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Office of Audits

# Audit of SEC's Employee Recognition Program and Recruitment, Relocation, and Retention Incentives

August 2, 2011
Report No. 492

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

OFFICE OF
INSPECTOR GENERAL

# MEMORANDUM

August 2, 2011

**To:** Cristin Fair, Acting Associate Executive Director, Office of Human Resources

Kenneth A. Johnson, Chief Financial Officer, Office of Financial Management (OFM)

**From:** H. David Kotz, Inspector General, Office of Inspector General (OIG)

**Subject:** *Audit of SEC's Employee Recognition Program and Recruitment, Relocation, and Retention Incentives,* Report No. 492

This memorandum transmits the U.S. Securities and Exchange Commission OIG's final report detailing the results on our audit of the SEC's employee recognition program and recruitment, relocation and retention incentives. This audit was conducted as part of our continuous effort to assess management of the Commission's programs and operations and as a part of our annual audit plan.

The final report contains 14 recommendations which if fully implemented should enhance the Commission's employee recognition program and administration of recruitment, relocation and retention incentives. The respective offices concurred with all 14 of the report's recommendations. Your written response to the draft report is included in Appendix V.

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

Should you have any questions regarding this report, please do not hesitate to contact me. We appreciate the courtesy and cooperation that you and your staff extended to our auditors during this audit.

Attachment

cc: James R. Burns, Deputy Chief of Staff, Office of the Chairman
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# Audit of SEC's Employee Recognition Program and Recruitment, Relocation, and Retention Incentives

## Executive Summary

**Background.** The Securities and Exchange Commission's (SEC or Commission) Employee Recognition Program (ERP) is designed to motivate employees and recognize contributions above and beyond normal job requirements with monetary and nonmonetary awards and to improve the efficiency of operations through an employee suggestion program. Awards may be granted for contributions either within or outside an employee's job responsibilities.

The Office of Human Resources (OHR) has authority for managing the Commission's awards budget and granting final approval of awards. OHR is also responsible for training supervisors to use the ERP effectively to achieve organizational goals and objectives, providing guidelines for initiating appropriately selected performance-related awards, encouraging employees to submit suggestions to the suggestion program, and evaluating and processing awards and suggestions. Further, OHR is responsible for monitoring and evaluating the adequacy of documentation for award recommendations and the use of approval authority that is delegated to divisions and offices.

During the period covered by this Office of Inspector General (OIG) audit, fiscal years 2008 through 2010, the Commission permitted monetary recognition in the form of special act or service awards, suggestion awards, time-off awards,[1] and on-the-spot awards. The Commission also utilized recruitment, relocation, and retention incentives. Recruitment, relocation, and retention (3R) incentives are among the human capital flexibilities intended to help federal agencies address human capital challenges and to build and maintain a high-performing workforce with essential skills and competencies.

**Objectives.** The overall objective of this audit was to assess whether monetary awards under the SEC's ERP and 3R incentives were awarded consistent with applicable governing policies and procedures. We also examined whether awards and incentives were linked to the Commission's human capital plan, as applicable.

**Results.** In this audit, the OIG found that OHR has not fully implemented recommendations made as a result of a 2007 Office of Personnel Management

[1] Time-off awards are considered monetary awards because they have monetary value in terms of lost production time to the Commission.

(OPM) human resources operations audit pertaining to the SEC's award activities. As a result, we found that similar deficiencies continue to exist. For example, we found that there were insufficient resources dedicated to developing and overseeing the ERP and there was a lack of documentary support for sampled awards. We also identified significant time lags between special act dates and award dates due to award budget allocations being made late in the fiscal year.

The audit also found that OHR does not have updated comprehensive policies and procedures available to its supervisors and employees regarding SEC awards and 3R incentives. Additionally, OHR has not provided supervisors and employees with formal training in this area. As a result, the Commission's use of awards and incentives is not as effective as it could be in achieving intended goals.

Further, we found that the SEC's budgeting processes for awards and incentives for SK[2] employees are flawed and ineffective. The SEC's overall award budget for SK staff and average award per person are nominal. Additionally, SEC offices and divisions often are not notified of their award budgets until late in the fiscal year, which has resulted in awards being made significantly after the rewarded action occurred. Further, during the period covered by our audit, supervisors were able to use their award budgets only for special act awards, virtually eliminating their ability to reward employees for outstanding performance in the course of their normal job duties and contrary to one of the primary purposes of the ERP. We also found inconsistencies among offices and divisions with respect to their adherence to the terms of the budget allocation memoranda issued to divisions and offices, including instances in which offices exceeded their award budgets or provided awards in advance of receiving their award budgets. We determined that payment of awards at the end of the fiscal year presents various accounting issues, including payroll errors. Lastly, we found that although Office Heads and Division Directors are ultimately notified of their awards budget, they are not notified of funds available for 3R incentives.

Furthermore, we found that OHR's supporting documentation for a large number of the monetary awards and incentives reviewed for this audit were incomplete. We found that documentation was insufficient to show the basis for the awards and incentives and that required approvals were properly obtained. We also found that an SEC employee was given an award for work that was the subject of an OIG investigative report. Although the SEC postponed giving the award pending a determination of whether disciplinary action was warranted against the employee, the award was eventually granted after an outside consultant determined that the employee's actions did not warrant formal disciplinary action, even though the outside consultant did not dispute the serious performance issues pertaining to the employee raised in the OIG report.

[2] SK is a staff level pay scale used by the SEC in lieu of the GS pay scale.

Additionally, we found that the SEC made a cash award to an SEC Schedule C employee in fiscal year 2010 in violation of OPM guidance restricting awards, bonuses, and similar payments for political appointees.

The audit also found that although OHR had an Employee Suggestion Program in place from 2008 to 2011 that included a monetary incentive component, OHR did not make any cash awards under the program. Additionally, the program was given little priority and was not effectively managed.

Lastly, we found that the SEC does not currently have in place a human capital plan. Accordingly, activities associated with the ERP and 3R incentives are not being assessed to determine whether they effectively align with the SEC's overall human capital goals and objectives.

**Summary of Recommendations:** Specifically, the OIG recommends that the Office of Human Resources:

(1) Implement an internal review process to review a select number or percentage of awards annually to ensure that appropriate documentation exists for the awards and needed information is readily available to support the awards.

(2) Annually provide information to SEC supervisors on relevant parts of the SEC award program, including (1) types of awards available and procedures for nominating employees for awards, (2) appropriate types of division-and office-level awards for peer recognition, and (3) successful award practices.

(3) Dedicate specific resources to develop and oversee the Employee Recognition Program.

(4) Finalize its policies and procedures for the Employee Recognition Program within three months and publish them on the SEC's Insider. The policies and procedures should include information on current practices for determining bonuses for Senior Officers (SO), policies for determining performance-based awards for SK employees, and acceptable methods of providing informal nonmonetary awards in addition to traditional nonmonetary awards.

(5) Review and update its existing policies and procedures on recruitment, relocation, and retention incentives. The update should ensure that the new policies and procedures reflect appropriate references to SK and SO employees and include expanded authority for retention bonuses.

(6) Provide formal training on its revised policies and procedures and issue information notices to supervisors and employees as needed to reflect changes in practices and policies.

(7) In conjunction with the Office of Financial Management (OFM), take the following actions:

7a. Develop alternatives for reviewing the SEC award budget so that it is competitive with other federal agencies' award budgets.

7b. Develop and implement a mechanism to reward employees for superior or meritorious performance within their job responsibilities through lump-sum performance awards.

7c. Determine ways to reduce the time required for formulation of budget allocations, including, for example, moving responsibility for formulating award budget allocations to OFM and having the Office of Information Technology walk-in development center develop an electronic program to pull payroll data directly from the Department of the Interior to facilitate more timely completion of budget allocations.

7d. Implement a process to make initial award allocations in the first quarter of each fiscal year, thereby giving offices the ability to make awards throughout the year. Base initial allocations on historical data and then refine the allocations, as needed, when the SEC's annual budget has been approved.

7e. Allocate award funds directly to SEC divisions and offices instead of placing the initial award funds in OHR's budget, and hold office and division heads responsible for monitoring use of the funds.

7f. Re-examine budgeted amounts for recruitment, relocation, and retention incentives to ensure that sufficient funds are available, and make supervisors aware of available funding so that they can effectively use incentives to recruit and retain needed talent

(8) Develop and train human resources specialists on a centralized filing system (manual, electronic, or both) for all awards that contains appropriate documentation to support the awards, including SF 50 and SEC Form 48 with narrative justification and appropriate approvals.

(9) Implement management controls to ensure that employees who are subject to disciplinary action are restricted from receiving awards related to the performance that resulted in the disciplinary action.

(10) Review the August 12, 2010, cash award to a Schedule C employee to determine whether it was in violation of the OPM guidance and, if so, seek recovery of the improper award.

(11) Consider ways that, as part of the ERP, it may be able to provide awards to employees for adopted suggestions submitted to the OIG's suggestion program.

(12) Revise the service agreement format in SEC Form 2299, Securities and Exchange Commission Recruitment Bonus Service Agreement, to incorporate specific reasons that the SEC "may" and "must" terminate service agreements for recruitment and relocation bonuses.

(13) Develop and train applicable human resources specialists on the use of a centralized filing system for all relocation, recruitment, and retention incentives. The centralized filing system should contain all appropriate documentation to support the incentives, including the SF 50 and the applicable SEC form with the narrative justification for the bonus and the appropriate approvals.

(14) Identify resources and establish a timeline to complete the required human capital plan. Ensure that ERP activities are evaluated at least annually to ensure that they align with human capital plan objectives and strategies.

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# Background and Objectives

## Background

**Employee Recognition Program.** The Securities and Exchange Commission's (SEC or Commission) Employee Recognition Program (ERP) is designed to motivate employees and recognize contributions above and beyond normal job requirements with monetary and nonmonetary awards and to improve the efficiency of operations through an employee suggestion program. Awards may be granted for contributions either within or outside an employee's job responsibilities. The Commission determines how much of its budget will be allocated to the ERP and how the budgeted amounts will be allocated among the various divisions and offices.

The Office of Human Resources (OHR) has authority for managing the SEC's awards budget and granting final approval of awards. OHR is also responsible for training supervisors to use the ERP effectively to achieve organizational goals and objectives, providing guidelines for initiating appropriately selected performance-related awards, encouraging employees to submit suggestions to a suggestion program, and evaluating and processing awards and suggestions. Further, OHR is responsible for monitoring and evaluating the adequacy of documentation for award recommendations and the use of approval authority that is delegated to divisions and offices.

During the period covered by this Office of Inspector General (OIG) audit, fiscal years 2008 through 2010, the Commission permitted monetary recognition in the form of special act or service awards, suggestion awards, time-off awards,[3] and on-the-spot awards. A special act or service award is a lump sum cash award in recognition of an employee's special act or service, such as exemplary or courageous handling of an emergency situation in connection with or related to official employment. A time-off award is an excused absence granted to an employee without charge to leave or loss of pay, in recognition of the employee's contribution to the quality, efficiency, or economy of government operations. An on-the-spot award is a small lump sum cash award similar to a special act or service award that is used to quickly recognize one-time and short-term tasks or assignments or other job responsibilities performed by an employee in an exemplary manner. A suggestion award is a lump sum cash award given to an employee in recognition of the adoption of a suggestion designed to accomplish a job better, faster, or more economically and that results in tangible or intangible benefits to the government. The suggestion may save material or property, promote health, increase safety, or improve morale.

[3] Time-off awards are considered monetary awards because they have monetary value in terms of lost production time to the Commission.

For the fiscal year 2008 and 2009 performance periods, all SK employees who received an acceptable performance rating received an equivalent merit increase (i.e., the same percentage adjustment to salary), in accordance with an agreement between the Commission and the National Treasury Employees Union (Union). If the merit increase would have caused an employee's pay to exceed the employee's salary grade maximum, the employee would receive the excess amount as a lump sum payment. Outside of the across-the-board merit increases, one-time awards linked to an individual's performance rating (performance awards) were not permitted. Therefore, the primary mechanisms to distinguish performance and reward SK employees during the period covered by our audit were special act or service, time-off, and on-the-spot awards. The Commission expects to provide SK employees a merit increase of approximately 2 percent for fiscal year 2010. Once the details have been worked out, the raises will be distributed retroactive to January 2, 2011. SEC Senior Officers (SO) were not subject to the Commission's agreement with the Union and were eligible to receive both merit increases and bonuses based on performance during fiscal years 2008 and 2009. SOs were not eligible for merit increases or bonuses for fiscal year 2010 due to restrictions on bonuses for senior executives.

In fiscal years 2008, 2009, and 2010, the SEC made 3,427, 3,102, and 2,524 cash awards, respectively, totaling approximately $4 to $5 million for each of the three years. Both SK and SO employees received these awards and some employees received multiple awards. In many cases, groups of employees received awards.

**Recruitment, Relocation, and Retention Incentives.** Recruitment, relocation, and retention (3R) incentives are among the human capital flexibilities intended to help federal agencies address human capital challenges and to build and maintain a high-performing workforce with essential skills and competencies. According to the Office of Personnel Management (OPM), the intent of 3R incentives is to provide agencies with discretionary authority to use nonbase compensation to help recruit, relocate, and retain employees in difficult staffing situations.[4]

A relocation incentive may only be paid to a current federal employee appointed without a break in service who must relocate from one agency to another, or from one part of an agency to another, in a different commuting area. A recruitment incentive can be given to an employee new to the federal government. In either case, it must be determined that the agency would likely encounter difficulty in filling the position in the absence of such an incentive. A retention incentive can be paid to a current employee if the unusually high or unique qualifications of the employee or the special needs of the agency make retaining that employee essential and it is determined that the employee would likely leave federal service without the incentive. In November 2007, OPM issued final regulations

[4] GAO-10-226, Continued Improvements Exist for FDA and OPM to Improve Oversight of Recruitment, Relocation, and Retention Incentives, January 2010.

that also give agencies authority to pay retention incentives to employees who would likely leave for a different federal position before the closure or relocation of the employee's office, activity, or organization in the absence of a retention incentive.[5]

During fiscal years 2008 through 2010, the SEC paid three employees relocation bonuses totaling approximately $70,000, paid 41 new employees a total of approximately $659,000 in recruitment bonuses, and approved 31 retention bonuses that ranged from approximately 2 to 24 percent of the employees' basic pay.

# Objectives

The overall objective of this audit was to assess whether monetary awards awarded under the SEC's ERP and 3R incentives were consistent with applicable governing policies and procedures. We also examined whether awards and incentives were linked to the Commission's human capital plan, as applicable.

[5] 5 CFR § 575.315.

# Findings and Recommendations

## Finding 1: OHR Did Not Fully Address OPM Recommendations Pertaining to SEC Award Practices

> OHR did not fully address recommendations that OPM made in its 2007 review of OHR's human resources operations pertaining to SEC award activities. As a result, we found that issues similar to those found by OPM continue to exist.

In November 2007, OPM conducted a human resources audit of OHR's operations.[6] OPM examined the Commission's award activities as part of its assessment to determine whether the SEC met OPM's results-oriented performance standard (i.e., the SEC has a diverse, results-oriented, high-performing workforce and a performance management system that differentiates between high and low levels of performance and links individual/team/unit performance to organizational goals and desired results effectively).

Based on the human resources audit, OPM made a number of recommendations[7] to OHR in a March 2008 report. During our audit, we found that OHR had addressed OPM's recommendations concerning awards and the performance management system, by electing to separate pay from performance until a new performance management system could effectively make distinctions in performance. We also found, however, that the SEC had not fully addressed other OPM recommendations pertaining to award activities.

OPM found that the SEC had only partially achieved the outcome of creating a reward environment that is beyond compensation and benefits which contributes to attracting, retaining, and motivating employees. In its comments, OPM stated that the SEC did have formal policy on the use of on-the-spot and special-act or service awards. OPM also noted that some SEC divisions or offices used division- or office-level awards for peer recognition and that some employees were recognized for performance through less formal means, such as opportunities to work on special projects or better assignments. However, OPM found that the use of such rewards and recognition practices was not consistent across SEC divisions and offices. OPM also noted that managers said monetary

[6] OPM conducts independent evaluations of agencies' HR programs to ensure they support the mission and meet merit system principles and related civil service laws. OPM evaluates the effectiveness of agencies' results oriented performance culture, leadership and knowledge management, and talent management, including delegated competitive examining and excepted service hiring, Source: http://www.opm.gov/Open/About OPM.aspx.

[7] OPM's review resulted in both required and recommended actions on the part of the SEC which are referred to generally as "recommendations" for purposes of this report.

recognition available for employees in professional positions fell significantly short of bonuses employees would be eligible to receive in the private sector. Additionally, OPM stated that employees, supervisors, and managers believed money, better work assignments, and peer recognition were the most motivating rewards.

With respect to use of office-level awards, we found in a preliminary inquiry completed in March 2010 that a former SEC regional office director used funds from the office's supply budget to purchase nonmonetary honorary and informal recognition awards in the form of inscribed glass blocks for staff. These informal awards were not issued pursuant to a Commission-sponsored awards program, and we found that the SEC's internal regulation, Personnel Operating Policies and Procedures (POPPS), Employee Recognition Program, dated September 9, 1991, did not give SEC division or office directors or the SEC's Executive Director authority to approve awards outside Commission-sponsored awards program. In addition, we determined that the absence of clear criteria for making such awards could lead to the appearance of impropriety on the part of the manager making the award and a perception of unfairness or favoritism on the part of staff not receiving an award.[8]

During its November 2007 review, OPM also found that employees were confused about the availability and eligibility of special act and service awards. OPM stated that some SEC divisions or offices made extensive use of all types of awards but that other units did not. We identified similar trends during this audit. For example, we found that some SEC divisions or offices made frequent time-off awards, while others did not. During fiscal years 2008 through 2010, for example, the Office of Information Technology made a total of 131 time-off awards, while the Office of Financial Management (OFM) made only 13.[9]

As a result of its review, OPM directed[10] OHR to educate the SEC workforce about relevant parts of the award program and recommended that OHR share information about successful awards practices across the Commission. In response, OHR stated that it would send out information about a new employee suggestion program with instructions by June 1, 2008; post the information about the employee suggestion program on the SEC's intranet, the Insider; and send an e-mail to SEC employees by August 1, 2008, to encourage them to read about the awards program on the Insider. OHR also stated that between November 2007 and the end of fiscal year 2008 it would collect and analyze information on awards practices at the SEC and, as appropriate, share information on best practices across the Commission.

[8] SEC Office of Inspector Investigative Memorandum entitled Employee Recognition Program and Grants of Employee Awards, PI 09-07 (Mar. 10, 2010).
[9] While there is a disparity between the offices in size, this size difference does not solely account for the difference in numbers of time-off awards.
[10] This was referred to by OPM as a required action.

The SEC issued a formal policy for its employee suggestion program in March 2008, but OHR was unable to provide us with any documentation to show that it had sent an e-mail to SEC employees by August 1, 2008, to encourage them to read about the awards program on the Insider. Additionally, OHR was unable to provide us with documentation to show that it collected and analyzed information on award practices or shared information on best practices throughout the SEC.

OPM also examined whether awards and recognition were "processed according to law and OPM and agency regulations and procedures." OPM found that OHR only partially met this standard. OPM found that the SEC had not evaluated its awards program to determine compliance with OPM and agency regulations and policies. In addition, OPM noted that it identified documentation issues, such as missing signatures, reviewer titles, and dates, during its review of a sample of individual and group special-service or act awards. OPM also found significant lags between the actual dates of special acts or services and the award dates. We found that similar issues persist. As discussed in more detail in Finding 4, OHR was not able to timely produce documentation to support various awards. We also found significant gaps between special act dates and award dates and that multiple awards were made to the same individuals at the end of the fiscal year. We believe that these lags and multiple year-end awards to individuals occurred in many cases because managers did not receive their award allocations until late in the fiscal year due in part to continuing resolutions.

As a result of its findings related to OHR's processing of awards, OPM directed OHR to conduct an evaluation of its awards program to determine the program's efficiency, effectiveness, and compliance with merit system principles, and OPM recommended that OHR streamline the approval process for awards so that awards could be issued closer to the time of the act or service being rewarded.

OHR stated in its response to OPM that it would evaluate the SEC awards program in accordance with 5 Code of Federal Regulations (CFR) 451.106(d) after the end of each fiscal year.[11] OHR also stated that it would seek authorization to increase the award approval limits for Office Heads and Division Directors from $1,499 to $2,500 to streamline the process for larger awards and that it would continue to distribute initial award allocations during the first quarter of each fiscal year.

Although we found that OHR had increased award approval limits for Office Heads and Division Directors to $2,500, we also found that significant gaps between special-act dates and award dates persist because award allocations are being provided in the third quarter of the fiscal year. Additionally, OHR was unable to provide documentation to show that annual award reviews were being conducted to address the documentation issues OPM cited during its review. OHR informed us that it does conduct a review of award data that is submitted to

[11] 5 CFR 451.106(d) states the following: "Agencies shall evaluate their award program(s)."

the Union at the end of each fiscal year and holds informal discussions among OHR management to identify trends and potential issues related to the awards program.

OHR provided OPM a response on July 1, 2008, to address the completion of select recommendations in OPM's March 2008 report, but the completed actions were not related to the SEC awards program. OHR informed us that turnover and reassignments of OHR staff had a negative effect on OHR's ability to fully address OPM's recommendations. We believe that the absence of a designated group in OHR with primary responsibility for the ERP has led to OHR's inability to fully achieve the OPM-specified outcome of creating a reward environment at the SEC beyond compensation and benefits that contributes to attracting, retaining, and motivating SEC employees. For example, we found that different groups within OHR are responsible for budget formulation and awards processing. We also found that responsibility for oversight of the ERP was handled by OHR's Employee and Labor Relations Branch at one time and was then transferred to the Center for Talent Management and Employee Programs because of staff retirements and reassignments.

Without an effective internal review process, education of SEC supervisors and managers concerning the ERP, and adequate staff resources dedicated to developing and overseeing the ERP, the issues found by OPM and our audit may persist, weakening the effectiveness of the ERP and its ability to achieve intended outcomes.

**Recommendation 1:**

The Office of Human Resources should implement an internal review process to review a select number or percentage of awards annually to ensure that appropriate documentation exists for the awards and needed information is readily available to support the awards.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

**Recommendation 2:**

The Office of Human Resources should at least annually provide information to SEC supervisors on relevant parts of the SEC award program, including (1) types of awards available and procedures for nominating employees for awards, (2) appropriate types of division- and office-level awards for peer recognition, and (3) successful award practices.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

**Recommendation 3:**

The Office of Human Resources should dedicate specific resources to develop and oversee the Employee Recognition Program.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

# Finding 2: OHR's Policy for Its Award Program Is Outdated and Not Readily Accessible

OHR does not have updated comprehensive policies and procedures available to its supervisors and employees regarding SEC awards and recruitment, relocation, and retention incentives. Additionally, OHR has not provided supervisors and employees with formal training in this area.

## ERP

OHR's policies and procedures for its awards program are located in the POPPS Manual, chapter 451.A, "Employee Recognition Program," but much of this guidance is outdated and not available electronically on the SEC intranet. This chapter was last updated in February 1993 and contains information that is no longer relevant. For example, it refers to guidance applicable to General Schedule and Senior Executive Service employees rather than to SK and SO employees. The guidance also contains information on quality step increases and suggestions awards, which are no longer available award options. Further, the guidance does not reflect the SEC's current practices for determining bonuses for SOs.

In connection with the preliminary inquiry noted earlier, we recommended that the SEC develop more detailed guidance for nonmonetary awards.[12] The preliminary inquiry found that the POPPS Manual did not specifically address

[12] SEC Office of Inspector General Investigative Memorandum entitled Employee Recognition Program and Grants of Employee Awards, PI 09-07 (Mar. 10, 2010).

whether informal nonmonetary awards in addition to traditional ERP nonmonetary awards were authorized and did not address what criteria, standards, and approvals were pertinent to such awards. The POPPS Manual also did not make clear that appropriated funds could not be used to pay for employee parking as an award.

Further, with OHR's recent implementation of the new performance-based rating system, we determined that OHR should issue guidance to supervisors on acceptable approaches for calculating performance awards that reflect meaningful distinctions based on the level of performance to ensure that employees with higher ratings of record receive larger cash awards.

OHR has recently dedicated resources, including hiring a contractor, to draft new policies and procedures for the SEC's ERP. By memorandum dated March 29, 2011, the Associate Executive Director of OHR notified the SEC Chairman that OHR is reviewing the ERP to identify and implement changes that will enable managers to effectively reward employees in a timely manner and in accordance with regulation. The Associate Executive Director of OHR further stated that the changes will be informed by the findings and recommendations of this audit, results from the SEC's compensation study being conducted by Towers, Watson, and Co.,[13] and collaboration with OFM regarding funding cycles for awards.

OHR's target date for having final policies and procedures in place is before the end of fiscal year 2011. However, we found that in the recent past, OHR has not met target dates for developing new policies and procedures. For example, we found that in response to Recommendation No. 1 in our March 2010 investigative memorandum,[14] which recommended that OHR revise its internal award policies, including the pertinent sections of the POPPS Manual, OHR stated that it would bring the entire policy up to date by September 10, 2010. OHR did not meet this target date, however, and the policy has not been completed to date.

We conducted searches of the Insider to identify information available electronically to supervisors and employees on the ERP and awards, and we found that minimal information existed and that the information available was difficult to locate. Our review found that the only information available as of March 2011 was a link under OHR Employee Relations to "Special Act and Time-Off Awards." The link is to SEC Form 48, Award Recommendation and Approval, which supervisors can use to nominate their employees for special act, suggestion, time-off, or on-the-spot awards. The form also contains an attachment consisting of a table with a brief description of the various types of awards and refers supervisors to the POPPS Manual for more information.

[13] The purpose of the study is to assess the Commission's current compensation design. Based on the study's findings, the SEC will consider recommendations to ensure that the Commission's compensation design is fair and transparent and enables the SEC to recruit and retain the staff necessary for the SEC to achieve its mission. Towers Watson was expected to complete its report by the end of June 2011.
[14] SEC Office of Inspector General Investigative Memorandum entitled Employee Recognition Program and Grants of Employee Awards, PI 09-07 (Mar. 10, 2010).

However, the POPPS Manual is not available electronically on the Insider. We also noted that although SEC Form 48 was last updated in August 2009, it is outdated because it refers to a suggestion award that is no longer available at the SEC, as discussed in Finding 6.

## 3R Incentives

SEC policies and procedures related to 3R incentives are set forth in three POPPS Manual chapters: 575.A, "Recruitment Bonuses," dated July 20, 1993, chapter 575.B, "Relocation Bonuses," dated July 20, 1993, and chapter 575.C, "Retention Allowances," dated August 27, 1996. These policies and procedures are outdated, however. For example, the POPPS policies pertaining to incentives make references to GS and SES employees rather than SK and SO employees. In some areas, the policies do not reflect recent regulatory changes related to 3R incentives.[15] For example, retention bonuses, as of 2007, may be approved for employees for whom the SEC has a special need during a period before the closure or relocation of the employee's office, facility, activity, or organization, if the employee would likely leave the SEC for a different position in the federal service in the absence of a retention incentive. This authority is in addition to the authority permitting retention bonuses for employees who are likely to leave the SEC for a position outside the federal government. However, OHR's current policy does not mention this expanded authority for retention bonuses and its application within the Commission. During the course of this audit, OHR acknowledged the need to revise its policies and procedures and stated that it had begun drafting changes to existing policies.

## Formal Training

In addition to reviewing internal policies and procedures, we sought information from OHR pertaining to formal training provided to supervisors and employees on methods for rewarding employees and the various incentives that are available. OHR said that to the best of its knowledge, there was no specific training provided on awards and incentives during fiscal years 2008 through 2010, but believed that these areas were touched on during performance management training.

Unless OHR ensures that its policies and procedures related to awards and incentives are up to date and readily available to all employees, and that supervisors receive adequate training on those policies and procedures, the Commission's use of awards and incentives is unlikely to be as effective as possible in achieving the intended goals of its awards and incentives programs. For example, lack of up-to-date information in the POPPS manual might result in managers' unawareness of their ability to offer retention bonuses to some

[15] Regulations related to 3R incentives are in CFR Title 5: Administrative Personnel, Part 575—Recruitment, Relocation, and Retention Incentives; Supervisory Differentials; and Extended Assignment Incentives.

employees. Additionally, uneven application of policies and procedures that may occur because of the lack of up-to-date information could lead to employee perceptions of unfairness.

**Recommendation 4:**

The Office of Human Resources should finalize its policies and procedures for the Employee Recognition Program within three months and publish them on the SEC's Insider. The policies and procedures should include information on current practices for determining bonuses for Senior Officers, policies for determining performance-based awards for SK employees, and acceptable methods of providing informal nonmonetary awards in addition to traditional nonmonetary awards.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

**Recommendation 5:**

The Office of Human Resources should review and update its existing policies and procedures on recruitment, relocation, and retention incentives. The update should ensure that the new policies and procedures reflect appropriate references to SK and SO employees and include expanded authority for retention bonuses.[16]

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

**Recommendation 6:**

The Office of Human Resources should provide formal training on its revised policies and procedures and issue information notices to supervisors and employees as needed to reflect changes in practices and policies.

[16] We note that in order to implement this recommendation, OHR will need to determine whether updated policies and procedures will include expanded authority for retention bonuses contained in CFR Title 5: Administrative Personnel, Part 575- Recruitment, Relocation, and Retention Incentives; Supervisory Differentials; and Extended Assignment Incentives, in light of its pay setting authority provided for in Pub. L. No. 107-123, Investor and Capital Markets Fee Relief Act, January 16, 2002.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

# Finding 3: OHR's Budgeting Processes for Awards and Incentives Are Ineffective

The budgeting processes and procedures that the SEC currently uses for awards and incentives for SK employees are flawed and ineffective.

The SEC's overall award budget for SK staff and average award per person are nominal.[17] Additionally, SEC offices and divisions often are not notified of their award budgets until late in the fiscal year, which has resulted in awards being made significantly after the rewarded action occurred. Further, during the period covered by our audit, supervisors were able to use their award budgets only for special act awards, virtually eliminating their ability to reward employees for outstanding performance in the course of their normal job duties and contrary to one of the primary purposes of the ERP. We also found inconsistencies among offices and divisions with respect to their adherence to the terms of the budget allocation memoranda issued to divisions and offices, including instances in which offices exceeded their award budgets or provided awards in advance of receiving their award budgets. Further, we determined that payment of awards at the end of the fiscal year presents various accounting issues, including payroll errors. Lastly, we found that although Office Heads and Division Directors are ultimately notified of their awards budget, they are not notified of funds available for 3R incentives.

## SK Awards

To examine the activities associated with the SEC's budget for awards and incentives, we obtained information from OHR and OFM related to budget formulation, allocations, and expenditures for SK awards for fiscal years 2008 through 2010. We also obtained information from the Office of the Executive Director related to work conducted by the Boston Consulting Group (BCG), which conducted a study that, among other things, compared the SEC's award budget to the award budgets of other governmental and nongovernmental entities.[18]

[17] This does not take into consideration the monetary value associated with time-off awards. During FY08-FY10, the SEC made 3,601 time-off awards totaling 49,181 hours.
[18] The Boston Consulting Group, U.S. Securities and Exchange Commission Organizational Study and Reform, March 10, 2011.

The SEC's overall award budget for SK staff and average award per person are nominal. Based on data OHR provided, we found that the average award per person for fiscal years 2008, 2009, and 2010 amounted to $925, $930, and $951, respectively.[19] According to BCG's March 10, 2011, report to Congress, because the percentage of compensation the SEC has allocated to the merit pay pool is just 1.5 percent[20] and merit pay has not been linked to the SEC's performance management system,[21] the SEC struggles to differentiate high performers through merit compensation. BCG also acknowledged that the SEC can reward performance through one-time monetary awards, but remarked that the SEC award budget is minimal, representing approximately 0.5 percent of the Commission's overall compensation budget, or about $2 to $3 million. BCG stated that "the median government award budget is just over six percent and goes as high as 12 percent." BCG concluded that the SEC would need to raise its award budget to at least 3 percent of total compensation, or $15 to $20 million, to align the budget with public sector benchmarks.[22]

We also found that SEC offices and divisions often are not notified of the amount of their award budgets until late in the fiscal year. As noted earlier, this late notification has resulted in lags between actions rewarded and the awards themselves. For fiscal years 2008 through 2010, OHR and the Office of the Executive Director (OED) determined offices' and divisions' budget allocations for SK monetary awards. In general, the process consisted of gathering payroll information regarding executive staff[23] and the SK staff count for each office and division and the aggregate basic pay for SK employees at headquarters and the regional offices. This information was then used to derive the aggregate SK pay for each division and office as a percentage of the total SK pay for the Commission. Using this percentage and the total award pool (minus the amount set aside for SK employees who are part of the executive staff), an award allocation was calculated for each office and division. The OED then sent memoranda to Office Heads and Division Directors notifying them of their award allocations and requesting that they nominate employees for awards. For fiscal years 2008, 2009, and 2010, the allocations totaled approximately $3.3 million, $3.3 million and $3.6 million, respectively.

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[19] For 2008 and 2009, OHR calculated this amount by dividing total SK award expenditures by the aggregate SK staff count on board during these fiscal years. For 2010, OHR calculated the amount by dividing the total funds allocated for fiscal year 2010 awards by the aggregate SK staff count on board during this fiscal year.

[20] Increase to base pay for all employees rated acceptable.

[21] The same percentage was provided for all employees rated acceptable with no differentiation based on performance.

[22] BCG noted, however, that with regard to funding predictability and funding levels, despite material increases in responsibility for the SEC under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), that the SEC's resources have not grown in proportion and in contrast, other regulators have increased resourcing to respond to the crisis or to changing regulatory environments. For example, BCG stated that the FDIC doubled its funding to $2.3 billion in 2009. BCG also acknowledged that other federal regulators are self-funded and have more funding flexibility.

[23] Includes SK pay level staff in the Office of Executive Staff, direct reports to the Chairman, Commissioners' Offices and Office of Legislative and Intergovernmental Affairs.

The SEC's award budget allocation process is not completed until after the Commission's annual appropriation has been approved, which may be several months into the fiscal year.[24] Additionally, the calculation of budget allocations and issuance of related memoranda takes several weeks to complete after the Commission's appropriations are approved. In fiscal years 2009 and 2010, the OED sent out allocation memoranda to Office Heads and Division Directors on August 11, 2009, and July 1, 2010, respectively. In both years, award nominations had to be made by early to mid-September, with the actual awards anticipated to be processed by the end of the fiscal year. Because the allocations were not determined until the fourth quarter of the fiscal year, we found instances where there appeared to be significant time lags between the actions being rewarded and the actual award.

Moreover, we found that during the period covered by our audit, supervisors were able to utilize their award budgets only for special act awards, virtually eliminating their ability to provide monetary awards to employees for superior or meritorious performance within their job responsibilities. For the fiscal year 2008 and fiscal year 2009 performance periods, all SK employees who received a performance rating of "acceptable" received the same merit increase (adjustment to salary), based on an agreement the Commission entered into with the Union. If the merit increase would have caused an employee's salary to exceed the maximum for the grade, the employee received the excess amount as a lump sum payment. One-time awards linked to an individual's performance rating (performance awards) were not permitted. Therefore, the only mechanism to distinguish performance and reward SK employees during the period covered by our audit was through special act or service awards and time-off or on-the-spot awards. Consequently, while one of the purposes of the ERP is to reward employees for performance throughout the rating period, the SEC does not currently have in place a mechanism to do so.

We also found inconsistencies among offices' and divisions' adherence to the terms of the award allocation memoranda. Some offices exceeded their total award budgets, and others provided awards in advance of receiving their award budgets. We found, for example, that by the time OFM received its fiscal year 2010 allocation memorandum, which specified an award allocation of $43,500, OFM had already used $28,100, more than half of the allocated amount, for awards. Although OFM sought and received approval from OHR before it made the awards, other offices and divisions were not informed that seeking and obtaining advance approval was an option available to them. We also found that the Office of Administrative Services and the Office of Investor Education and Advocacy had each made awards totaling approximately $7,000 in fiscal year 2010 before they received their allocation memoranda. In addition, according to data that OHR provided, several offices exceeded their total award allocations. For example, based on information provided by OHR, the OED exceeded its

[24] We acknowledge that there have been instances where the SEC has not received its appropriation until several months into the fiscal year as a result of multiple continuing resolutions.

fiscal year 2008 allocation of $5,014 by $10,986, approximately 319 percent and its fiscal year 2009 allocation of $7,200 by $4,400, or approximately 161 percent, and the Office of Public Affairs exceeded its fiscal year 2008 allocation of $6,959 by $10,001, or approximately 244 percent, and its fiscal year 2009 allocation of $6,900 by $18,000, or approximately 361 percent.

Further, we determined that payment of awards at the end of the fiscal year presented various accounting issues. Based on our review of information provided by OFM, we found that the SEC's entire awards budget is initially held in OHR. For fiscal year 2010, OFM transferred award funds from OHR to the various SEC offices and divisions after OED had notified them by memorandum of the amount they had been allocated for awards. OFM made these transfers to (1) allow offices and divisions to see their allocation in their budget reports and (2) prevent payroll errors by having the funding already in offices' and divisions' budgets. During the fiscal year 2010 end-of-year closeout process, however, OFM learned that the majority of awards would not be fully processed before the end of the fiscal year. As a result, most of the award allocations (less any awards already paid out) were transferred back to OHR to be obligated under a single miscellaneous obligating document.[25] Because of the payment of awards at the end of the fiscal year and resulting actions deemed necessary by OFM for the-end of-year close-out process, we found that payroll errors related to a lack of funding availability in specific budget object codes for some divisions and offices occurred despite OFM's effort to eliminate such errors by initially transferring award funds to offices and divisions. As a result, extra time had to be spent to resolve the errors and process the awards. A recent OIG report on the SEC's budget execution process found that budgetary controls were changed in the SEC's Momentum accounting system to facilitate obligation of payroll charges (including awards) for fiscal year 2009 that were received in the first quarter of fiscal year 2010, which could lead to an Anti-Deficiency Act violation.[26]

## 3R Incentives

We found that while there is a specific amount set aside for recruitment bonuses, relocation and retention money comes from a different, more general funding source within the SEC. For fiscal year 2010, approximately $126,000 was budgeted for recruitment bonuses.

We found that unlike awards, office and division heads are not notified of the amount of funds available for recruitment, relocation, and retention incentives. As a result, managers might not offer retention incentives, for example, because they are uncertain about the availability of funds for them.

[25] Three offices' award money remained in their budgets because, according to OFM, transferring their allocations back to OHR would have resulted in errors.
[26] SEC Office of Inspector General Audit Report entitled Audit of the SEC Budget Execution Cycle, Report No. 488 (Mar. 29, 2011).

The relatively small size of the award budget coupled with the fact that no awards are currently available for exceptional performance of job duties beyond the across-the-board increase negotiated with the Union and unavailability of awards funds information until late in the year (and no information on incentive awards) significantly limits the effectiveness of awards and incentives on attracting, retaining, and motivating individuals with needed talent. In addition, the payment of awards at the end of the fiscal year results in the potential for payroll errors, including possible Anti-Deficiency Act violations.

**Recommendation 7:**

The Office of Human Resources (OHR), in conjunction with the Office of Financial Management (OFM), should take the following actions: [27]

7a. Develop alternatives for reviewing the SEC award budget so that it is competitive with other federal agencies' award budgets.

7b. Develop and implement a mechanism to reward employees for superior or meritorious performance within their job responsibilities through lump-sum performance awards.

7c. Determine ways to reduce the time required for formulation of budget allocations, including, for example, moving responsibility for formulating award budget allocations to OFM and having the Office of Information Technology walk-in development center develop an electronic program to pull payroll data directly from the Department of the Interior to facilitate more timely completion of budget allocations.

7d. Put in place a process to make initial award allocations in the first quarter of each fiscal year, thereby giving offices the ability to make awards throughout the year. Base initial allocations on historical data and then refine the allocations, as needed, when the SEC's annual budget has been approved.[28]

[27] In implementing these recommendations for 2011 and 2012, the SEC should adhere to budgetary limitations in the Office of Personnel Management's June 10, 2011, Memorandum for Heads of Executive Departments and Agencies, from John Berry, Director, Office of Personnel Management and Jeffrey Zients, Deputy Director for Management & Chief Performance Officer, Office of Management and Budget, Subject: Guidance on Awards for Fiscal Years 2011 and 2012. In addition, we understand that union negotiations may affect the SEC's ability to fully achieve the intended outcomes of the recommendation.

[28] We acknowledge that the SEC's ability to put in place award budget allocations in the first quarter of the fiscal year may be impacted by possible future continuing resolutions.

7e. Allocate award funds directly to SEC divisions and offices instead of placing the initial award funds in OHR's budget, and hold office and division heads responsible for monitoring use of the funds.

7f. Re-examine budgeted amounts for recruitment, relocation, and retention incentives to ensure that sufficient funds are available, and make supervisors aware of available funding so that they can effectively use incentives to recruit and retain needed talent.

**Management Comments.** OHR and OFM concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR and OFM concurred with this recommendation. See Appendix V for management's full comments.

# Finding 4: OHR Did Not Maintain Adequate Documentation to Support SK Awards Made During Fiscal Years 2008 Through 2010

OHR's supporting documentation for a large number of the monetary awards reviewed for this audit was incomplete. We found that documentation was insufficient to show the basis for the awards and that required approvals were properly obtained. We also found that an award was made to an SEC employee who was involved in an examination and investigation of Bernard Madoff (Madoff) that failed to discover Madoff's Ponzi scheme.

## Cash Awards

During fiscal years 2008 through 2010, through memoranda issued by OED, SEC Office Heads and Division Directors were provided allocations of award funds and asked to make nominations for SK monetary special act or service awards or on-the-spot awards. The memoranda specified that supervisors were required to use SEC Form 48 to document their award nominations and provide a narrative justification discussing the tangible or intangible benefits of the act or service being rewarded.

Awards also required management approval. For fiscal year 2008, Commissioners, Division Directors, Office Heads, and Regional Directors were permitted to approve awards up to $1,500. Awards from $1,500 to $10,000 needed approval from the Executive Director, and awards above $10,000 required approval from the Chairman. For fiscal years 2009 and 2010, awards up to $2,500 could be approved by Commissioners, Division Directors, Office Heads, and Regional Directors; awards from $2,500 to $10,000 needed approval from the Executive Director; and awards above $10,000 required approval from the Chairman.

To determine whether OHR was maintaining appropriate documentation for the awards it made, we judgmentally selected a sample of 29 of 8,759 available SK monetary awards made from fiscal year 2008 through fiscal year 2010. Twenty-five of these awards were individual cash awards and four were group cash awards. On January 24, 2011, we asked OHR to provide us with the documentation supporting the awards. Specifically, we asked that for each award, OHR provide us with an SEC Form 48 showing the type of award, appropriate approvals, and a narrative justification to describe the employee's achievements to warrant the award, and an SF 50, Notification of Personnel Action, to show the processing of the award. In general, OHR was unable to provide complete and timely information to support these awards. As of March 31, 2011, OHR had provided only SF 50s for the majority of the awards in our sample. We determined that a primary reason for OHR's inability to timely provide the requested information was that OHR does not have a centralized filing system for these types of documents. During our audit, we found that many OHR specialists maintained their own personal files to document the awards they process.

OHR provided complete documentation (SF 50, SEC Form 48, and any related justification or approvals) for only eight of the 29 awards for which we requested documentation. For 20 of the awards, OHR provided only an SF 50 showing that the award was processed. OHR provided no documentation for one of the awards.

Because no SEC Form 48 was provided for 20 of the awards in our sample, all 20 of those awards lacked documented justifications and documented approvals. Two of the 20 awards were large enough—$6,000 and $7,000—that they would have required approval from the Executive Director, and two were large enough—both were for $15,000—that they would have required approval from the Chairman. We also found with respect to one cash award for which an SEC Form 48 had been provided, the signature block that should have contained the dated signature of the Regional Director (the approving official) had been left blank.

We also found errors in the documentation that was provided. For eight awards, the documentation indicated that the award was rating-based. The SF 50s for

four of these awards were assigned nature of action code 840 (Individual Cash Award Rating Based). Under the SEC's agreement with the Union, however, for the fiscal year 2009 performance cycle, employees were permitted to receive only an equivalent performance merit increase, and performance-based awards were not permitted. Hence, all SF 50s for cash awards should have had a nature of action code 849 (Individual Cash Award Non Rating Based). Further, OHR could not provide justifications showing the recommending offices' basis for issuing the four awards. Based on discussions with OHR, we believe it is likely that the rating-based nature of action code on the four awards resulted from a data entry error. However, the SF 50 for one of the four awards showed an award amount of $1,472, and the narrative justification stated "per agreement dated 10/3/08." Both the specific amount of the award and the justification language suggest that the award may have been part of a settlement agreement with the employee rather than a special act award. OHR should research these four awards to determine whether they were in fact erroneously coded—that is, they were not performance-based—to ensure that none were made in violation of the SEC's agreement with the Union.

The other four awards with documentation indicating that they were rating-based were coded as non-rating-based cash awards (special act awards) on the SF 50s, but the related justifications indicated that the awards related to the employees' normal duties. For example, one special act award stated that the examinations led by the employee continued to have an extraordinarily high percentage of significant findings ultimately resulting in successful referrals of apparent fraudulent activity to the Division of Enforcement or the Financial Industry Regulatory Authority. In another case, the award justification stated that the employee was a participant in several examinations and investigations that contributed to the Commission's goals and mission and had implications inside and outside the agency. Although these justifications contained additional details regarding the specific examinations and investigations conducted and their outcomes, the justifications did not clearly show why the employees' contributions went beyond their normal duties and performance standards. Section 4-1 of the POPPS Manual, "Special Act or Service Awards," states that special act or service awards should be used "to recognize *non-recurring contributions* which are *beyond the normal duties* of employees" (emphasis added).

We also found six instances where multiple awards were made to the same employee within days of each other. In some cases, the total amount of the multiple awards to a single employee exceeded the $2,500 approval threshold for Office Heads and Division Directors. For example, one employee received an award on September 12, 2010, for $1,900 and another on September 13, 2010, for $785. Another employee received an award on September 12, 2010, for $2,100 and another on September 13, 2010, for $2,400. Because the award documents were submitted separately, however, higher-level approvals were not obtained. In the first example, OHR was unable to provide documentation that

would enable us to determine whether the awards related to separate acts or services. In the second example, the awards related to the same performance period, but the justifications cited different work performed to warrant each award.

Based on available documentation, we understand that the primary reason why multiple awards were made to individuals within days of each other in fiscal years 2009 and 2010 is that Office Heads and Division Directors did not receive notification of award allocations from OHR until late in the fiscal year. Therefore, offices provided multiple awards at the end of the fiscal year to cover special acts that occurred throughout the fiscal year. We also believe that some of the award justifications were performance-based because special act awards were the primary tool for recognizing staff who produced high-quality work until the agency's new performance system was fully implemented. As previously noted, during fiscal years 2008 and 2009, all employees who received a performance rating of "acceptable" received an equivalent percentage merit pay increase.

Further, we found two awards for which the only documentary support provided were SF 50s showing award amounts of $6. While these amounts appear to be erroneous, OHR was unable to provide any further documentation to support the awards.

## Time-Off Awards

We judgmentally selected 10 out of 3,601 time-off awards made from fiscal year 2008 through fiscal year 2010 for review to determine if there was sufficient documentation to support the awards. The awards selected ranged from 8 to 40 time-off hours. Time-off awards allow supervisors to grant employees time off from duty as a means of encouraging and rewarding superior accomplishments or other personal efforts. According to the POPPS Manual, Chapter 451.A, Employee Recognition Program, Section 5. Time Off Awards, a time-off award is appropriate in situations in which an employee makes a unique contribution involving a difficult or important assignment; displays special skills or initiative in completing an assignment or project before the deadline or in the face of unusual obstacles or pressures; uses notable initiative or creativity in making improvements in a product, activity, program, or service; or ensures that the mission of the organizational unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining his or her own regular workload. A maximum of 40 hours may be granted to a full-time employee for a single contribution. Supervisors nominate employees for time-off awards by completing an SEC Form 48 that includes a justification describing the employee's achievement and resulting benefit to the SEC. Time-off awards up to a maximum of three workdays can be approved by Office Heads and Division Directors. The Executive Director is authorized to approve time-off awards in excess of three workdays, up to the maximum 40 hours for a single contribution.

We found that OHR lacked sufficient documentation to support the majority of time-off awards in our sample. OHR did not provide any documentation to support two of the 10 time-off awards and could only provide SF 50s to support six of the time-off awards. In addition, there was no documentation to show why the Executive Director had approved two time-off awards that exceeded the three-day limit, as required by the POPPS manual.

## Cash Award to Employee Based in Part on 2009 Madoff Investigation

In August 2009, we completed our investigation of the SEC's failure to uncover Bernard Madoff's $50 billion Ponzi scheme.[29] We found that the examinations and investigations of Madoff and/or his firm were generally conducted by inexperienced personnel, were not planned adequately, and were too limited in scope. We further found that the SEC examiners and investigators failed to understand the complexities of Madoff's trading and the importance of verifying his returns with independent third parties. As a result, we recommended in our investigative report that the Chairman share with management the portions of the investigation that related to performance failures by employees who still worked at the SEC and that appropriate action, including performance-based action, be taken on an employee-by-employee basis.

We found during our review that one of the key participants in both the 2005 examination and 2006 investigation of Madoff received a $1,200 cash award in April 2010. The narrative justification for the award indicated that it was made, in part, to reward the employee's efforts in 2009 pertaining to a follow-on investigation of Madoff. The award nomination was signed by the employee's Branch Chief and Assistant Regional Director on September 14, 2009, just two weeks after the August 31, 2009, issuance of the OIG's final investigative report on the Commission's failure to uncover the Madoff Ponzi scheme. Moreover, both the employee being rewarded and the Assistant Regional Director who recommended the award were cited in the report for numerous performance issues and were subject to potential disciplinary action at the time the award recommendation was made.

We did find that SEC postponed payment of the award to the employee until April 25, 2010, after the SEC's receipt of a report from Fortney & Scott, LLC,[30] which concluded that the employee's actions did not warrant formal disciplinary action. However, the Fortney & Scott report did not dispute the serious performance issues pertaining to the employee raised in our report, including the fact that the

[29] SEC Office of Inspector General Report entitled *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme*, Report No. OIG-509 (Aug. 31, 2009).
[30] Fortney & Scott, LLC, is a law firm that the SEC hired to serve as an expert to review performance issues identified in the OIG's Madoff report and to advise the Commission concerning any personnel or disciplinary responses that might be warranted based on that report.

2005 examination of Madoff in which the employee had played a critical role was inappropriately focused, conducted without obtaining critical independent data, closed with unresolved issues remaining, and relied too heavily on the representations of Madoff. Further, the Fortney & Scott report recommended formal disciplinary action, including removal from service, for the Assistant Regional Director who approved the award nomination in question.

The lack of adequate documentation to support cash and time-off awards and approval by division and office heads of awards to employees potentially subject to disciplinary action, jeopardizes the integrity of the awards program.

**Recommendation 8:**

The Office of Human Resources should develop and train human resources specialists on a centralized filing system (manual, electronic, or both) for all awards that contains appropriate documentation to support the awards, including SF 50 and SEC Form 48 with narrative justification and appropriate approvals.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

**Recommendation 9:**

The Office of Human Resources should implement management controls to ensure that employees who are subject to disciplinary action are restricted from receiving awards related to the performance that resulted in the disciplinary action.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

# Finding 5: A Cash Award Was Inappropriately Made to a Schedule C Political Appointee

The SEC made a cash award to an SEC Schedule C employee in fiscal year 2010 in violation of OPM guidance

restricting awards, bonuses, and similar payments for political appointees.

In August 2010, OPM issued guidance restricting awards, bonuses, and similar payments for political appointees beginning on August 3, 2010, and continuing through the end of fiscal year 2011.[31] The guidance specifically prohibits performance and special act awards. For purposes of the guidance, all Schedule C employees are political appointees.

To determine whether any Schedule C employees received monetary awards during the aforementioned restricted period, we obtained a current list of Schedule C employees from OHR and compared the list with award data maintained by OHR. We found that one Schedule C employee received a $2,000 cash award effective August 12, 2010. While we sought further information from OHR regarding this award during fieldwork, such as the SF 50 and SEC Form 48 and related justification, OHR initially did not provide the requested information. However, OHR recently informed the OIG that it has determined the award to be improper and is taking appropriate action to recover the funds.

**Recommendation 10:**

The Office of Human Resources should review the August 12, 2010, cash award to a Schedule C employee to determine whether it was in violation of the Office of Personnel Management guidance and, if so, seek recovery of the improper award.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

# Finding 6: OHR's Employee Suggestion Program Did Not Provide Cash Awards During Fiscal Years 2008 Through 2010 and Was Not Effectively Managed

Although OHR had an Employee Suggestion Program in place from 2008 to 2011 that included a monetary incentive

[31] Memorandum from John Berry, Director, Office of Personnel Management, Guidance on Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Employees Serving Under Political Appointments, CPM 2010-14 (Aug. 3, 2010).

component, OHR did not make any cash awards under the program. Additionally, the program was given little priority and was not effectively managed.

In March 2008, OHR issued a formal directive for its Employee Suggestion Program.[32] According to the OHR directive, the program was designed to motivate employees to submit constructive ideas that contribute to the economy, efficiency, or effectiveness of government operations. A suggestion was defined as "an idea designed to accomplish a job better, faster, and or/cheaper and which results in tangible or intangible benefits to the federal government." The suggestion "may save material or property, promote health, increase safety, and improve morale or administrative routine." Recognition in the form of a cash award was to be given to eligible employees whose suggestions were adopted. Awards for suggestions that would result in tangible savings or benefits were to be based on an estimate of the first-year dollar savings or benefits. The Executive Director or the Associate Executive Director for OHR had authority to approve awards up to $10,000.

To submit a suggestion, employees were to complete a suggestion form or submit an e-mail or document to OHR with pertinent information about the suggestion. OHR, according to its policy, would acknowledge receipt of the suggestion within five days by e-mail and forward the suggestion for consideration to the office or division that could benefit from the suggestion or would be responsible for implementing it. OHR would then notify the employee who submitted the suggestion regarding the decision made by the office or division that considered it. A sole employee in OHR, who was designated as the "Suggestion Officer" but had multiple other duties, was primarily responsible for carrying out these activities. According to OHR, the employee who filled this role retired from the SEC in 2009, and the role and job duties were not reassigned.

We gathered available information on the Employee Suggestion Program from OHR and met with OHR officials who had knowledge of the program to ascertain whether any cash awards had been provided to employees through the program. Although SEC employees submitted approximately 150 suggestions from fiscal year 2008 through March 2010, OHR did not initiate any payment or monetary awards to employees whose suggestions were implemented under the program. However, OHR provided e-mail documentation to show one case in which the office of the employee who made a suggestion provided the employee a $1,000 cash award and a time-off award. Additionally, we found in our examination of an internal spreadsheet that OHR provided to us, which showed the status and tracking of suggestions, that another employee had received a time-off award for submitting a suggestion to the Employee Suggestion Program, although the source of the award was unclear.

[32] U.S. Securities and Exchange Commission Human Capital Directive, Employee Suggestion Program, dated March 6, 2008, addressed to All Employees from Jeffrey Risinger, Associate Executive Director, Office of Human Resources.

In our discussions with OHR, we learned that the Employee Suggestion Program was given little attention and that at one time a significant backlog of suggestions (approximately 50) was assigned to various employee and labor relations specialists in the Office of Employee and Labor Relations to be reviewed and closed out. Further, we found that the OHR internal spreadsheet for the program contained limited current information on what close-out actions had been taken by OHR or the office or division to which the suggestion was referred. For example, the spreadsheet only contained information regarding pertinent dates, the suggestion topic, the individual who submitted the suggestion, and the office or division to which the suggestion was referred, and the status column of the spreadsheet in many cases was simply marked "closed."

Further, we learned that after an OHR employee who had worked on the program departed in late 2010, the program had become essentially nonoperational. We also found that current OHR management was not aware that a mailbox advertised on the SEC Insider for employees to use to submit suggestions was still operational as of April 2011. After we made further inquiries, OHR accessed the electronic suggestions mailbox and found that it contained approximately 33 e-mails that had never been reviewed. A few of the e-mails actually pertained to fixing the Employee Suggestion Program because employees did not get responses from OHR on their submitted suggestions.

Following recent meetings with OHR and as requested by the OIG, OHR has published a notice on the SEC Insider directing staff to the OIG's suggestion program that was established in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[33] The notice states that to avoid any duplication of efforts, OHR has discontinued its previous SEC Employee Suggestion Program and that employees should submit their suggestions for improvements in SEC programs and operations directly to the OIG. The OIG also arranged for OHR to forward the unread e-mails from its suggestions mailbox to the OIG for appropriate review and follow-up.

The Dodd-Frank Act does not give the OIG authority to provide employees cash awards for adopted suggestions, although it does provide for non-monetary recognition to employees who make suggestions.[34] Without the availability of awards for adopted suggestions, SEC employees may have less incentive to submit suggestions that could improve the Commission's efficiency and effectiveness.

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[33] The OIG established the Employee Suggestion Program in September 2010 in accordance with Section 966 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (July 21, 2010). Through this Program, the OIG receives suggestions from employees for improvements in work efficiency, effectiveness, and productivity, as well as allegations by employees of waste, abuse, misconduct, or mismanagement within the Commission.

[34] Section 966 of the Dodd-Frank Act authorizes the OIG to provide nonmonetary recognition to employees who make suggestions that would or do increase the work efficiency, effectiveness, or productivity of the Commission, or reduce waste, abuse, misconduct, or mismanagement within the Commission.

**Recommendation 11:**

The Office of Human Resources should consider ways that, as part of the Employee Recognition Program, it may be able to provide awards to employees for adopted suggestions submitted to the OIG's suggestion program.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

# Finding 7: OHR Does Not Maintain Adequate Documentation for 3R Incentive Awards, and Related Service Agreements Do Not Meet OPM Requirements

OHR was unable to provide complete documentation to support 3R incentive awards that were selected for review. In addition, the language in service agreements for recruitment and relocation awards does not meet OPM requirements.

## Recruitment

To examine whether the SEC maintains sufficient documentation to support recruitment bonuses awarded, we selected a judgmental sample of six recruitment bonuses from a population of 41 recruitment bonuses paid from fiscal year 2008 through fiscal year 2010 and reviewed supporting documentation that OHR maintains for the bonuses. The dollar values of the sampled recruitment bonuses ranged from $4,000 to $56,825.

All six recruitment bonuses in our sample had deficiencies with respect to service agreements. In four cases, OHR was unable to provide documentation showing that a service agreement had been completed, as required by the POPPS Manual, Chapter 575.A, Recruitment Bonuses. Of the two for which OHR was able to provide service agreements, one lacked the required signature of an agency representative and the other had been only partly completed--OHR had not completed the lower portion, which shows the date the employee entered duty and the service completion date.

We also found that the service agreement format utilized by the SEC does not fully comply with 5 CFR § 575.110(d), which states that service agreements "must include the conditions under which the agency must terminate the service agreement (i.e., if an employee is demoted or separated for cause, receives a rating of record of less than 'Fully Successful' or equivalent, or otherwise fails to fulfill the terms of the service agreement) and the conditions under which the employee must repay a recruitment incentive under §575.111." According to 5 CFR § 575.110(e), the service agreement must also include "the conditions under which the agency may terminate the service agreement before the employee completes the agreed-upon service period." Our review of the service agreement format currently used by the SEC—SEC Form 2299, Securities and Exchange Commission Recruitment Bonus Service Agreement (revised in May 2003)—found that it does not fully address these requirements. The agreement states only that the employee agrees to remain in the SEC's employment for a period of 12 months, beginning on the date of the employee's appointment, unless separated for reasons beyond the employee's control and which are acceptable to the SEC. The agreement also states that the employee agrees to repay the recruitment bonus to the Commission on a pro-rata basis if he or she does not remain with the SEC for the specified period.

We further found that a recruitment incentive was paid before the Chairman formally approved it. An SF 50 showed that a recruitment bonus of 25 percent of basic annual pay in the amount of $56,825 was effective August 3, 2009, but our examination of the associated SEC Form 2298, Securities and Exchange Commission Recommendation and Approval of Recruitment Bonus, found that the bonus had not been approved by the Chairman until 10 days later. Although OFM had provided initial approval on July 28, 2009, and the Executive Director had provided initial approval on July 30, 2009, the Chairman did not approve the bonus until August 13, 2009. According to the POPPS Manual, the SEC is precluded from even making an oral offer to pay a recruitment bonus until after formal approval is obtained.[35] In addition, OHR was unable to provide us with a completed Form 2298 showing the required approvals for a 25 percent recruitment bonus of $23,070, although available e-mails indicated that OHR had sought approval from the Chairman.

OHR also did not provide us with written justifications for two of the six recruitment bonuses that were a part of our sample. The POPPS Manual requires that written justifications be based on one or more of the following factors, noting that OPM requires consideration of the first five:

(1) Special qualifications needed for the position and displayed by the candidate;
(2) If the position is unique, the success of recent efforts to recruit candidates for similar positions;

[35] POPPS Manual, ch. 575.A, "Recruitment Bonuses," para. 6, Procedures.

(3) Recent turnover in similar positions;
(4) Labor market factors that may affect SEC's ability to recruit high quality internal or external candidates for similar positions now or in the future;
(5) Practicality of using the superior qualifications appointment alone or in combination with a recruitment bonus;
(6) Impacts on morale;
(7) Relative attractiveness of the duty station including cost of living, remoteness, and community amenities;
(8) Urgency to fill the position;
(9) Agency affirmative employment goals; and
(10) Other special or unique needs for the individual's service.[36]

Further, SEC policy requires that each recruitment bonus paid be based on the written justification as well as a written determination that, in the absence of such a bonus, the SEC would encounter difficulty in filling the position with a high-quality candidate.

We found that one of the sampled justifications did not appear to fully address all the required factors in SEC policy. While the written justification provided information about the individual's accomplishments (where the individual had worked, what the individual had accomplished) and stated that the individual was currently making substantially more than the SEC could offer, it did not attempt to address such factors such as the specific qualifications needed for the position, labor market factors, etc. The justification also did not state that the SEC had determined that in the absence of such a bonus, it would encounter difficulty in filling the position with a high-quality candidate.

## Relocation

To examine whether the SEC maintained sufficient documentation to support relocation bonuses awarded, we reviewed documentation maintained by OHR to support all three relocation bonuses paid during fiscal years 2008 through 2010. The relocation bonuses were for $10,000, $44,625, and $15,000.

According to the POPPS Manual, the office recommending the relocation bonus must complete SEC Form 2320, Recommendation and Approval of Relocation Bonus, and provide a written justification for the bonus that addresses the following:

(1) Special qualifications needed for the position and displayed by the candidate;
(2) If the position is not unique, the success of recent efforts to recruit high quality candidates for similar positions, including narrative

[36] POPPS Manual, ch. 575.A, "Recruitment Bonuses," para. 2, Policy.

examples and/or indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;
(3) Recent turnover in similar positions;
(4) Labor market factors that may affect the SEC's ability to recruit high quality internal or external candidates for similar positions now or in the future;
(5) Positive and negative impacts on the morale of current employees;
(6) Relative attractiveness of the duty station including cost of living, remoteness, and community amenities;
(7) Urgency to fill the position;
(8) Agency affirmative employment goals; and
(9) Other special or unique needs for the individual's service.[37]

SEC policy also requires that relocation bonuses up to 10 percent of annual basic pay be approved by the Executive Director and that bonuses of 10 percent up to the legal maximum of 25 percent of basic pay be approved by the Chairman. Additionally, before a relocation bonus may be paid, the employee must sign a written service agreement to complete 12 months of employment at the Commission in the new location.

We found that OHR did not provide SEC Form 2320 for two of the three relocation bonuses we reviewed, although e-mails for the $15,000 relocation bonuses show that approval for the bonus had been obtained from the Executive Director. Further, we found that the documentation provided by OHR for one of the relocation bonuses did not contain a written justification as required by SEC policy or SEC Form 2320 showing that the Chairman had approved the bonus, although e-mails provided by OHR indicated that the appropriate paperwork had been signed by the Chairman. The relocation bonus was for $44,625, approximately 25 percent of the employee's basic pay.

OHR did not provide us with documentation to show that a service agreement had been completed for the $10,000 relocation bonus. OHR provided service agreements for the $44,625 and $15,000 relocation bonuses, but the form for the $15,000 bonus was not signed by an agency representative and OHR had not filled in the lower half of the form with the appointment date and service agreement completion date.

## Retention

To examine whether the SEC maintains sufficient documentation to support retention bonuses awarded, we selected a judgmental sample of seven retention bonuses from a population of 31 retention bonuses paid during fiscal years 2008 through 2010 and reviewed the associated supporting documentation that OHR

[37] POPPS Manual, ch. 575.B, "Relocation Bonuses."

maintains. The retention bonuses in our sample ranged from 2 to 24 percent of the employee's basic annual salary.

According to the POPPS Manual, the office or division recommending the retention bonus must complete SEC Form 2321, Request and Justification for Action in New or Continuing Retention Allowance, and provide a written justification for the bonus that addresses the following:

(1) The adverse impact that the employee's departure would have on the SEC's ability to carry out an activity or perform a function that is essential to its mission;
(2) The degree of success of recent efforts to recruit candidates and retain employees with qualifications similar to those possessed by the employee for positions similar to the position held by the employee;
(3) The availability of candidates for employment who, with minimal training or disruption of service, could perform the full range of duties and responsibilities assigned;
(4) Other factors that may affect the SEC's ability to replace employees who possess specialized or critical knowledge, skills, and abilities now or in the near future;
(5) Positive and negative impacts on the morale of current employees; and
(6) Other special or unique needs for the individual's service.[38]

SEC policy requires that retention bonuses up to 10 percent of basic annual salary be approved by the Executive Director and that bonuses from 10 percent up to the maximum 25 percent of basic annual salary be approved by the Chairman. Further, SEC policy requires that OHR ensure that allowances are reviewed annually and are either recertified (with or without modification of the amount) or terminated. SEC Form 2321 is intended to serve as documentation to support both newly-approved allowances and recertifications.

For two of the six retention bonuses in our sample, OHR did not provide us with the required SEC Form 2321 with approvals, written justification, SF 50, and annual recertifications. For four of the six retention bonuses, OHR provided only an SF 50 to show that the retention bonus had been processed. For three of the six retention bonuses, OHR did not provide us with documentation to show that annual retention bonus recertifications had been completed as required by SEC policy, even though in each case the retention allowance had been in place at least one year.

We also found that approvals by the Chairman for retention bonuses were not always documented and that required approval signatures for bonuses were not

[38] POPPS Manual, ch. 575.C, "Retention Allowances."

always obtained in a timely manner. Two of the retention bonuses in our sample were for more than 10 percent of the employee's basic annual salary and therefore required the Chairman's approval. One of these retention bonuses was for 13.13 percent, and the only documentation for the bonus that OHR provided to us was an SF 50 that had been signed by the Associate Executive Director for OHR. The other retention bonus was for 24.01 percent. For that bonus, SEC Form 2321 was completed approximately 15 days after the effective date of the retention incentive. The retention incentive was processed on March 14, 2010, according to the SF 50 for the action, but the paperwork and required approvals from the Executive Director, OHR, and the Chairman were not obtained until March 15, 2010, March 29, 2010, and March 17, 2010, respectively. OHR noted on the Form 2321 that it had obtained oral approval (although it is not clear from whom) to make the retention incentive effective before the required signatures had been obtained.

We believe that OHR's lack of a centralized filing system contributed to its inability to produce complete documentation for the 3R bonuses in our sample. As a result, OHR was unable to show that the incentives paid by the SEC were justified and approved, as required by OPM and SEC policy, which increases the risk that 3R bonuses may be inappropriately awarded.

**Recommendation 12:**

The Office of Human Resources should revise the service agreement format in SEC Form 2299, Securities and Exchange Commission Recruitment Bonus Service Agreement, to incorporate specific reasons that the SEC "may" and "must" terminate service agreements for recruitment and relocation bonuses.[39]

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

**Recommendation 13:**

The Office of Human Resources should develop and train applicable human resources specialists on the use of a centralized filing system for all relocation, recruitment, and retention incentives. The centralized filing system should contain all appropriate documentation to support the

[39] We note that in implementing this recommendation, OHR will need to determine whether updated policies and procedures will include required provisions for service agreements in CFR Title 5: Administrative Personnel, Part 575- Recruitment, Relocation, and Retention Incentives; Supervisory Differentials; and Extended Assignment Incentives, in light of its pay setting authority provided for in Pub. L. No.107-123, Investor and Capital Markets Fee Relief Act, January 16, 2002.

incentives, including the SF 50 and the applicable SEC form with the narrative justification for the bonus and the appropriate approvals.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

## Finding 8: The SEC's ERP and 3R Incentives Are Not Linked to an SEC Human Capital Plan

The SEC does not have a human capital plan. Accordingly, activities associated with the ERP and 3R incentives are not being assessed to determine whether they effectively align with the SEC's overall human capital goals and objectives.

According to OPM regulation, agency heads or their designees must maintain a current human capital plan and provide OPM an annual Human Capital Management Report, based on an approved human capital accountability system. Using a format established by agreement between the agency and OPM, the human capital plan must cover the following:

- Human capital goals and objectives. These are to consist of a comprehensive, integrated set of goals and initiatives with detailed policy and program priorities and initiatives, as appropriate.

- Workforce analysis. This analysis is to include a description of the current state of the agency's workforce, a projection of human resources needed to achieve the agency's performance goals and objectives during the term of its strategic plan, and identification of potential shortfalls and gaps.

- Performance measures and milestones. These are to include, for each human capital goal or objective, one or more "human capital metrics" to provide a basis for assessing progress and results.[40]

During discussions with OHR, we found that the SEC has not yet put in place the required formal human capital plan. OHR does, however, produce a Human Capital Management Report that it provides to OPM each year. We found that the 2010 report contained information on the SEC's achievement of Commission-specific initiatives such as supplemental health benefits and requirements related to financial reform. The report also discussed achievements with respect to

[40] 5 CFR § 250.203.

government-wide initiatives such as telework, hiring reform, health and wellness, and domestic partner benefits. In addition, it discussed accomplishments related to OPM's Leadership and Knowledge Management System and Results-Oriented Performance Culture System. The report also noted that OHR has established a group within OHR to develop a human capital accountability plan and institute internal reviews to assess compliance and effectiveness of human capital management performance and monitor the progress of various human capital initiatives. The Human Capital Management Report, however, is not a substitute for a formal human capital plan. In fact, the Human Capital Management Report should report progress against meeting the performance measures and milestones contained in the human capital plan.

According to OHR, it has not put in place a formal human capital plan due to a lack of resources; however, OHR has recently put in place a contract to obtain the needed resources to develop the plan. Because it lacks the required human capital plan, the Commission cannot assess whether the ERP and 3R incentives effectively align with its overall human capital goals and objectives

**Recommendation 14:**

The Office of Human Resources should identify resources and establish a timeline to complete the required human capital plan. It should also ensure that ERP activities are evaluated at least annually to ensure that they align with human capital plan objectives and strategies.

**Management Comments.** OHR concurred with this recommendation. See Appendix V for management's full comments.

**OIG Analysis.** We are pleased that OHR concurred with this recommendation.

# Abbreviations/Acronyms

| | |
|---|---|
| 3R | Recruitment, Relocation, and Retention |
| BCG | Boston Consulting Group |
| CFR | Code of Federal Regulations |
| Dodd-Frank Act | Dodd-Frank Wall Street Reform and Consumer Protection Act |
| ERP | Employee Recognition Program |
| OED | Office of Executive Director |
| OFM | Office of Financial Management |
| OHR | Office of Human Resources |
| OIG | Office of Inspector General |
| OPM | Office of Personnel Management |
| POPPS | Personnel Operating Policies and Procedures |
| SEC or Commission | U.S. Securities and Exchange Commission |
| SO | Senior Officer |
| Union | National Treasury Employees Union |

# Scope and Methodology

We conducted this performance audit 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 determined that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Scope.** We examined activities associated with the SEC's ERP and 3R incentives during fiscal years 2008 through 2010. Our examination included assessing whether comprehensive documentation was available to supervisors and employees regarding awards and incentives, whether sufficient documentation existed to support cash awards and incentives paid, and whether recommendations made by OPM in its 2007 review of OHR's operations related to SEC award activities had been adequately addressed. We conducted our fieldwork from January 2011 through May 2011.

**Methodology.** To accomplish our audit objectives we gained familiarity with applicable OPM and Commission policies and procedures related to awards and incentives. We gathered documentation regarding OPM's 2007 review of OHR's operations to examine recommendations made with respect to the SEC's award practices and actions taken to address those recommendations. Additionally, we selected judgmental samples of awards and incentives and reviewed supporting documentation to determine whether the awards were processed in accordance with applicable policies and procedures. We also gained an understanding of the SEC's process for budgeting for awards and incentives to identify areas for improvement. Further, we examined OHR's Employee Suggestion Program and related award activities. We also examined whether OHR had linked its ERP and incentive activities to a human capital plan. We conducted interviews and obtained related documentation from personnel in OHR and OFM. Additionally, we contacted another federal financial regulatory agency to obtain a copy of its policies and procedures related to awards and incentives and identify best practices. Lastly, we obtained information from OED related to work conducted by BCG, which conducted a study that, among other things, compared the SEC's award budget to the award budgets of other governmental and nongovernmental entities.

**Management Controls.** We reviewed management controls as they pertained to the audit objectives, such as gaining an understanding of OHR's policies and procedures for awards and incentives and its controls over processing awards and incentives.

**Use of Computer-Processed Data.** We used computer-processed data provided by OHR that was obtained from the Department of the Interior's National Business Center (payroll system). We also used Excel spreadsheets provided by OHR pertaining to award budget allocations, as well as related data provided by OFM from the SEC's Momentum accounting system. We determined that the data retrieved from the systems and the requested information appeared to be sufficient, reliable, and adequate to meet our stated objectives. We did not perform any tests on the general or application controls over these audit systems because such testing was beyond the scope of our work.

**Judgmental Sampling.** We used judgmental sampling for testing of both awards and incentives in an effort to ensure adequate coverage in our sample of headquarters and regional offices and to ensure that the awards sampled covered our audit timeframe of fiscal year 2008 through fiscal year 2010. Our judgmental samples contained

- 29 out of 8,759 SK monetary awards;
- 10 out of 3,601 time-off awards;
- 8 out of 89 SO bonuses (including five individuals who reported directly to the Chairman) paid in fiscal year 2010 for the performance period ending September 30, 2009;
- 6 out of 41 recruitment bonuses; and
- 7 out of 31 retention bonuses.[41]

We did not project the results of the samples to the entire population as we did not utilize statistical sampling techniques.

**Prior Audit Coverage.** We reviewed a complaint pertaining to nonmonetary awards and reported on our findings and recommendations on March 10, 2010.[42] We found that a former Regional Director used funds from the office's supply budget to purchase nonmonetary awards in the form of inscribed glass blocks for staff members. We determined that the absence of clear criteria to serve as the basis for making such awards could lead to an appearance of impropriety on the part of the manager making the award and a perception of unfairness or favoritism on the part of other staff.

[41] An initial sample was pulled and based on a lack of available documentation from OHR and initial testing results, the OIG decided that further testing was not necessary as it would not likely alter the overall testing results.
[42] SEC Office of Inspector General Investigative Memorandum entitled Employee Recognition Program and Grants of Employee Awards, PI 09-07 (Mar. 10, 2010).

# Criteria

**Code of Federal Regulations, Title 5: Administrative Personnel, Part 451-Awards.** Provides information regarding agencies' award authority, responsibilities, and restrictions.

**Code of Federal Regulations, Title 5: Administrative Personnel, Part 575-Recruitment, Relocation and Retention Incentives; Supervisory Differentials; and Extended Assignment Incentives.** Provides information regarding requirements for payment of recruitment, relocation, and retention incentives.

**Code of Federal Regulations, Title 5: Administrative Personnel, Part 250-Personnel Management in Agencies.** Provides information on requirements for agency human capital plans.

**SECM 6-1, Personnel Operating Policies and Procedures, Chapter 451.A, Employee Recognition Program, February 10, 1993.** Describes the Commission's policies and procedures for recognizing employees of the Commission and certain others for their contributions in the form of suggestions, superior performance, and special acts or services.

**SECM 6-1, Personnel Operating Policies and Procedures, Chapter 575.A, Recruitment Bonuses (July 20, 1993), Chapter 575.B, Relocation Bonuses (July 20, 1993), Chapter 575.C, Retention Allowances (August 27, 1996).** Describes requirements for payment of recruitment, relocation, and retention incentives.

**Memorandum from John Berry, Director, Office of Personnel Management, Guidance on Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Employees Serving Under Political Appointments, CPM 2010-14 (August 3, 2010).** Guidance restricting awards, bonuses, and similar payments for political appointees.

# List of Recommendations

**Recommendation 1:**

The Office of Human Resources should implement an internal review process to review a select number or percentage of awards annually to ensure that appropriate documentation exists for the awards and needed information is readily available to support the awards.

**Recommendation 2:**

The Office of Human Resources should at least annually provide information to SEC supervisors on relevant parts of the SEC award program, including (1) types of awards available and procedures for nominating employees for awards, (2) appropriate types of division-and office-level awards for peer recognition, and (3) successful award practices.

**Recommendation 3:**

The Office of Human Resources should dedicate specific resources to develop and oversee the Employee Recognition Program.

**Recommendation 4:**

The Office of Human Resources should finalize its policies and procedures for the Employee Recognition Program within three months and publish them on the SEC's Insider. The policies and procedures should include information on current practices for determining bonuses for Senior Officers, policies for determining performance-based awards for SK employees, and acceptable methods of providing informal nonmonetary awards in addition to traditional nonmonetary awards.

**Recommendation 5:**

The Office of Human Resources should review and update its existing policies and procedures on recruitment, relocation, and retention incentives. The update should ensure that the new policies and procedures reflect appropriate references to SK and SO employees and include expanded authority for retention bonuses.

**Recommendation 6:**

The Office of Human Resources should provide formal training on its revised policies and procedures and issue information notices to supervisors and employees as needed to reflect changes in practices and policies.

**Recommendation 7:**

The Office of Human Resources (OHR), in conjunction with the Office of Financial Management (OFM), should take the following actions:

7a. Develop alternatives for reviewing the SEC award budget so that it is competitive with other federal agencies' award budgets.

7b. Develop and implement a mechanism to reward employees for superior or meritorious performance within their job responsibilities through lump-sum performance awards.

7c. Determine ways to reduce the time required for formulation of budget allocations, including, for example, moving responsibility for formulating award budget allocations to OFM and having the Office of Information Technology walk-in development center develop an electronic program to pull payroll data directly from the Department of the Interior to facilitate more timely completion of budget allocations.

7d. Put in place a process to make initial award allocations in the first quarter of each fiscal year, thereby giving offices the ability to make awards throughout the year. Base initial allocations on historical data and then refine the allocations, as needed, when the SEC's annual budget has been approved.

7e. Allocate award funds directly to SEC divisions and offices instead of placing the initial award funds in OHR's budget, and hold office and division heads responsible for monitoring use of the funds.

7f. Re-examine budgeted amounts for recruitment, relocation, and retention incentives to ensure that sufficient funds are available, and make supervisors aware of available funding so that they can effectively use incentives to recruit and retain needed talent.

**Recommendation 8:**

The Office of Human Resources should develop and train human resources specialists on a centralized filing system (manual, electronic, or both) for all awards that contains appropriate documentation to support the awards, including SF 50 and SEC Form 48 with narrative justification and appropriate approvals.

**Recommendation 9:**

The Office of Human Resources should implement management controls to ensure that employees who are subject to disciplinary action are restricted from receiving awards related to the performance that resulted in the disciplinary action.

**Recommendation 10:**

The Office of Human Resources should review the August 12, 2010, cash award to a Schedule C employee to determine whether it was in violation of the Office of Personnel Management guidance and, if so, seek recovery of the improper award.

**Recommendation 11:**

The Office of Human Resources should consider ways that, as part of the Employee Recognition Program, it may be able to provide awards to employees for adopted suggestions submitted to the OIG's suggestion program.

**Recommendation 12:**

The Office of Human Resources should revise the service agreement format in SEC Form 2299, Securities and Exchange Commission Recruitment Bonus Service Agreement, to incorporate specific reasons that the SEC "may" and "must" terminate service agreements for recruitment and relocation bonuses.

**Recommendation 13:**

The Office of Human Resources should develop and train applicable human resources specialists on the use of a centralized filing system for all relocation, recruitment, and retention incentives. The centralized filing system should contain all appropriate documentation to support the incentives, including the SF 50 and the applicable SEC form with the narrative justification for the bonus and the appropriate approvals.

**Recommendation 14:**

The Office of Human Resources should identify resources and establish a timeline to complete the required human capital plan. It should also ensure that ERP activities are evaluated at least annually to ensure that they align with human capital plan objectives and strategies.

# Management's Comments

MEMORANDUM

July 25, 2011

TO: H. David Kotz
Inspector General

FROM: for Cristin C. Fair Pamela Coffey
Acting Associate Executive Director
Office of Human Resources

Kenneth Johnson
Chief Financial Officer
Office of Financial Management

SUBJECT: OHR Management Response to Draft Report No. 492, *Audit of SEC's Employee Recognition Program and Recruitment, Relocation, and Retention Incentives*

This memorandum is in response to the Office of Inspector General's Draft Report No. 492, *Audit of SEC's Employee Recognition Program and Recruitment, Relocation, and Retention Incentives*. Thank you for the opportunity to review and respond to this report. We concur with the fourteen recommendations presented in the report and have begun taking appropriate steps to implement them.

**Recommendation 1:**

OHR concurs. OHR will implement an internal review process to regularly audit a sample of processed awards for compliance and to ensure documentation is readily available.

**Recommendation 2:**

OHR concurs. OHR will develop and distribute annual communications to SEC supervisors on the SEC Employee Recognition Program and how they can use it as a tool to increase performance and motivate staff.

**Recommendation 3:**

OHR concurs. OHR Employee and Labor Relations has assumed responsibility for the Employee Recognition Program and will assign a staff member to manage the program.

**Recommendation 4:**

OHR concurs. OHR has begun drafting a revision to the current Employee Recognition Program policy. We will finalize it and ensure appropriate distribution - including the SEC Insider - and communication to SEC supervisors.

**Recommendation 5:**

OHR concurs. The current recruitment, relocation and retention incentives policies will be updated, including reference to the expansion of authority for retention bonuses.

**Recommendation 6:**

OHR concurs. OHR will identify and deploy appropriate communication and training solutions to ensure that supervisors and employees understand any changes and appropriate uses for these motivation tools.

**Recommendation 7a:**

OHR and OFM concur. OHR, in collaboration with the Office of Financial Management, will review opportunities to benchmark the SEC awards budget with that of other FIRREA agencies. This benchmarking will include the substantial value of time-off awards as appropriate. As you have noted, we, like other federal agencies, face specific budgetary limitations for awards in FY 2011 and 2012 per the Office of Personnel Management memo dated June 10, 2011.

**Recommendation 7b:**

OHR and OFM concur. SEC's negotiated agreement with NTEU currently allows for merit pay increases based on performance. The recent implementation of a five-level performance management system and current compensation study will contribute to efforts to move to a pay-for-performance model in the future to reward employees based on meaningful distinctions in performance. Any near-term award solutions would be limited to the parameters in the aforementioned OPM guidance memo.

**Recommendation 7c:**

OHR and OFM concur. OHR has defined a methodology for determining appropriate award allocations by office or division was used this fiscal year, which has reduced the time required once the operating budget was approved. OHR will collaborate with OFM to determine appropriate roles and responsibilities for future allocations.

**Recommendation 7d:**

OHR and OFM concur. We recognize the value in rewarding employees for their contributions as soon as possible following the event. We will establish a process to allocate awards budgets as soon as possible after the enactment of the SEC's regular appropriation, to the extent permitted by available funds. During a continuing resolution in the early months of a fiscal year, it is possible that the agency may not be able to afford to distribute awards budgets. In the event of a continuing resolution, OHR and OFM will consult with the COO, and Chairman as needed, to make an informed decision regarding the awards budget, as a part of overall budget deliberations.

**Recommendation 7e:**

OHR and OFM concur. This fiscal year, OHR and OFM worked together to allocate award funding directly to the offices and divisions and distributed memos to internal customers to inform them of the

change in the funding allocation process and emphasize their responsibility for managing within their award budget.

**Recommendation 7f:**

OHR and OFM concur. In collaboration with OFM, OHR will review the execution of prior years' recruitment, relocation, and retention incentives and develop and communicate strategies to ensure that, within the funds available, the appropriate budget levels are used to effectively attract and retain highly skilled employees.

**Recommendation 8:**

OHR concurs. A centralized filing system will be established to increase efficiency and support future documentation reviews. Roles and responsibilities of human resource specialists will be defined and communicated through appropriate means.

**Recommendation 9:**

OHR concurs. As part of a process that was established and implemented in May 2011 to support this year's award allocation, award nomination forms received through a centralized email box are forwarded to Employee and Labor Relations, who determines whether the employee has any related disciplinary action pending or taken. This technical review is completed prior to processing of the award.

**Recommendation 10:**

OHR concurs. The subject cash award was reviewed and found to have been erroneously processed after the date on which the President restricted such awards. The employee and her manager were notified of the error and the personnel action was cancelled. Based on the cancellation, debt recovery has been initiated by the Department of the Interior (DOI) National Business Center, SEC's payroll services provider.

**Recommendation 11:**

OHR concurs. OHR will propose possible approaches to reward employees for their contributions to the continuous improvement of the agency and encourage participation in the OIG Employee Suggestion Program.

**Recommendation 12:**

OHR concurs. The service agreement will be revised in conjunction with the effort to revise the existing recruitment incentive policy.

**Recommendation 13:**

OHR concurs. A centralized filing system will be established to increase efficiency and support future documentation reviews. Roles and responsibilities of human resource specialists will be defined and communicated through appropriate means.

**Recommendation 14:**

OHR concurs. The Program Management Office (PMO) within the Office of the Chief Operating Officer (OCOO) has contracted with Booz Allen Hamilton to support the implementation of recommendations from the Boston Consulting Group (BCG) organizational study. As part of the workstreams related to human capital, the contractor team will assist OHR in the development of a human capital plan. Further, an evaluation schedule will be established to assess Employee Recognition Program results for compliance and alignment with human capital objectives and strategies.

# OIG Response to Management's Comments

OHR concurred with all 14 recommendations addressed to its office and indicated that it would take action to implement all of the recommendations. In addition, OFM agreed with the one recommendation jointly addressed to its office and OHR.

We believe that OHR and OFM's proposed actions are responsive to our findings and are pleased that they have already initiated actions to implement some of the report's recommendations. Once all of the recommendations are fully implemented, we believe that the improvements will help strengthen oversight of the SEC's employee recognition program and recruitment, relocation, and retention incentives.

# Audit Requests and Ideas

The Office of Inspector General welcomes your input. If you would like to request an audit in the future or have an audit idea, please contact us at

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