comply while maintaining some degree of flexibility to respond to technological advances related to AI;
- use information and input gathered from an agency request for information and comment and from investment adviser examinations to draft best practices regarding the ethical use of AI;
- continue adding staff with AI and machine learning expertise; and
- task the Division of Examinations with monitoring compliance with the new ethical AI framework.¹⁵

In July 2023, the SEC proposed new requirements to address risks to investors from conflicts of interest associated with the use of predictive data analytics by broker-dealers and investment advisers.¹⁶ The goal is to prevent firms from placing their interests ahead of investors’ interests. Public comments on this proposed rule were due October 10, 2023.

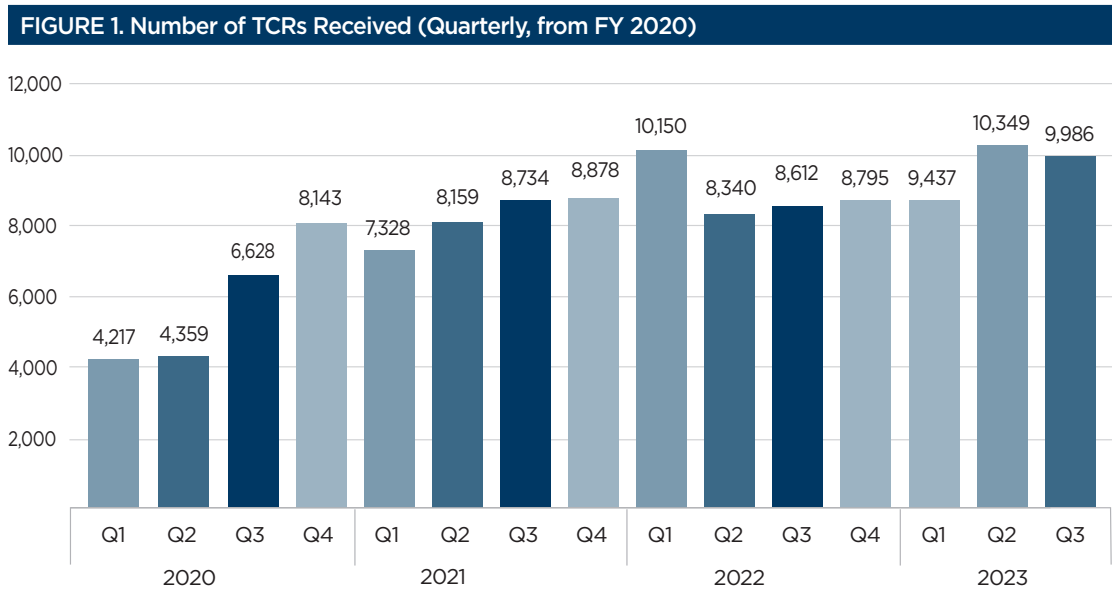
Although AI has great potential to improve capital markets, AI and “deep fake” audio and video technologies may also be used by malicious actors for fraudulent purposes, including impersonation. For example, generative AI can imitate the tone and substance of a legitimate investment professional and may thereby dupe prospective and existing customers into transferring funds or providing personal financial information. The difficulty in identifying perpetrators, some of whom may be overseas, can hinder bringing these actors to justice or recovering funds for victims. In FY 2024, we will continue to monitor the SEC’s efforts with respect to the use of AI by SEC-regulated entities.

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

We acknowledge the SEC’s continued efforts to use technology and analytics to improve efficiency and effectiveness and respond to significant developments and trends in the evolving capital markets. The SEC’s strategic plan and technology target reflect the importance of these efforts and affirm the agency’s commitment to continue investing in data analytics and new technologies, such as AI and machine learning. To that end, the SEC has hosted numerous seminars and information sessions for its staff, including through an AI/machine learning community of practice, to discuss topics related to analytics and AI/machine learning tools and projects, and to learn about recent advances from industry and academic experts.

One example of improvement through data analytics is the automation of the process by which the Division of Enforcement’s (Enforcement) Office of Market Intelligence analyzes the thousands of tips, complaints, and referrals (TCRs) alleging violations of the federal securities laws or conduct that poses a risk of harm to investors. Enforcement continues to use analytics to bulk process incoming TCRs, specifically deprioritizing those categories of allegations that tend to lack merit. Enforcement worked with the Division of Economic and Risk Analysis to automate review of certain TCRs, helping staff to focus on high value submissions, better manage TCRs, and alleviate a backlog.

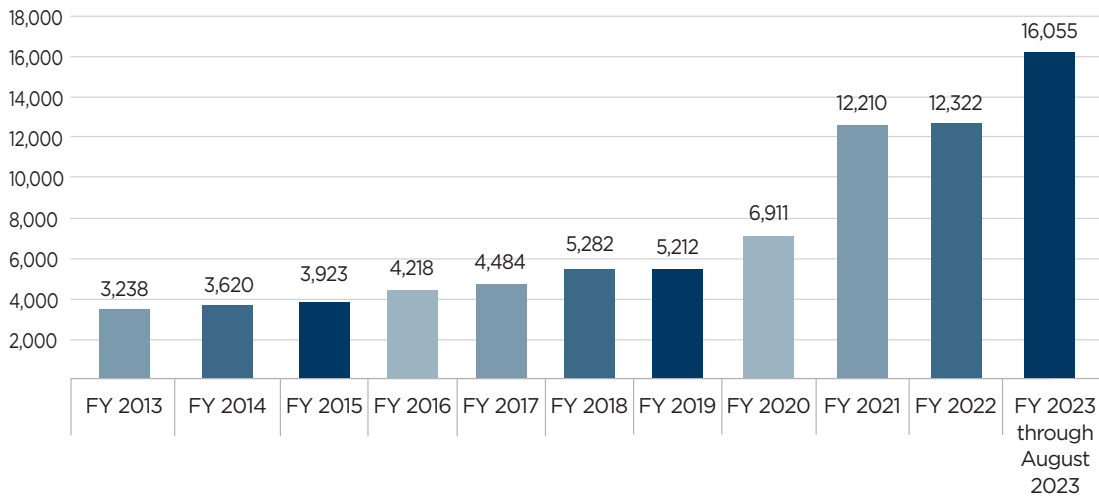
As Figure 1 shows, however, the number of TCRs received continues to increase, which may stress the agency’s capabilities. TCRs have increased from 23,347 in 2020 to 35,897 in 2022, and 2023 is on track to meet or exceed the prior year numbers. In late May/early June 2024, the SEC plans to launch a modernized TCR system with enhanced processing capabilities. We have previously reported on challenges the SEC faced when attempting to modernize its TCR system,¹⁷ and we have encouraged management to leverage lessons learned to help inform decision-making and meet cost and schedule goals, avoiding the overruns and delays previously experienced.¹⁸



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

Likewise, the number of whistleblower complaints has increased steadily since the Office of the Whistleblower (OWB) was established in 2011. As Figure 2 shows, the number of whistleblower tips received annually more than quadrupled over the last ten years. Whistleblower complaints for FY 2023 received through the month of August have increased more than 30 percent above the totals for FYs 2021 and 2022. In January 2022, OWB implemented a new system to modernize, standardize, and automate the tracking and management of whistleblower program information.

FIGURE 2. Number of Whistleblower Tips Received (FY 2013–August 2023)



Source: OIG-generated based on OWB’s 2022 annual report to Congress, and data provided by Enforcement. This data is limited to whistleblower tips and does not reflect all tips or complaints received by the Commission during the fiscal year.

In a December 2022 report,¹⁹ we noted that OWB was experiencing a significant backlog in processing whistleblower claims, which increased the amount of time whistleblowers waited before receiving the Commission’s Final Order. Prior to our report, the SEC took steps to improve whistleblower claims processing and tracking procedures, including (1) implementing an initiative to more efficiently develop the initial drafts of attorney declarations, (2) adopting certain rule amendments, and (3) implementing a modernized claims tracking system. Management’s efforts notwithstanding, we determined, among other findings, that OWB lacked effective controls over manually inputted data entries, resulting in inaccurate or incomplete data.

We made eight recommendations to help further increase efficiencies in the SEC’s whistleblower program, better prepare for future whistleblower program growth, reduce risk, and improve controls over whistleblower program data and communication with external parties. Management concurred with our recommendations and has taken actions sufficient to close all of them.

ONGOING AND ANTICIPATED OIG WORK

In FY 2024, we will initiate reviews of the SEC’s strategic approach to AI and machine learning (pending Government-wide guidance), investment company filings, and the Division of Corporation Finance disclosure operations. We will also complete our ongoing audit of aspects of the SEC’s rulemaking process and related internal controls. Furthermore, we will follow-up on open recommendations intended to expedite Enforcement investigations.

Challenge

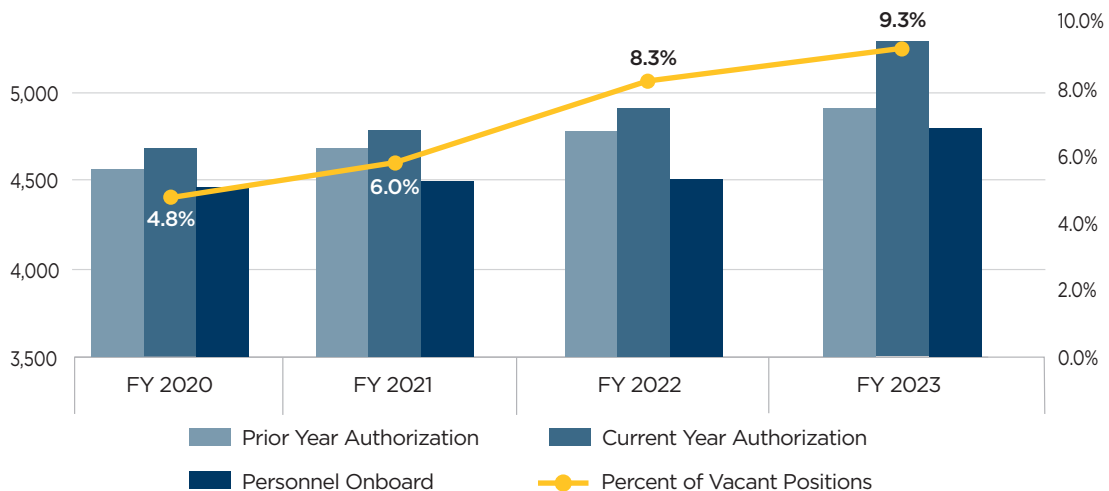
Recruiting and Retaining a Skilled Workforce

Long recognized as one of the Best Places to Work in the Federal Government,²⁰ the SEC seeks to hire the best and brightest candidates to join its talented workforce by offering rewarding careers at an innovative organization. The agency considers people to be its most important asset and includes as one its top strategic goals supporting a skilled workforce that is diverse, equitable, inclusive, and fully equipped to advance agency objectives.²¹ Nevertheless, like many federal agencies, the SEC faces challenges in recruiting and retaining highly skilled staff.

Vacancies and Attrition

As of September 30, 2023, 491 of the SEC's 5,303 authorized positions were unfilled, a vacancy rate of 9.3 percent. The vacancy rate has increased steadily over the past four years, as the agency added new slots, as shown in Figure 3. The SEC added 379 new positions in FY 2023, and its 2024 budget request seeks another 170 slots, 25 of which are directly associated with the rulemaking agenda, with 12 additional positions tied to supporting rulemaking roles.²²

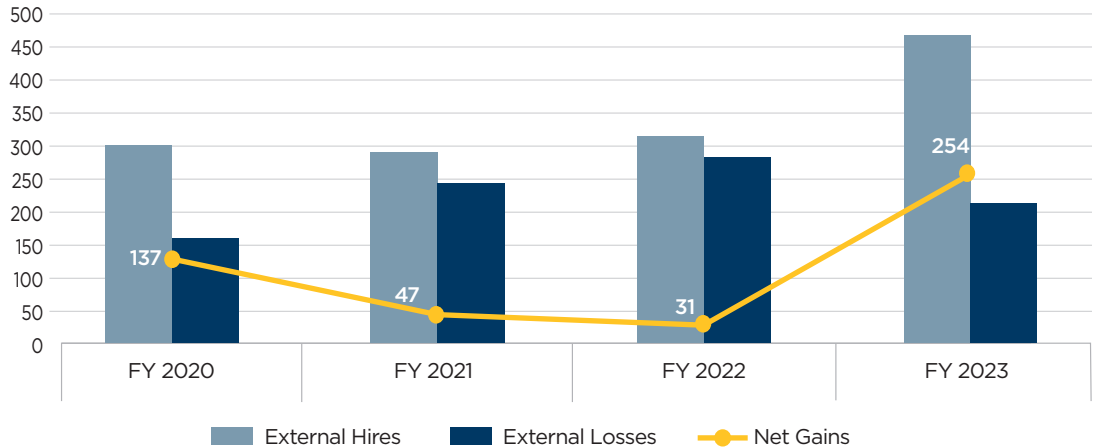
FIGURE 3. Vacant Positions as Percentage of Authorized Positions (FY 2020–FY 2023)



Source: Based on personnel onboard at FY end data provided by OHR and Enacted FY Authorizations provided by the Office of Financial Management.

Attrition also contributes to the vacancy rate. Although the SEC has hired an average of over 300 staff members from external sources annually over the past four years, Figure 4 shows that, until 2023, most of those gains were offset by staff departures.

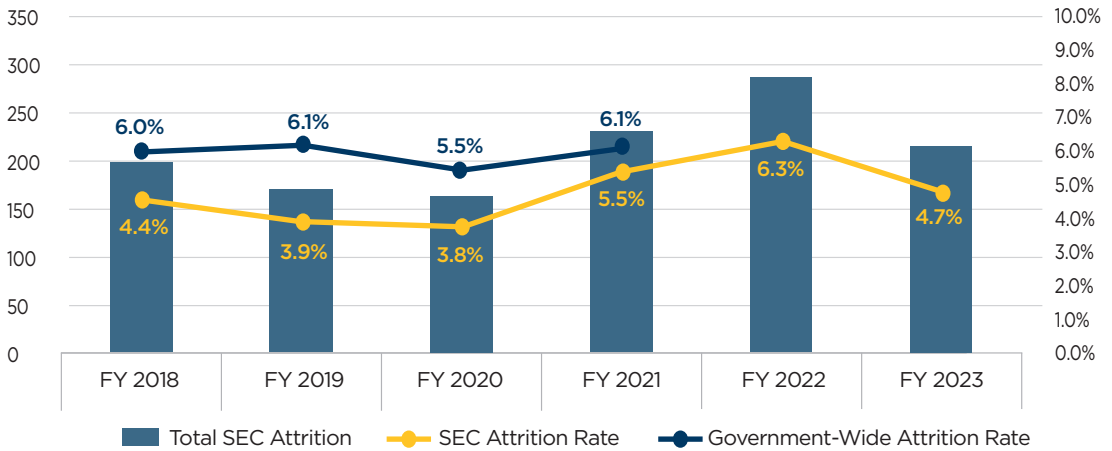
FIGURE 4. Net Gains in Personnel Onboard at Year-End (FY 2020–FY 2023)



Source: Based on FY year end data provided by OHR.

Attrition rose at the SEC from 3.8 percent in FY 2020 to 6.3 percent in FY 2022, before declining to 4.7 percent in FY 2023, as shown in Figure 5. Although the SEC’s attrition rate increased prior to declining in FY 2023, it remained below the government-wide attrition rate through FY 2021, the most recent year for which government-wide attrition rates are publicly available.²³

FIGURE 5. SEC Attrition Rate Compared to Government-Wide Attrition Rate (FY 2018–FY 2023)



Source: Based on SEC attrition data provided by OHR and available government-wide attrition data from the Partnership for Public Service.

Staffing shortages do not hit evenly across the agency. The Division of Enforcement, responsible for investigating and prosecuting fraud and other violations of the securities laws, has a vacancy rate of 8.1 percent, and the Division of Examinations, which, among other things, conducts risk-based reviews of mutual funds, exchange traded funds, and broker/dealers, has a vacancy rate of 9.3

percent, and thus the agency cannot examine or investigate as many matters as it could if fully staffed. In the Division of Trading and Markets, which, for example, provides day-to-day oversight of self-regulatory organizations (such as the national securities exchanges and clearing agencies), the vacancy rate is 15.6 percent.

While the leaders of these divisions assure us that they are meeting their core missions, they acknowledge that they must curtail work because of unfilled slots. Vacancies can reduce the scope of their work, cause delays and may require them to forgo work that they would undertake if fully staffed. Division leaders also told us that staffing shortages impose higher workloads on existing staff. A triennial review of SEC personnel management completed by GAO in December 2022 estimated that over half of the SEC's workforce believed that their division or office did not have enough staff to manage the volume of work that needs to be completed.²⁴ Our evaluation of the timeliness of Enforcement investigations reported in February 2023 that 277 of 412 staff who responded—67 percent—disagreed or strongly disagreed that the Enforcement Division's human capital resources were sufficient to handle the investigative workload.²⁵ Those who responded cited a need for investigative and trial attorneys, accountants, paralegals, and other support staff and stated that they were spread too thin to move cases forward on a timely basis. Division management agreed that increased staffing was needed. Some agency officials cited staff shortages and increasing workloads as a reason that staff members are leaving the SEC.

The vacancy rate at the SEC is unlikely to be reduced significantly in the short term. On September 28, 2023, the SEC paused most hiring actions until further notice, due to the uncertainty surrounding the SEC's FY 2024 appropriations. We will continue to monitor how the hiring pause impacts the SEC's ability to continue to meet its mission priorities.

Hiring Flow and Volume

While the Office of Human Resources (OHR) administers key aspects of the agency's recruiting and staffing process, including consulting with management, establishing and administering human capital programs and policies, and ensuring compliance with federal laws and regulations and negotiated agreements,²⁶ each component within the SEC plays an important role in the hiring process.

The SEC undertook an intensive effort to fill the 379 new positions authorized for FY 2023, as well as backfill losses due to attrition. Indeed, OHR maintained an average of 500 or more hiring actions in process at any given time throughout FY 2023. The agency filled 850 positions in FY 2023, significantly more than in the preceding three years.²⁷ While this led to a net gain of 254 positions, the rate of vacancies also increased, from 8.3 percent to 9.3 percent. This occurred in part because internal hires accounted for 44.6 percent of the SEC positions filled in FY 2023, which created 379 additional vacancies. OHR also noted that staffing and workloads among hiring officials within agency components can create practical limitations on the amount of time that can be devoted to completing hiring actions in a given year, and that the necessary pre-employment checks also prolong the hiring cycle. Senior officials across the agency agreed that reducing attrition would help to lower the current vacancy rate. In FY 2024, we will assess the SEC's strategies for recruiting and retaining employees and filling vacancies.

Chair Gensler has acknowledged that the SEC's workforce must contend with increasingly complex markets, a significant growth in registrants, and more involvement in the markets from individual investors. As the size, scale, and complexity of capital markets grow, it is critical that the SEC is adequately staffed to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation so that its ability to meet these demands is not reduced or delayed.

Specialized Recruiting Challenges

As described above, the SEC also faces challenges in recruiting specialists in crypto assets, which Enforcement considers critical to strengthening its capabilities to investigate new and emerging issues in crypto-asset markets.²⁸ Officials in several SEC divisions cited a small candidate pool of qualified experts and high competition from private sector recruitment as challenges in filling crypto asset-related positions. Officials also reported that many qualified candidates hold crypto assets, which the Office of the Ethics Counsel has determined would prohibit them from working on particular matters affecting or involving crypto assets. This prohibition, according to SEC officials, has been detrimental to recruiting, as candidates are often unwilling to divest their crypto assets to work for the SEC.

Other Recruiting and Attrition Drivers

One of the most significant drivers in both recruitment and attrition is competition with the private sector, particularly on wages. The SEC employs highly skilled professionals, including attorneys, economists, and accountants. Private sector wages can be substantially higher than the SEC's pay scale, making private sector positions attractive to both new and seasoned professionals.²⁹

While agency officials we spoke with believed that the recently finalized collective bargaining agreement—which expands telework to eight days per pay period for most employees and extends certain work-life balance flexibilities, as well as other benefits—will be a significant positive factor for recruiting and retaining professional talent, competition with private sector compensation will continue to pose a challenge.

Opportunities for advancement are another important factor in attrition and retention decisions. Relatively few promotion opportunities are available above the SK-14 level, which may lead staff to pursue career options elsewhere. The SEC has made an effort to reduce its external professional hiring at the SK-14 level, dropping it from 74.8 percent in FY 2021 to 63.5 percent in FY 2022. With respect to positions at the lower levels, our recent report on the Upward Mobility Program, which was originally intended to provide promotional opportunities for selected staff at the SK-7-9 levels, found that 30 percent of the program positions went to SK-11 staff who took voluntary downgrades and were then promoted to SK-12 within months.³⁰ While this practice did not violate SEC rules or regulations, it did call into question the Upward Mobility Program design, including whether SK-11 employees were intended beneficiaries. SEC management said that it would work with the National Treasury Employees Union (NTEU)—the union that represents more than two-thirds of the SEC workforce—to formalize policies and document the intended grade levels of program participants.

Performance management is another opportunity for improvement, though the likely effect on attrition is not clear. GAO’s December 2022 report³¹ found that in general employees viewed the SEC’s performance management system unfavorably, and over half felt that the two-tier rating system (“accomplished performer” or “unacceptable”) did not create meaningful distinctions in performance or incentivize high performance. Additionally, while many employees reported they believed performance appraisals under the current system were fair and it was easier for supervisors to rate staff, an estimated 74 percent of employees believed that receiving meaningful performance feedback depended more on individual supervisors than on the structure of the performance management system.³²

Surveys of departing employees conducted by the SEC generally bear out the salience of compensation, promotion, recognition, and career opportunities, as well as retirement eligibility, as significant reasons for leaving the SEC. However, the exit surveys are not a mandatory part of the off-boarding process. With a response rate of only about 40 percent in FYs 2019 through 2022, the SEC may be missing valuable information and insights regarding retention and attrition. To remedy this, officials in OHR told us that they are updating the off-boarding process so exit surveys are sent to departing employees in a separate email (independent of other off-boarding process items), with automated reminder emails to encourage departing employees to complete the exit survey. More comprehensive and granular data may assist the SEC to develop targeted responses for the contributing factors that are within the agency’s power to mitigate.

Transition to a Hybrid Workplace

With the conclusion of the COVID-19 pandemic,³³ the SEC has moved to a hybrid workplace, in which most employees are required to work in the office at least two days per two-week pay period and may telework the remainder of their time. In the agency’s view, this balances the benefits of extended telework that accrued during the pandemic, while promoting in-person collaboration and culture-building,³⁴ including “community days,” when all members of a work unit are together in the office. This telework policy is included in the 2023 Collective Bargaining Agreement between the SEC and NTEU. Training in supervising staff in a telework environment, which covers the specifics of telework and work schedule policies within the SEC, has been made available to all managers.

On August 4, 2023, the White House directed Cabinet-level officials to “aggressively execute” a shift to increase the in-office presence of federal employees this fall. This directive did not apply to the SEC as an independent agency. This issue is of great interest to Congress³⁵ and the SEC workforce and we will continue to monitor any developments to increase the in-office attendance of SEC employees.

This post-pandemic telework posture has had a favorable impact on the agency’s budget. The SEC has reduced its headquarters footprint by more than 200,000 square feet, at an annual savings of at least \$14 million, with further space reductions possible. The SEC is in the process of reviewing space needs across its regional offices to determine whether further space reductions and related cost savings can be achieved. The projected level of future telework will also affect the SEC’s remaining headquarters lease extensions, which contain options to cancel at certain milestones, as well as the space needs for the new headquarters to which the SEC will relocate later this decade.

Both the SEC and NTEU have recognized the substantial benefits of telework, such as protecting the environment, improving employees' work-life balance, improving the SEC's ability to recruit and retain talent, and providing for continuity of operations during emergencies. Both parties also noted that performance expectations are the same for both teleworking and non-teleworking employees. Moreover, telework can be suspended for an employee in the event of time and attendance issues, a decline in performance, or a failure to truthfully report time worked.

Managing telework effectively requires substantial commitment from agency leaders and supervisors, to find new ways to maintain positive employee engagement, mentoring and informal learning, which may not occur organically when staff are not physically together. Supervisors must also maintain an awareness of staff productivity and the quality of their work, to guard against inattention/distraction and the possibility of time and attendance fraud.

Even if some adjustments are made, expanded telework will likely continue at the SEC. The leadership believes that the availability of telework is an important recruitment inducement. Supervisors and staff need the technology, tools, and training to collaborate effectively in a hybrid environment to accomplish the SEC's mission.

ONGOING AND ANTICIPATED OIG WORK

In FY 2024, we will complete (1) an assessment of the operations and controls over the SEC's equal employment opportunity program, and (2) a review of agency actions to ensure staff with sufficient and appropriate skills, experience, and expertise are involved in formulating and reviewing proposed rules. We will assess the SEC's strategies for recruiting and retaining employees and filling vacancies. We will also continue to monitor the SEC's progress in addressing any new recommendations related to human capital management.

Challenge

Protecting Systems and Data

Information security in the financial sector is a significant focus of public and private entities alike, with particular attention to market systems, customer data protection, disclosure of material cybersecurity risks and incidents, and compliance with legal and regulatory obligations under the federal securities laws. The seriousness of the threats and the potential consequences to investors, issuers, and other securities market participants, and the financial markets and economy more generally, are substantial and increasing. Cybersecurity risk management has become essential.

Federal agencies are not immune to these challenges. The Cybersecurity and Infrastructure Security Agency (CISA) is constantly adding new Known Exploited Vulnerabilities to their catalog, including vulnerabilities of major software products. These types of vulnerabilities are frequent attack vectors for malicious cyber actors and pose significant risks to federal enterprises and systems. CISA has issued an Advisory warning³⁶ that cyber actors routinely exploit poor security configurations (either misconfigured or left unsecured), weak controls, and other poor cyber hygiene practices to gain access or as part of other tactics to compromise federal systems. Since many government information technology (IT) systems, including the SEC's, contain vast amounts of sensitive information, it is important that the agency protect the confidentiality, integrity, and availability of this information—and effectively respond to data breaches and security incidents.

SEC management has recognized that “efficient, effective, and responsible use of data and IT is a crucial focus of the agency.”³⁷ In its FY 2024 Congressional Budget Justification, the agency requested additional funds to implement its multi-year IT strategy, which includes (1) the expansion of AI and machine learning into data accessibility and analysis; (2) the migration of applications to the cloud; (3) the implementation of a zero trust architecture and other compliance with new cybersecurity requirements; and (4) the development of an IT Supply Chain Risk Management program. The budget request includes plans to hire additional personnel to help implement these initiatives and to ensure the SEC's IT investments yield the promised value and benefits for agency programs.

We discuss below recent IT events, as well as the overall security posture of the SEC's systems and data.

Insufficient User Access Controls Allowed Certain Enforcement Staff Access to Restricted Adjudicatory Information

Last year, we reported on a material weakness, disclosed by the agency in an April 2022 Commission statement, associated with a lack of controls related to user access to a Commission system. Specifically, the SEC reported that the database maintained by the Office of the Secretary that contains information and documents related to Commission actions was not configured to restrict access to certain Enforcement staff, and thus unintentionally allowed Enforcement administrative staff to view and export information on the adjudication of administrative matters to which the Enforcement Division was a party. In June 2023, the SEC reported that 91 matters then pending before the Commission were implicated: two matters originally disclosed in April 2022; 28 matters as to which one or more adjudication memoranda specific to the particular matter were accessed by Enforcement administrative staff (also referred to as “Affected Matters”); and 61 additional matters in which one or more adjudication memoranda broadly applicable to numerous pending matters were accessed by Enforcement administrative staff (referred to as “Omnibus Memoranda”).

The Commission’s internal review found no evidence that access to adjudication memoranda regarding the Affected Matters impacted Enforcement filings or decision-making. The internal review likewise found no evidence that the administrative staff member who accessed the eight Omnibus Memoranda, which recommended procedural actions in then-pending administrative adjudicatory proceedings, contacted any Enforcement staff responsible for investigating and prosecuting the relevant matters about any of these memoranda. Nevertheless, as a matter of discretion, the Commission dismissed 42 pending matters found to be connected to the control deficiency and granted relief for persons subject to collateral bars in an additional 48 matters, to preserve the Commission’s resources.

Our independent investigation into this matter confirmed that Enforcement administrative staff accessed the adjudication memoranda without appreciating their significance or the fact that they should not be shared with Enforcement staff generally. We identified lack of staff training, inadequate internal controls and the unanticipated use of a system designed to allow the recording of Commission votes on staff recommendations. The Commission has taken this lapse in controls seriously, taking steps to ensure that sensitive work products are appropriately safeguarded and committing to keeping the public informed about the scope of this issue.

Some Public Comments to SEC Rulemakings Submitted Online Were Not Received Due to a Technological Error

In 2022, the SEC failed to receive 168 comments on 11 pending rulemakings due to a technological error in the agency’s online comment system.³⁸ As a result, after working with the vendor to deploy a fix, the SEC reopened the comment periods for 11 affected rulemaking releases and one request for comment. The agency notified the public that the technological error might also have affected certain comments related to eight self-regulatory organization matters.

As reported in our April 2023 management letter,³⁹ we identified IT control weaknesses that delayed the SEC's awareness of the technological error and magnified the error's overall impact. Specifically, the responsible Information System Owner and system administrators did not configure alerts or regularly monitor system logs, which would have permitted agency personnel to timely identify and respond to the error. The SEC also did not back up some data submitted through the internet comment form, which delayed recovery of comments. As a result, among other information, we requested confirmation from the agency that it has posted to its public website comment letters not initially received but subsequently recovered and/or resubmitted, so that teams have the opportunity to consider these comments when preparing a recommendation to the Commission regarding a final rulemaking. We also identified another matter for management's consideration regarding comments that are not posted to the SEC's public website or promptly provided to rulemaking staff, and the overall efficiency of related processes. In May 2023, SEC management confirmed for us that rulemaking teams were given the opportunity to consider the comments when preparing a recommendation to the Commission regarding a final rulemaking.

In September 2023, SEC management confirmed for us that the SEC deployed a new comment letter system on April 30, 2023. The agency asserts that the new system has decreased the time that it takes for Office of the Secretary staff to review and approve comment letters and, in turn, transmit comment letters to rule-writers. The OIG has not independently assessed the corrective actions implemented by the agency or validated its assertions.

Strengthening the SEC's Cybersecurity Posture

IMPLEMENTING A ZERO TRUST ARCHITECTURE

On May 12, 2021, President Biden issued Executive Order 14028, *Improving the Nation's Cybersecurity*, initiating a government-wide effort to ensure that baseline security practices are in place and to migrate the federal government to a zero trust architecture. A zero trust approach to cybersecurity focuses on preventing and limiting damage in the event that a malicious actor gains access to a network. Zero trust operates on the principle to "never trust, [and] always verify," with a goal to continuously authenticate and authorize users and devices that seek to obtain and maintain access to systems and data.

In FY 2023, we conducted a review of the SEC's progress toward implementing the zero trust architecture strategy and cybersecurity standards and objectives established in Office of Management and Budget (OMB) Memorandum M-22-09.⁴⁰ Overall, the SEC has completed six of nine actions required to be implemented within the first year (i.e., by January 27, 2023). However, at the time of our review, three of the nine tasks had not been completed. The SEC appears to be on track to meet the longer term zero trust requirements by OMB's September 30, 2024, deadline; however, actions are needed to address outstanding tasks and prevent delaying the SEC's achievement of specific zero trust security goals and extending implementation beyond FY 2024.

Failure to timely and effectively implement government-wide zero trust cybersecurity principles may result in the SEC being more susceptible to threat campaigns that target the agency's IT infrastructure, threaten privacy, damage the American economy, and weaken trust in government.

To help us determine whether further action by the OIG is warranted regarding this issue, we requested that management provide the OIG, no later than November 13, 2023, a description of actions the SEC has taken or plans to take to:

1. Configure all SEC public-facing systems that support multi-factor authentication to give users the option of using phishing-resistant authentication.
2. Remove password policies that require special characters.
3. Establish a goal for monitoring and potentially restricting how sensitive electronic documents are shared.

Maturing the SEC's Information Security Program

We annually evaluate the SEC's implementation of the Federal Information Security Modernization Act of 2014 (FISMA).⁴¹ Since FY 2021, the SEC has made progress in improving its information security program by institutionalizing the use of advanced risk management technologies; developing a standard hardware taxonomy across the agency; and updating relevant components of the agency's interconnection inventory. However, the agency faced challenges, including, but not limited to, documenting the results of privacy risk assessments, integrating formal lessons learned on the effectiveness of incident handling policies and procedures, and completing business impact analyses for its information systems. We contracted with Kearney & Company, P.C. (Kearney) to conduct the FY 2022 independent evaluation and, on November 15, 2022, issued the report titled, *Fiscal Year 2022 Independent Evaluation of the SEC's Implementation of the Federal Information Security Modernization Act of 2014* (Report No. 574).

Although the SEC strengthened its program, Kearney determined for FY 2022 that the agency's information security program did not meet annual Inspector General FISMA reporting metrics' definition of "effective," which requires more than half of the domains to be rated as Level 4 ("Managed and Measurable").⁴² As stated in Report No. 574, the SEC's maturity level for the five Cybersecurity Framework security functions ("identify," "protect," "detect," "respond," and "recover") and related domains was primarily Level 3 ("Consistently Implemented"). As shown in Figure 6 below, there was a significant decrease in both the overall Security Training domain rating (from Optimized in FY 2021 to Defined in FY 2022) and the Contingency Planning domain rating (from Managed and Measurable in FY 2021 to Consistently Implemented in FY 2022). We determined that these decreases were primarily due to changes in the government-wide methodology (prescribed by OMB, along with the Council of the Inspectors General on Integrity and Efficiency, the Chief Information Security Officers Council, and CISA) for the FY 2022 assessment. Specifically, the FY 2022 assessment included fewer metrics overall than the FY 2021 evaluation.

FIGURE 6. Summary of SEC FISMA Ratings (FY 2021 and FY 2022)

Domain	Assessed Rating By FY	
	2022	2021
Risk Management	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
Supply Chain Risk Management	Level 1: <i>Ad Hoc</i>	Level 1: <i>Ad Hoc</i>
Configuration Management	Level 2: <i>Defined</i>	Level 2: <i>Defined</i>
Identity and Access Management	Level 2: <i>Defined</i>	Level 2: <i>Defined</i>
Data Protection and Privacy	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
Security Training	Level 2: <i>Defined</i>	Level 5: <i>Optimized</i>
Information Security Continuous Monitoring	Level 3: <i>Consistently Implemented</i>	Level 3: <i>Consistently Implemented</i>
Incident Response	Level 4: <i>Managed and Measurable</i>	Level 4: <i>Managed and Measurable</i>
Contingency Planning	Level 3: <i>Consistently Implemented</i>	Level 4: <i>Managed and Measurable</i>

Source: OIG-generated based on Exhibit 1 from Report No. 574 and 570.

Report No. 574 included 13 new recommendations to strengthen the SEC’s information security program and highlighted opportunities to improve in all nine of FY 2022 Inspector General FISMA reporting metric areas. To date, the SEC has taken corrective action sufficient to close eight of these 13 recommendations. However, one recommendation from a prior year FISMA report remains open (FY 2017).⁴³ We commend agency management for the actions taken to date and encourage management to promptly act on all opportunities for improvement identified in previous FISMA reports to help minimize the risk of unauthorized disclosure, modification, use, and disruption of the SEC’s sensitive, nonpublic information, and to assist the agency’s information security program reach the next maturity level.

ENSURING THE EFFECTIVENESS OF SEC’S DATA LOSS PREVENTION PROGRAMS

An effective data loss prevention (DLP) program reduces the risk of a data breach or a leak of sensitive SEC information by monitoring communication channels and preventing nonpublic data—such as personally identifiable information, law enforcement sensitive data, or business identifiable data—from leaving the agency’s network without authorization. An unauthorized disclosure of sensitive SEC data could have significant adverse consequences on both the SEC and the financial sector due to the loss or compromise of confidential, protected, and/or proprietary information; harm to the SEC’s reputation; monetary loss; and disruptions to financial markets, critical systems, and/or services.

We assessed DLP-related incident response controls during our FISMA evaluation, and since FY 2020, the SEC has been assessed an acceptable level 4, Managed and Measurable, for their overall incident response controls. Nevertheless, at least one agency official has expressed concerns regarding inefficiencies in the SEC's DLP tool capabilities and the Office of Information Technology's procedures for classifying and providing relevant and prompt information on a data loss breach. Untimely notification of data loss incidents to supervisors and interested parties could result in further avoidable losses and ineffective mitigation and remediation.

Given the sensitivity of data within SEC systems, we believe that a detailed standalone review of the DLP program is warranted and intend to initiate such a review this year.

SAFEGUARDS FOR SEC MOBILE DEVICES

In FY 2023, the SEC's Office of Information Technology made progress by taking corrective action sufficient to close one cybersecurity-related recommendation from a previous report titled Opportunities Exist To Improve the SEC's Management of Mobile Devices and Services, (Report No. 562). However, the SEC has not yet completely addressed a recommendation from Report No. 562 that the agency update existing policies and procedures to include additional controls addressing mobile device inventory, provisioning, applications, sanitization, and operating system updates. As of September 2023, the agency was still in the process of revising its mobile devices standard operating procedures.

ONGOING AND ANTICIPATED OIG WORK

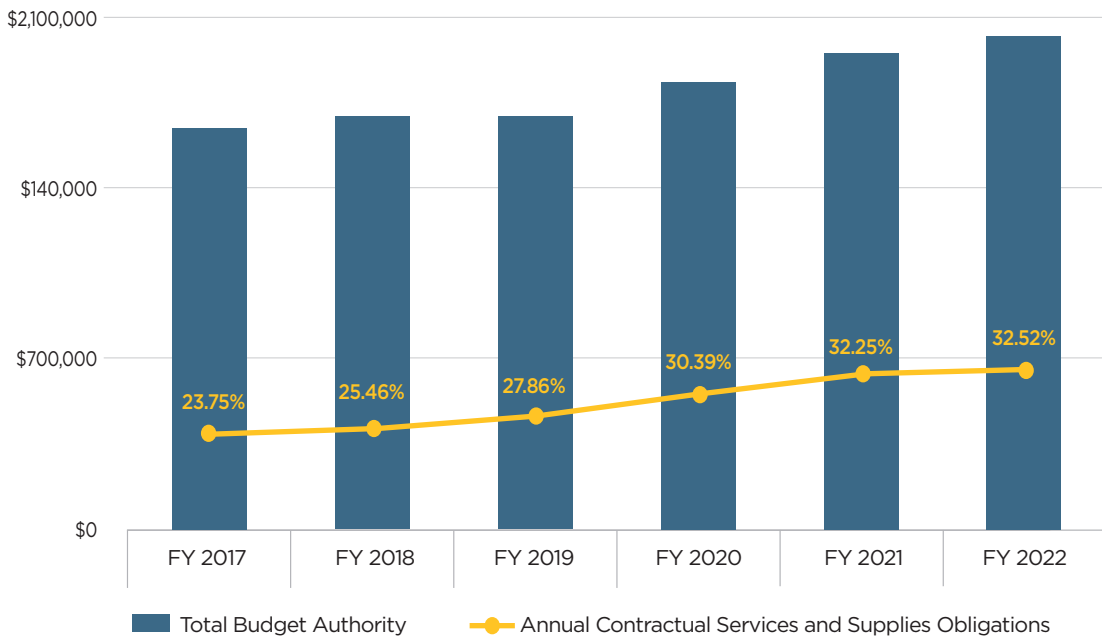
In FY 2024, we will continue to assess the SEC's efforts to secure its systems and data and mature its information security program. Specifically, we will complete ongoing reviews of the SEC's FY 2023 FISMA compliance and its efforts to establish a secure environment and applications to use consolidated audit trail data. We will also initiate the FY 2024 FISMA evaluation and an audit of the SEC's DLP program. Finally, we will evaluate the SEC's strategic approach to AI and machine learning.

Challenge

Synopsis and Trends in Contracting

The SEC relies on contractors for technical and subject matter expertise, including IT support; professional litigation and investigation-related services; support in areas of analytics and examinations; and human resources support services. The portion of the SEC’s budget devoted to contract services continues to rise, representing about one-third of the agency’s expenditures in FY 2022. (See Figure 7.) For FY 2024, the agency has requested nearly \$741 million for contractual services and supplies, about 30 percent of the total \$2.436 billion requested for agency operations.

FIGURE 7. SEC Annual Contractual Services and Supplies Obligations, in Thousands, as a Percentage of Total Annual Budget Authority (FY 2017–FY 2022)



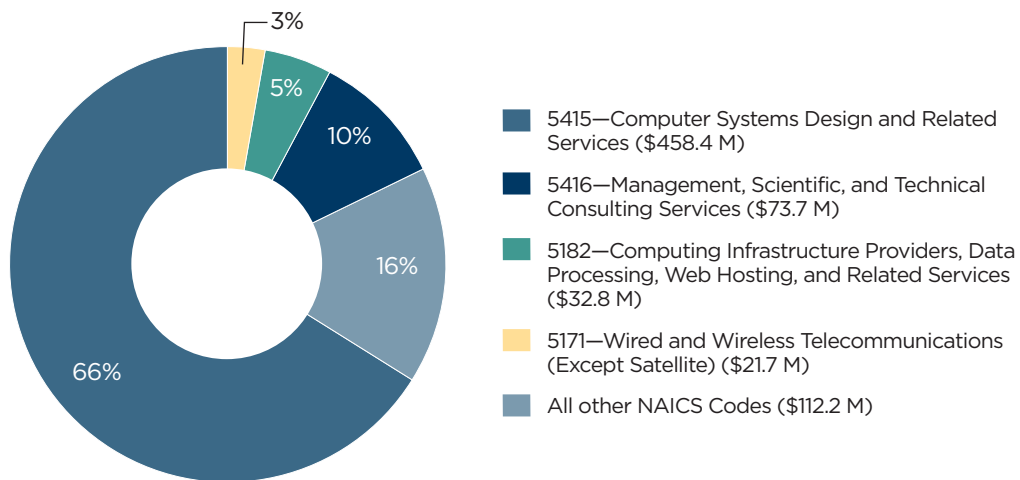
Source: OIG-generated based on annual actual obligations by object class as reported in the SEC’s Congressional Budget Justifications for FY 2019 through FY 2024.

Contract management challenges are common across the federal government. From December 2022 through July 2023, federal agencies issued reports detailing inadequate procurement management; inadequate specialized training for contracting officers; problems addressing prohibited telecom items offered on multiple award schedule contracts; lack of adherence to existing acquisition and procurement procedures; and lack of adherence to acquisition policies and procedures. The SEC is not immune to such issues and must ensure that its acquisition workforce remains vigilant and manages contract resources effectively.

As in prior years, the SEC spends the majority of its contract dollars on IT services. These services include application management and development, business solutions delivery, IT infrastructure and operations management, information security, IT governance, and data management.

Of the nearly \$700 million obligated for contracts in FY 2023, the SEC obligated about 70 percent (or about \$491 million) to vendors doing business in two categories:⁴⁴ one for computer systems design and related services, and another for computing infrastructure providers, data processing, web hosting, and related services. (See Figure 8.)

FIGURE 8. SEC’s Top Contract Categories (Industry Codes) in FY 2023



Source: OIG-generated from data retrieved from [SAM.gov](https://sam.gov) on October 2, 2023.

This high concentration of IT contracting affects the SEC’s risks. Since 2015, GAO has designated IT acquisitions and operations as a high-risk area, in need of improvement and attention by the executive branch and by Congress:

[F]ederal IT investments too frequently fail to deliver capabilities in a timely manner. They also incur cost overruns or schedule slippages while contributing little to mission-related outcomes. These investments often lack disciplined and effective management in areas such as project planning, requirements definition, and program oversight and governance.⁴⁵

Focus on Diversity, Equity, and Inclusion in Contracting

Recent OMB guidance implements President Biden’s commitments to increase the share of contracts awarded to small disadvantaged businesses to 15 percent by 2025.⁴⁶ To do this, OMB directs federal agencies to take specific management actions, including increasing the number of such new entrants to the federal marketplace and reversing the general decline in the small business supplier base.

To support diversity, equity, and inclusion goals, the Offices of Acquisitions (OA) and Minority and Women Inclusion (OMWI) continue to collaborate to voluntarily implement the requirements of Executive Order 13895, which states that the federal government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.⁴⁷ OA and OMWI have committed to developing processes to ensure underserved groups have the opportunity to provide feedback on the SEC’s existing Supplier Diversity Program and are afforded opportunities to participate in SEC business opportunities.

The SEC procures many of its IT services through its OneIT enterprise contract vehicle, which has a 10-year ordering period, a contract ceiling of \$2.5 billion, and separate pools for acquisitions from small businesses. As of October 2, 2023, 22 of the 27 task orders under the OneIT contract vehicle went to small businesses, representing 47 percent of the total \$827 million obligated. In March 2022, we initiated an audit to (1) assess the SEC’s processes for encouraging small business participation in agency contracting, in accordance with federal laws and regulations; and (2) determine whether, in FY 2020 and FY 2021, the SEC accurately reported small business awards. In our February 2023 report,⁴⁸ we noted that the SEC exceeded government-wide statutory small business contracting goals for prime contract awards and took steps to encourage small business contracting and supplier diversity and inclusion. However, the SEC, we found, could better identify and, as appropriate, respond to trends in its small business contracting activities by:

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

We also identified opportunities to better leverage the role of the SEC’s Office of Small and Disadvantaged Business Utilization. Lastly, we found that OA could maintain better records to support and enhance the accuracy of the SEC’s reported small business awards and improve the completeness of contract files. We made eight recommendations for improvement. Management concurred with our recommendations and has taken actions sufficient to close seven of them to date. The remaining recommendation will be closed upon completion and verification of proposed actions.

Time and Materials Contracts

Time and materials (T&M) contracts are to be used when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. As recognized in the Federal Acquisition Regulation, T&M contracts do not reward a contractor for cost control or labor efficiency. T&M and labor-hour (LH) contracts⁴⁹ are generally considered riskier than fixed price contracts because contractors bill the government by the hour and could conceivably work less efficiently so that they could charge more hours. As a result, GAO recommended that agencies use lower-risk contract vehicles where possible, including assessing ongoing use of T&M contracts in their acquisition portfolios.⁵⁰ Similarly, the Federal Acquisition Regulation encourages contracting officers to assess contract types periodically, after experience obtained during the performance of a T&M contract provides a basis for firmer pricing.

Last year, we reported that the SEC's use of T&M contracts had increased from about 40 percent in FY 2018 to about 53 percent in FY 2022. In response, Agency management stated that the SEC continues to closely monitor its use of T&M contracts, exercises rigorous oversight of these types of contracts, and has made improvements, including an updated independent government cost estimate guide and an automated determination and findings workflow.⁵¹

Since last fall, we have initiated an audit to assess the SEC's controls over T&M contracts (including LH contracts) and determine whether those controls ensure compliance with applicable laws, regulations, and SEC policies and procedures. Specifically, we will assess (1) the factors OA considered when awarding T&M contracts; (2) the measures taken to reduce the SEC's use of T&M contracts when possible and appropriate; and (3) the surveillance of T&M contracts, including through use of a Quality Assurance Surveillance Plan, and coordination between contracting officers, contracting officer representatives, and program offices. Our audit will include T&M contracts awarded during FY 2021 and FY 2022. We anticipate completing this work and reporting our results in 2024, at which time we may offer recommendations for improvement.

ONGOING AND ANTICIPATED OIG WORK

In FY 2024, we will monitor the SEC's contract management and acquisition processes through the work of our Acquisitions Working Group. We will also report on any acquisition-related matters identified as a result of other ongoing and planned reviews of SEC programs and operations and continue to support the SEC's efforts to train contracting officers and contracting officer's representatives about the potential for procurement-related fraud.

Endnotes

- 1 U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2022-2026* (Goal 2); November 23, 2022.
- 2 U.S. Securities and Exchange Commission, Office of Inspector General, *The Inspector General's Statement on the SEC's Management and Performance Challenges*; October 13, 2022.
- 3 The SEC's rulemaking index for 2022 shows a total of 36 rules: the 27 new proposals, plus nine other items, including rules that were relisted because their comment periods were re-opened. Historically, the 36 rules listed on the rulemaking index in 2022 is the highest number in a single year since 2012. In 2008, during the financial crisis, the SEC proposed 36 rules, while in 2010 and 2011, it proposed 40 and 51 rules, respectively many in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- 4 <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408624>
<https://appropriations.house.gov/legislation/hearings/budget-hearing-fiscal-year-2024-request-us-securities-and-exchange-commission>
<https://www.appropriations.senate.gov/hearings/review-of-the-fy-2024-budget-for-the-us-securities-and-exchange-commission>
<https://www.banking.senate.gov/hearings/09/06/2023/oversight-of-the-us-securities-and-exchange-commission>
<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408978>
- 5 U.S. Securities and Exchange Commission, *Fiscal Year 2024 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2022 Annual Performance Report*; March 13, 2023.
- 6 For FY 2024, the SEC requested an overall increase of 170 positions.
- 7 U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2022-2026* (Strategic Initiative 2.2) November 23, 2022.
- 8 Financial Stability Oversight Council, *Report on Digital Asset Financial Stability Risks and Regulation*; October 3, 2022.
- 9 U.S. Government Accountability Office, *BLOCKCHAIN IN FINANCE Legislative and Regulatory Actions Are Needed to Ensure Comprehensive Oversight of Crypto Assets* (GAO-23-105346; June 22, 2023).
- 10 As noted by GAO, several lawmakers have proposed legislation that would provide for federal oversight of spot markets for crypto assets and address the prudential risks associated with stablecoins. Additionally, in July 2023, H.R. 4763, Financial Innovation and Technology for the 21st Century Act, was introduced and referred to the House Financial Services Committee and the House Committee on Agriculture to “provide for a system of regulation of digital assets by the Commodity Futures Trading Commission and the Securities and Exchange Commission, and for other purposes.”
- 11 In response to GAO's draft report, the SEC did not agree with all of the report's positions regarding the crypto asset industry's risks and the applicability of the federal securities laws to various aspects of the crypto asset industry. The SEC's response also highlighted existing efforts to coordinate, including with other financial regulators.
- 12 Our review of Division of Enforcement staffing included measures to expedite and ensure timely completion of investigations, including in crypto asset enforcement actions and to address the causes of delays. We are awaiting documentation that our recommendations have been implemented.
- 13 *SEC v. Ripple Labs, Inc.*, No. 20-10832 (S.D.N.Y. July 13, 2023) (order granting in part and denying in part cross-motions for summary judgment); *SEC v. Terraform Labs Pte. Ltd.*, No. 23-1346 (S.D.N.Y. July 31, 2023) (order denying motion to dismiss).
- 14 SEC Chair Gary Gensler, “*Isaac Newton to AI*” *Remarks before the National Press Club*; July 17, 2023.
- 15 Investor Advisory Committee letter to SEC Chair Gary Gensler, *Establishment of an Ethical Artificial Intelligence Framework for Investment Advisers*; April 6, 2023.
- 16 U.S. Securities and Exchange Commission 17 C.F.R. Parts 240 and 275 [Release Nos. 34-97990; IA-6353; File No. S7-12-23] RIN 3235-AN00; 3235-AN14, *Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*; SEC Issue Date: July 26, 2023; Federal Register Publish Date: August 9, 2023.

- 17 U.S. Securities and Exchange Commission, Office of Inspector General, *Final Management Letter: Observations Noted During TCR System Audit Support Engagement* (May 20, 2015); and U.S. Securities and Exchange Commission, Office of Inspector General, *Final Management Letter: Progress on the SEC's Tips, Complaints, and Referrals Intake and Resolution System Redesign and Vulnerability Remediation Efforts* (May 31, 2017).
- 18 U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Further Strengthen the Tips, Complaints, and Referrals Program* (Report No. 566; February 24, 2021).
- 19 U.S. Securities and Exchange Commission, Office of Inspector General, *SEC's Whistleblower Program: Additional Actions Are Needed To Better Prepare for Future Program Growth, Increase Efficiencies, and Enhance Program Management* (Report No. 575; December 19, 2022).
- 20 Partnership for Public Service, *2022 Best Places to Work in the Federal Government*. Effective management of an entity's workforce, its human capital, is essential to achieving results and an important part of internal control.
- 21 U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2022–2026* (Goal 3); November 23, 2022. *See also* U.S. Securities and Exchange Commission, *Diversity, Equity, Inclusion, and Accessibility Strategic Plan Fiscal Years 2023–2026*; September 18, 2023.
- 22 U.S. Securities and Exchange Commission, *Fiscal Year 2024 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2022 Annual Performance Report*; March 13, 2023.
- 23 Partnership for Public Service, *Who is Quitting and Retiring: Important Fiscal 2021 Trends in the Federal Government* (last accessed on October 4, 2023).
- 24 U.S. Government Accountability Office, *SECURITIES AND EXCHANGE COMMISSION Employee Views of Personnel Management Improved, but Action Needed on Measuring Diversity and Inclusion Goals* (GAO-23-105459; December 22, 2022).
- 25 U.S. Securities and Exchange Commission, Office of Inspector General, *Enforcement Investigations: Measures of Timeliness Showed Some Improvement But Enforcement Can Better Communicate Capabilities for Expediting Investigations and Improve Internal Processes* (Report No. 576; February 15, 2023).
- 26 U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Can Improve in Several Areas Related to Hiring* (Report No. 572; February 28, 2022).
- 27 This data, provided by OHR, includes all hiring and loss data except for SEC scholars and hardship reassignments.
- 28 U.S. Securities and Exchange Commission, Office of Inspector General, *Enforcement Investigations: Measures of Timeliness Showed Some Improvement But Enforcement Can Better Communicate Capabilities for Expediting Investigations and Improve Internal Processes* (Report No. 576; February 15, 2023).
- 29 Some professionals join the SEC with the intention of serving for a limited time, in order to gain skills that enhance their value to private employers.
- 30 U.S. Securities and Exchange Commission, Office of Inspector General, *Final Management Letter: Review of Upward Mobility Program* (May 1, 2023).
- 31 Section 962 of Dodd-Frank includes a provision for GAO to report triennially on the SEC's personnel management, including the competence of professional staff; the effectiveness of supervisors; and issues related to employee performance assessments, promotion, and intra-agency communication. *See* Pub. L. No. 111-203, 124 Stat. 1376, 1908-1909 (2010) (codified at 15 U.S.C. § 78d-7).
- 32 U.S. Government Accountability Office, *SECURITIES AND EXCHANGE COMMISSION Employee Views of Personnel Management Improved, but Action Needed on Measuring Diversity and Inclusion Goals* (GAO-23-105459; December 22, 2022).
- 33 To view our work related to the agency's pandemic response, *see* U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Took Appropriate Workplace Safety Actions in Accordance With Pandemic Guidance But Could Improve Communications* (Report No. 579; July 25, 2023).
- 34 U.S. Securities and Exchange Commission, *Strategic Plan Fiscal Years 2022-2026* (Goal 3); November 23, 2022.
- 35 *See, e.g.*, House Committee on Oversight and Accountability, Subcommittee Hearing, *Oversight of Federal Agencies' Post-Pandemic Telework Policies* (September 14, 2023).

- 36 Cybersecurity & Infrastructure Security Agency, Cybersecurity Advisory, Weak Security Controls and Practices Routinely Exploited for Initial Access, AA22-137A, December 8, 2022.
- 37 U.S. Securities and Exchange Commission, *Fiscal Year 2024 Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2022 Annual Performance Report*; March 13, 2023.
- 38 The SEC was ultimately able to recover all but one of the comments affected by the error.
- 39 U.S. Securities and Exchange Commission, Office of Inspector General, *Final Management Letter: Review of SEC Controls Over Public Comments Submitted Online and Actions Taken in Response to a Known Error*; April 14, 2023.
- 40 U.S. Securities and Exchange Commission, Office of Inspector General, *Final Management Letter: Readiness Review—The SEC’s Progress Toward Implementing Zero Trust Cybersecurity Principles*; September 27, 2023.
- 41 Pub. L. No. 113-283, § 3555, 128 Stat. 3073 (2014).
- 42 OMB Office of the Federal Chief Information Officer FY22 Core IG Metrics Implementation Analysis and Guidelines (last accessed on October 4, 2023).
- 43 U.S. Securities and Exchange Commission, Office of Inspector General, *Audit of the SEC’s Compliance With the Federal Information Security Modernization Act for Fiscal Year 2017* (Report No. 546; March 30, 2018).
- 44 The categories are established under the North American Industry Classification System (NAICS), a comprehensive industry classification system that covers all economic activities and groups establishments into industries based on the similarity of their production processes. Among other things, U.S. statistical agencies use NAICS to provide uniformity and comparability in the presentation of statistical data describing the U.S. economy. Federal Acquisition Regulation 19.102(b) requires contracting officers to assign one NAICS code to all government solicitations, contracts, and task and delivery orders based on the product or service being acquired and its principal purpose.
- 45 U.S. Government Accountability Office, *High Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas* (GAO-23-106203; April 20, 2023).
- 46 Office of Management and Budget, Memorandum M-22-03, *Advancing Equity in Federal Procurement*; December 2, 2021.
- 47 Executive Order 13895, *Advancing Racial Equity and Support for Underserved Communities through the Federal Government*; January 20, 2021. Independent agencies, such as the SEC, are strongly encouraged to comply with the provisions of this Executive Order.
- 48 U.S. Securities and Exchange Commission, Office of Inspector General, *The SEC Supported Federal Small Business Contracting Objectives, Yet Could Make Better Use of Data and Take Other Actions To Further Promote Small Business Contracting* (Report No. 577; February 28, 2023).
- 49 As stated in Federal Acquisition Regulation 16.602, *Labor-hour contracts*, LH contracts are a variation of T&M contracts and differ only in that materials are not supplied by the contractor.
- 50 U.S. Government Accountability Office, *FEDERAL CONTRACTING: Opportunities Exist to Reduce Use of Time-and-Materials Contracts* (GAO-22-104806; June 7, 2022). GAO included in its review four Department of Defense agencies and field activities (the Air Force, Army, Defense Finance and Accounting Service, and Washington Headquarters Services), and three civilian agencies (the Social Security Administration, the Department of Homeland Security, and the Department of State).
- 51 U.S. Securities and Exchange Commission, *Fiscal Year 2022 Agency Financial Report* (November 15, 2022).

OIG Contact Information

Employee Suggestion Program

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

Comments and Ideas

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

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