



U.S. Securities and Exchange Commission  
Office of Inspector General  
Office of Audits

# Audit of the SEC Budget Execution Cycle



March 29, 2011  
Report No. 488

Audit Conducted by Acuity Consulting, Inc.



OFFICE OF THE  
INSPECTOR GENERAL

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

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

March 29, 2011

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

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

**Subject:** *Audit of the SEC Budget Execution Cycle*, Report No. 488

This memorandum transmits the U.S. Securities and Exchange Commission OIG's final report detailing the results on our audit of the SEC's budget execution cycle. 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 nine recommendations which if fully implemented should strengthen OFM's budget operations. OFM concurred with all the recommendations. Your written response to the draft report is included in Appendix VI.

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 auditor and contractors during this audit.

Attachment

cc: Kayla J. Gillan, Deputy Chief of Staff, Office of the Chairman  
Luis A. Aguilar, Commissioner  
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Jeffery Heslop, Chief Operating Officer, Office of the Chief Operations Officer  
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Diego T. Ruiz, Executive Director, Office of the Executive Director  
Diane Galvin, Assistant Director, Planning and Budget Office, Office of Financial Management

# Audit of the SEC Budget Execution Cycle

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## Executive Summary

**Background.** The Securities and Exchange Commission (SEC or Commission) Office of Inspector General (OIG) contracted with Acuity Consulting, Inc. (Acuity), to conduct an audit of the SEC's budget execution processes and to identify potential areas for improvement.

The mission of the SEC is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. To fulfill its mission, the SEC is financed through an annual general fund appropriation that is enacted by Congress that may remain available until expended and through occasional supplemental appropriations that are available for a specific period of time.

During fiscal years (FY) 2009 and 2010, and as in other FYs, the SEC's annual general fund appropriation consisted of a "Salaries and Expenses" account within the President's Budget. In FYs 2009 and 2010, the SEC obligated over \$966 million and \$1.1 billion, respectively, against the funds available. Pursuant to P.L. 111-32, enacted on June 24, 2009, the SEC received a supplemental appropriation of \$10 million that was available for FYs 2009 and 2010 with the stated purpose of "investigation of securities fraud."

The SEC has various headquarters functions that are located in the Washington, D.C. area, including the Office of Financial Management (OFM), which administers the agency's financial management and budget functions. Organizationally, OFM has reporting responsibilities to the Office of the Executive Director (OED) for budget formulation and budget execution functions and to the Office of Chief Operating Officer for the finance, accounting, and treasury operation functions. OFM is headed by the Associate Executive Director (Finance), who also serves as the SEC's Chief Financial Officer. OFM is organized into two primary offices: (1) the Finance and Accounting Office, which is responsible for accounting policies, procedures, and operations, and (2) the Planning and Budget Office, which is responsible for the formulation and execution of the SEC's budget. The OFM Planning and Budget Office consists of two branches: (1) Budget, Formulation and Execution, and (2) Performance and Planning.

The SEC uses two software applications for the budget development and budget execution processes. The Budget and Program Performance Analysis System (BPPAS) is an activity-based costing/performance-based budgeting system software application that the SEC uses for the budget planning and formulation process and for developing the annual operating budget. BPPAS downloads and

updates appropriation, apportionment, allocation, suballocation,<sup>1</sup> and budget transfers data to Momentum, the SEC's core financial system of record, at varying levels of detail. Obligation data in BPPAS is updated by uploads of obligation data from the Momentum system, which is used to record all of the SEC's budget execution and accounting transactions. The Momentum system further maintains the Commission-wide general ledger and produces the financial and external reports that are submitted periodically to the U.S. Department of the Treasury (Treasury) and other Federal entities.

The SEC budget process consists of formulation, submission, approval, execution, and reporting. The budget execution process, which is the focus of this audit, includes the enactment of an appropriation, obtaining the Office of Management and Budget's (OMB) approval of an apportionment (i.e., a plan to spend resources that identifies amounts legally available for obligations and expenditures), and making allocations and suballocations to the SEC's various offices and divisions. After apportionment, OFM staff load the funding allocations as reflected in BPPAS to Momentum, and these amounts are then available for commitment and obligations.

The Government Accountability Office (GAO) reported in GAO Report No.10-250, *SEC's Financial Statements for Fiscal Years 2009 and 2008*, that since its 2007 audit of the SEC, there were several repeat control deficiencies within the SEC, including "ineffective processes and related documentation concerning budgetary transactions." Further, in GAO Report No.11-202, *SEC's Financial Statements for Fiscal Years 2010 and 2009*, GAO reaffirmed the following three open recommendations reported in prior audit reports: (1) correcting general ledger system configurations for upward and downward adjustments of prior-years' undelivered orders, (2) clarifying administrative control of funds guidance for staff performing obligation activities, and (3) establishing and implementing controls related to the recording statute.

**Objectives.** The overall objective of the audit was to determine whether sufficient management controls over the SEC's budget execution processes were in place and operating effectively.

**Results.** The audit identified a number of control deficiencies concerning the SEC's budget execution processes. Specifically, the audit found that the SEC may have violated the Purpose Statute, 31 U.S.C. § 1301, during the period a supplemental appropriation was available for obligation due to inconsistent appropriations selection on contract modifications for information technology (IT)

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<sup>1</sup> An "apportionment" is "[a] distribution made by OMB of amounts available for obligation in an appropriation or fund account into amounts available for specified time periods, activities, projects, objects or combinations thereof." SEC-R 14-1, Administrative Control of Funds, § 2.b. An "allotment" is "authority to incur obligations within a specified amount . . .," and a "suballotment" is a "subdivision of an allotment." SEC-R 14-1, Administrative Control of Funds, § 2.c. The SEC uses allocations and suballocations, rather than allotments and suballotments.

acquisitions and expert witness fee services. In the course of our fieldwork, we noted the inconsistent citing of appropriations for contract modifications related to certain IT projects and expert witness fee services once an appropriation had been selected for the initial contract. Specifically, we identified eight contracts that inconsistently cited appropriations once the initial appropriation was selected; of these eight contracts, six initially cited the supplemental appropriation, while subsequent contract modifications cited the SEC's general appropriation.

In accordance with guidance found in GAO's *Principles of Federal Appropriations Law* (Red Book), when two appropriations are available for the same purpose, an agency is required to select one appropriation and continue to use that appropriation consistently throughout its availability, unless the statutory language clearly demonstrates congressional intent to make one appropriation available to supplement or increase a different appropriation for the same type of work. We found no express language in the act containing the supplemental appropriation that clearly demonstrated congressional intent to have both appropriations available for the same type of work, as was the situation in a prior Comptroller General decision. As a result of the SEC's failure to select and use one appropriation consistently for particular IT projects and expert witness fees, the SEC may have violated the Purpose Statute during the period when the supplemental appropriation was available for obligation. In addition, we determined that the SEC may have violated the Antideficiency Act, 31 U.S.C. § 1341(a), as the supplemental appropriation no longer has sufficient funds to accommodate adjustment of the potential Purpose Statute violation. In discussions with OFM, we were informed that management's position is that the SEC did not violate the Purpose Statute because it believed that the exception to the requirement to select and use one appropriation applied. We consulted with and were advised by GAO that a formal opinion was appropriate to resolve this matter. Accordingly, we are recommending that the SEC request an opinion on the matter from the Comptroller General.

In addition, the audit found that a senior budget analyst in OFM inactivated the Momentum financial system budgetary controls to facilitate the processing of payroll transactions. We found no evidence that senior or executive management authorized the budget analyst's inactivation of Momentum budget document controls. The inactivation of Momentum budget document controls allowed the sum of the allocation amounts issued in FY 2010 to exceed the FY 2010 apportionment. We determined that the fact that the SEC's allocations exceeded the apportionment was contrary to both OMB guidance and the SEC's Administrative Control of Funds Regulation, SEC-R 14-1. Moreover, the inactivation of budget controls by OFM staff could lead to a violation of the Antideficiency Act, 31 U.S.C. § 1517(a).

Further, the audit found that the BPPAS system is configured to track only one appropriation symbol. As a result, the SEC does not have full visibility of its

budgetary authority and the purposes for which it is used. Effective in FY 2012, under Section 991 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress has established a separate appropriation titled “Securities and Exchange Commission Reserve Fund,” in addition to the Commission’s annual general appropriation. In an environment of multiple appropriations, the SEC needs to have BPPAS configured to accept more than one appropriation to avoid an increased level of manual override activity and mitigate the increased effort required to support congressional reporting requirements under the Dodd-Frank Act. In the absence of full visibility of purpose and use of funds, the SEC may be at risk of future Purpose Statute and Antideficiency Act violations related to the separate “Securities and Exchange Commission Reserve Fund” appropriation established under the Dodd-Frank Act.

The audit also found that OFM does not have a formal budgetary training program to ensure that its personnel with budgetary responsibilities are appropriately trained and are aware of the requirements associated with their job functions. Instead, OFM budgetary personnel learn via on-the-job training and rely on informal materials such as handwritten notes. We learned that although the SEC is preparing for the release of a new training system, there is no current plan to offer budget training through this new system.

In addition, the audit identified a deficiency in the design of internal controls in that OFM does not require written authorization of reprogramming and realignment actions between two-digit Budget Object Classes. Further, OFM’s reprogramming and realignment actions are subject to a diminished audit trail and a lack of timely monitoring throughout the year of budget execution. As a result, the SEC has an increased risk of exceeding established Appropriations Act reprogramming thresholds during the year of execution.

**Summary of Recommendations.** In order to improve internal controls over the budget execution process, we are recommending that

- (1) OFM, in consultation with OGC, request a formal opinion from the Comptroller General as to whether the SEC violated the Purpose Statute, and as a consequence the Antideficiency Act, by charging certain costs of information technology projects and expert witness fees to both the general and supplemental appropriations;
- (2) OFM, in consultation with the OED and OGC, establish policies and guidance on how to fund expenditures where there are multiple appropriations available for the same purpose;

- (3) OFM complete a risk reassessment and include the inactivation of Momentum budget controls as a high-risk area in the OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*;
- (4) OFM revise the Internal Control Override Template included in OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*, to include a section for follow-up actions to ensure financial integrity or statutory compliance and ensure that significant overriding of financial controls be required to be approved by senior-level officials;
- (5) OFM formally document its allotments as required by Appendix H of OMB Circular A-11 to evidence the transfer of legal responsibility for funds to the recipient;
- (6) OFM initiate a review of the BPPAS capability to accommodate multiple appropriations;
- (7) OFM, in consultation with the Office of Human Resources, develop and establish a formal, ongoing SEC-focused budgetary training program;
- (8) OFM revise the current reprogramming and realignment procedures to require that the Budget Officer or the Assistant Director, Planning and Budget, approve all reprogramming and realignment actions that cross two-digit Budget Object Classes in writing; and
- (9) OFM establish a process to sufficiently and accurately track reprogramming and realignment activities in one central location.

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# Background and Objectives

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## Background

Based on the Office of Inspector General's (OIG) annual audit plan, OIG contracted the professional services of Acuity Consulting, Inc. (Acuity), to conduct an audit of the SEC's budget execution processes. The mission of the Securities and Exchange Commission (SEC or Commission) is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. To fulfill its mission, the SEC is financed through an annual general fund appropriation enacted by Congress that may remain available until expended ("no-year" funds), and through occasional supplemental appropriations that are available for a specific period of time.

During fiscal years (FY) 2009 and 2010, and as in other FYs, the SEC's annual general fund appropriation consisted of a "Salaries and Expenses" account within the President's Budget. Each Appropriations Act required the SEC to offset its annual general fund appropriation against the exchange and filing fees the SEC collected from corporate registrants so as to result in a final general fund appropriation estimated at not more than \$0. Further, each Appropriations Act provided that the appropriation of such offsetting collections shall be available until it is expended for necessary expenses. The purpose of this type of general fund appropriation is to ensure that there are sufficient budgetary resources for obligations at the beginning of a FY, while ultimately financing the obligations with exchange and filing fees that the SEC collects. In FY 2009 and FY 2010, the SEC obligated over \$966 million and over \$1.1 billion, respectively, representing legal liabilities against funds that were available to the SEC to pay for the goods and services that were ordered.

Pursuant to P.L. 111-32, enacted on June 24, 2009, the SEC received a supplemental appropriation of \$10 million that was available for obligations in FYs 2009 and 2010 with the stated purpose of "investigation of securities fraud." This supplemental appropriation was not subject to financing through offsetting collections, and is similar to the SEC's annual general fund appropriation.

The SEC has 18 offices, 11 regional offices, and 5 divisions within its offices that are responsible for fulfilling the SEC's mission. The 5 divisions are located both at the SEC's headquarters and in its 11 regional offices. The SEC has various headquarters functions that are located in the Washington, D.C., area, including the Office of Financial Management (OFM), which administers the agency's financial management and budget functions.

Organizationally, OFM has reporting responsibilities to the Office of the Executive Director (OED) for the budget formulation and budget execution functions and to

the Office of Chief Operating Officer for the finance, accounting, and treasury operation functions. OFM is headed by the Associate Executive Director (Finance), who also serves as the SEC's Chief Financial Officer (CFO). OFM is organized under two primary offices: (1) the Finance and Accounting Office, which is responsible for accounting policies, procedures, and operations, and (2) the Planning and Budget Office, which is responsible for the formulation and execution of the SEC's budget.

Overseen by an Assistant Director, the OFM Planning and Budget Office consists of two branches: (1) Budget, Formulation and Execution, and (2) Performance and Planning. The Budget, Formulation and Execution Branch consists of seven individuals: one budget officer, one management analyst, four budget analysts, and one budget technician.

The SEC uses two software applications for the budget development and budget execution processes. The Budget and Program Performance Analysis System (BPPAS) is an activity-based costing/performance-based budgeting system software application that the SEC uses for the budget planning and formulation process and for developing the annual operating budget. BPPAS downloads and updates appropriation, apportionment, allocation, suballocation, and budget transfers data to Momentum, the SEC's core financial system of record, at varying levels of detail. Obligation data in BPPAS is updated by uploads of obligation data from Momentum. The Momentum system (Version 6.1.5) is used to record all SEC budget execution and accounting transactions. The system further maintains the Commission-wide general ledger and produces the financial and external reports that are submitted periodically to the U.S. Department of the Treasury (Treasury) and other Federal entities.

The SEC uses a "participatory" budget formulation process in that funding is requested by the SEC's constituent offices and is allocated through BPPAS. The SEC's budget formulation process begins about 20 months prior to the start of the FY, when the SEC begins to prepare its annual authorization request to Congress. The authorization request, which is due to the Financial Services Committee, U.S. House of Representatives, and the Banking, Housing, and Urban Affairs Committee, U.S. Senate, by May 15 of each year, typically covers a two-year period that includes the upcoming year and the year thereafter. During the budget authorization development process, OFM contacts all SEC offices and divisions for staffing and resource requests that are to be submitted through BPPAS.

OFM summarizes the staffing and resource requests and presents them to the Executive Director (ED). The ED's changes are integrated into the requests for staffing and resource decisions and are then presented by the ED to the SEC Chairman. OFM, along with the Office of General Counsel (OGC) and the Chairman's staff, drafts an authorization request that is based on the Chairman's decisions. Generally, the staffing and resource levels approved by the Chairman

for the SEC's authorization request serve as the upper bounds for the amounts the Commission will consider for its upcoming budget submission to the Office of Management and Budget (OMB).

Concurrent with the process outlined above, BPPAS consolidates budget submissions and produces a master budget spreadsheet (referred to in BPPAS as the "crosswalk") that is based on the non-personnel resource requests of the SEC's offices/divisions. OFM uses this spreadsheet to "price out" the SEC's proposed budget, which means adjusting the offices/divisions' requested amounts for inflation and other economic assumptions provided by OMB, conversion/annualization of positions into full-time equivalents, making adjustments for pay raises, and incorporating costs associated with program increases.

Once the budget submission is approved by OMB, OFM adjusts the crosswalk to reflect the revised resource levels. OFM then opens a "congressional justification" in BPPAS for the SEC's offices/divisions to update their narratives and workload to reflect the agreed-upon funding levels for submission as part of the President's budget to the Congress.

Subsequent to the submission of the President's budget, the CFO issues an "Operating Budget Call" letter that contains guidance and the due dates for submitting fund allocation requests and the related justifications. Fund allocation requests, by Budget Object Class (BOC), are submitted through BPPAS from the originating organization (office/division) to OFM's Planning and Budget Office. A BOC is a method for identifying the specific purpose for which the funds are being used. Certain funding requests (e.g., travel, IT equipment) are submitted through a "consolidating organization" (e.g., Division of Enforcement, Office of Administrative Services, Office of Information Technology, Office of Human Resources) prior to being submitted to the Planning and Budget Office. Pay and benefits costs are centrally calculated within OFM's Planning and Budget Office.

The fund allocation requests are reviewed within BPPAS by assigned budget analysts, leaders within OFM, the CFO, and the ED. The ED may consult with the Chairman's staff prior to approving the operating budgets. BPPAS data reflects:

- Originating organization request,
- Consolidating organization request,
- Requesting organization (either originating organization or consolidating organization) justifications for the funds,
- OFM recommendations (with justifications or calculations), and
- Decision.

Upon approval of the fund allocation requests, OFM requests that originating organizations provide a quarterly breakdown of their approved funding. The quarterly breakdown supports the basis for the apportionment request to OMB.

In the absence of specifically requested quarterly breakdowns, BPPAS uses a 25 percent default value for each quarter.

The SEC's budget execution process begins with enactment of the SEC's appropriation. Pursuant to OMB Circular A-11, an apportionment is a plan that is approved by OMB to spend resources provided by an annual Appropriations Act, a Supplemental Appropriations Act, a continuing resolution, or a permanent law (mandatory appropriation). The apportionment identifies amounts that are legally available for obligations and expenditures. It further specifies and limits the obligations that can be incurred and the expenditures that can be made (or makes other limitations, as appropriate) for specified time periods, programs, activities, projects, objects, or any combination thereof. An apportioned amount may be further subdivided by an agency into allotments, suballotments, and allocations. Allotments are the formally documented assignment of legal responsibility for the subdivision of apportioned funds made by heads of agencies. Suballotments are a subdivision of an allotment and also carry formal assignment of legal responsibility for the funds. Further administrative subdivisions of suballotments that do not transfer legal responsibility for funds are allowances, allocations, and suballocations.

Within the SEC, funding is subdivided and is then issued to the Commission's offices/divisions through the use of allocations and suballocations directly from the apportionment. Once funding is apportioned, the funding allocations as reflected in BPPAS are loaded into Momentum by OFM staff and are then available for commitments and obligations.

The Government Accountability Office (GAO) reported in GAO Report No.10-250, *SEC's Financial Statements for Fiscal Years 2009 and 2008*, that since its 2007 audit of the SEC, GAO had identified several repeat control deficiencies, including the SEC's "ineffective processes and related documentation concerning budgetary transactions." Further, in GAO Report No.11-202, *SEC's Financial Statements for Fiscal Years 2010 and 2009*, three open recommendations reported in prior audit reports were reaffirmed. These recommendations related to (1) correcting general ledger system configurations for upward and downward adjustments of prior years' undelivered orders, (2) clarifying administrative control of funds guidance for staff performing obligation activities, and (3) establishing and implementing controls related to the recording statute.

As a result of the continuing deficiencies with respect to OFM's budget execution process, and in accordance with the SEC OIG's annual audit plan, Acuity was hired by way of a competitive contract to conduct this engagement.

# Objectives

The OIG contracted the professional audit services of Acuity to identify potential areas for improvement with regard to the Commission's budget execution processes. The overall objective of the audit was to determine whether sufficient management controls over the SEC's budget execution processes were in place and were operating effectively.

Acuity's additional objectives were as follows:

- Examine the various lines of authority and responsibility with regard to Commission budget decisions (e.g., which individuals are making budget decisions and if these individuals are properly trained, permitted to make these decisions by law).
- Examine the Commission's processes for administrative division and subdivision of funds.
- Examine the policies and procedures in place to ensure appropriate spending of approved budgets (e.g., ensuring that there are no Antideficiency Act violations).
- Examine the SEC's policies and procedures for monitoring obligations incurred to ensure that apportionments and allotments are not exceeded.
- Test contractor gaps and deficiencies with respect to non-payroll obligations, de-obligation reviews, and contract closeout procedures.

# Findings and Recommendations

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## **Finding 1: By Alternating Between Two Separate Appropriations, the SEC May Have Violated the Purpose Statute and, as a Consequence, the Antideficiency Act**

The SEC may have violated the Purpose Statute during the period the supplemental appropriation was available for obligation due to inconsistent appropriations selection on contract modifications for information technology acquisitions and expert witness fee services. Because there were insufficient funds to accommodate adjustment of the potential Purpose Statute violations, the SEC may have also violated the Antideficiency Act.

Federal agencies are required to comply with the content of various appropriations acts and obligate funds only for the purposes for which the appropriation was enacted, as provided in 31 U.S.C. § 1301, commonly referred to as the Purpose Statute:

Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.<sup>2</sup>

Federal agencies are provided additional guidance in accordance with the Purpose Statute under the *GAO Principles of Federal Appropriations Law* (Red Book), Chapter 2.B.2.b, for instances in which multiple appropriations are available:

Where two appropriations are available for the same purpose, the agency may select which one to charge for the expenditure in question. Once that election has been made, the agency must continue to use the same appropriation for that purpose unless the agency at the beginning of the fiscal year informs the Congress of its intent to change for the next fiscal year.<sup>3</sup>

This guidance on multiple available appropriations is supported by the U.S. Comptroller General's decision in the matter of *Unsubstantiated DOE Travel Payments*, GAO-RCED-96-58R (Washington, D.C., Dec. 28, 1995).

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<sup>2</sup> Purpose Statute, op. cit., 1301 (a).

<sup>3</sup> GAO, *Principles of Federal Appropriations Law*, Third Edition, p. 2-23.

Further, the following exception to the rule is provided in Red Book Chapter 2.B.2b:

Of course, where statutory language clearly demonstrates congressional intent to make one appropriation available to supplement or increase a different appropriation for the same type of work, both appropriations are available.<sup>4</sup>

The exception to the rule is supported by the U.S. Comptroller General's decision in the matter of *Funding for Army Repair Projects*, B-272191 (Nov. 4, 1997). In this decision, the Army was not required to make an election between two appropriation accounts available for major repair and minor construction projects during fiscal year 1993 because Congress had specifically authorized the use of both accounts for such projects in section 301 of P.L. 103-35. As a result, the Army was permitted to use Operations and Maintenance funds for property maintenance and repair work in Germany even though Real Property Maintenance, Defense funds were available for the same work.

The SEC is financed through an annual general appropriation of funds enacted by Congress that may remain available until expended based on "no-year" funds that are used to fund the Commission's necessary expenses in fulfilling its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. These expenses include payroll and related expenses, travel, printing, information technology (IT), and other equipment purchases and services. Further, as part of the appropriations language in each FY's appropriations act, the SEC is required to offset its appropriations through offsetting collections.<sup>5,6</sup> Treasury has designated the SEC's annual general appropriation with the Treasury Appropriation Fund Symbol (TAFS) of "50X0100."

Pursuant to P.L. 111-32, enacted on June 24, 2009, the SEC received a supplemental appropriation of \$10 million for FYs 2009 and 2010 for the stated purpose of "investigation of securities fraud."<sup>7</sup> Unlike the SEC's general annual appropriation, the supplemental appropriation was not subject to financing through offsetting collections. Treasury designated the supplemental appropriation with a separate, distinct TAFS of "5009/100100." This supplemental appropriation is referred to and designated in OFM's core financial accounting system as the "M0100" appropriation.

During our fieldwork, we found that OFM did not develop and publish clear funding guidance on the use of the supplemental appropriation for non-

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<sup>4</sup> Ibid, p. 2-23.

<sup>5</sup> 2009 Omnibus Appropriations Act, P.L. 111-8, p. 148.

<sup>6</sup> 2010 Consolidated Appropriations Act, P.L. 111-17, p. 164.

<sup>7</sup> 2009 Supplemental Appropriations Act, P.L. 111-32, p. 21. The full text of this provision stated as follows: "For an additional amount for necessary expenses for the Securities and Exchange Commission, \$10,000,000, to remain available until September 30, 2010, for investigation of securities fraud."

information technology expenditures. The only written guidance we found was a memorandum dated July 23, 2009, from the OED that listed several IT projects for which funds could be obligated using the “M0100” appropriation.

As implemented by SEC management, the separate “M0100” appropriation was used for three main purposes:

- compensation costs,
- investigations-related IT costs, and
- expert witness fees and litigation support costs.

Our audit obtained the following information with regard to each of these categories:

- Compensation Costs – SEC employees were individually identified by name with their respective compensation costs charged 100 percent to the “M0100” appropriation.
- Investigations-Related IT Costs – Guidance provided in the July 23, 2009, OED memorandum<sup>8</sup> identified IT projects supporting the investigation of securities fraud as the following:
  - Document Imaging Operation & Maintenance,
  - Tips & Complaint System,
  - Native File Searching for Investigations System,
  - Forensic Tools, Maintenance & Supplies System,
  - Automated Blue Sheet Analysis System, and
  - Electronic Documents 2.0 Project.
- Expert Witness Fees and Litigation Support Costs – During our fieldwork, we were informed that management direction and practice for non-payroll expenditures were to use the “M0100” appropriation first and to the extent available, since both the time available for execution and the amount appropriated were limited.

In the course of our fieldwork, we noted the inconsistent citing of appropriations for contract modifications related to certain IT projects and expert witness fee services once the appropriation had been selected for the initial contract. This practice primarily related to the “M0100” appropriation cited on the initial contract with subsequent contract modifications citing the “X0100” appropriation. We also noted some instances where the initial contract cited the “X0100” appropriation with subsequent contract modifications citing the “M0100” appropriation.

In accordance with the Red Book Chapter 2.B.2.b guidance, when two appropriations are available for the same purpose, an agency is required to

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<sup>8</sup> “Use of Funds from 2009 Supplemental Appropriation,” Memorandum, June 23, 2009.

select one appropriation and continue to use that appropriation consistently throughout its availability, unless the statutory language clearly demonstrates congressional intent to make one appropriation available to supplement or increase a different appropriation for the same type of work. Congress did not expressly state in P.L. 111-32 that the additional appropriation was intended to increase or supplement another appropriation, as was the case in the matter of *Funding for Army Repair Projects*, B-272191 (Nov. 4, 1997).

We identified and reviewed 12 contracts totaling \$18,058,198 that cited both the “M0100” and “X0100” appropriations during FY 2009 and FY 2010. Of these 12 contracts, we identified 8 contracts that inconsistently cited an appropriation once the initial cite had been selected. Six of these 8 contracts were for certain IT projects and expert witness fees and initially cited the “M0100” appropriation in FY 2009; however, subsequent contract modifications cited the “X0100” appropriation. The remaining 2 of the 8 contracts we identified were for expert witness fees and initially cited the “X0100” appropriation in FY 2009; subsequent contract modifications, however, cited the “M0100” appropriation. Further details on the 8 contracts are provided in Appendix V.

As a result of the SEC’s failure to adhere to the Red Book Chapter 2.B.2.b<sup>9</sup> regarding selecting an appropriation and continuing to use that appropriation consistently throughout its availability, the SEC may have violated the Purpose Statute<sup>10</sup> during the period when the supplemental “M0100” appropriation was available for obligation. Further, as explained in the Red Book, Chapter 6.C.2.d, a violation of the Purpose Act may sometimes result in a violation of the Antideficiency Act:

Where . . . no other funds were authorized to be used for the purpose in question (or where those authorized were already obligated), both 31 U.S.C. § 1301(a) and § 1341(a) have been violated. In addition, we would consider an Antideficiency Act violation to have occurred where an expenditure was improperly charged and the appropriate fund source, although available at the time, was subsequently obligated, making readjustment of accounts impossible.<sup>11</sup>

At the end of FY 2010, \$106,521 was available for obligation from the “M0100” appropriation. The net effect of adjusting the potential Purpose Statute violations would require additional obligations of \$1,425,333 from the “M0100” appropriation instead of the “X0100” appropriation. Accordingly, as defined in GAO Red Book Chapter 6.C.2.d,<sup>12</sup> we determined that the SEC may have

<sup>9</sup> GAO Red Book, op. cit., p. 2-23.

<sup>10</sup> Purpose Statute, op. cit., 1301(a).

<sup>11</sup> GAO Red Book, op. cit., p. 6-79.

<sup>12</sup> Ibid, p. 6-79.

violated the Antideficiency Act<sup>13</sup> as the supplemental “M0100” appropriation does not currently have sufficient funds to accommodate adjustment of the potential Purpose Statute violations. Although sufficient funds existed at the time of the error, they have since been obligated and/or expended.

In discussions with OFM, we were informed that management’s position is that the SEC did not violate the Purpose Statute because the exception to the rule cited in Red Book Chapter 2.B.2b. applied to the SEC’s general and supplemental appropriations during FYs 2009 and 2010. The OIG in subsequent conversations with GAO staff members was notified that a formal opinion was appropriate to resolve this matter. Accordingly, we are recommending that an opinion be requested from the Comptroller General.

**Recommendation 1:**

The Office of Financial Management, in consultation with the Office of General Counsel, should request a formal opinion from the Comptroller General as to whether the Commission violated the Purpose Statute, and as a consequence the Antideficiency Act, by charging certain costs of information technology projects and expert witness fees to both the general and supplemental appropriations.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management’s full comments.

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

**Recommendation 2:**

The Office of Financial Management, in consultation with the Office of the Executive Director and the Office of General Counsel, should establish policies and guidance on how to fund expenditures where there are multiple appropriations available for the same purpose.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management’s full comments.

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

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<sup>13</sup> Antideficiency Act, 31 USC 1517.

## **Finding 2: The SEC Inactivated Momentum Budgetary Controls to Facilitate Processing Payroll Transactions, Which Could Lead to a Violation of the Antideficiency Act**

A senior budget analyst in OFM inactivated the Momentum budgetary controls to facilitate processing payroll transactions. The inactivation of these budgetary controls could lead to the SEC's violating the Antideficiency Act.

Pursuant to OMB Circular A-123, management is responsible for establishing and maintaining internal control to achieve the objectives for effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations.<sup>14</sup> Further, guidance is provided to Federal agencies on the President's Budget process and the basic laws that regulate the preparation, submission, and execution of the budget through OMB Circular A-11. In particular, Part 4 of OMB Circular A-11 contains instructions on the budget execution process to include guidance on the apportionment and reapportionment process, reporting on budget execution and budgetary resources, and a checklist for fund control regulations (Appendix H) that agencies must comply with in their respective administrative control of funds regulation.

Pursuant to Appendix H, Checklist for Fund Control Regulations, each Federal agency's management is responsible for ensuring the integrity of its agency's administrative control of funds. According to Appendix H, Section 11, an agency's administrative control of funds regulation is required to include a policy that the sum of:

- Allotment amounts issued will not exceed the apportionment, and
- Suballotment amounts issued will not exceed the allotment amount.

Further, Section 4 of Appendix H provides, "Your regulation must specify that violations of allotments and suballotments are violations of the Antideficiency Act."<sup>15</sup>

Pursuant to the SEC's Administrative Control of Funds Regulation, SEC-R 14-1, the following are cited as restrictions:

- The sum of the allotments issued shall not exceed the apportionment.
- The sum of suballotments issued shall not exceed the allotment amount.
- The sum of allowances issued shall not exceed the sum of the allotments.

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<sup>14</sup> OMB Circular A-123, Management's Responsibility for Internal Control.

<sup>15</sup> OMB Circular A-11, Appendix H, p. 2.

Under current SEC practice, allowances (also referred to as allocations) are issued to the SEC's offices/divisions by fiscal quarter and BOC. A BOC identifies the specific purpose for which funds are being used by a Federal agency. Despite referencing the subdivision of funds in the SEC's Administrative Control of Funds Regulation, SEC-R 14-1, OFM has not formally documented its allotments or suballotments, as required by Appendix H, to evidence the transfer of legal responsibility of funds to recipients.

The SEC's core financial system of record is the Momentum system (Version 6.1.5). The application is used to record all the SEC's budget execution and accounting transactions, maintain the agency's Commission-wide general ledger, and produce the financial and external reports that are periodically submitted to Treasury and other Federal entities. The subdivisions of funds maintained in the Momentum system are (1) apportionment, (2) allocation level, and (3) suballocation level.

During our fieldwork, we compiled and reviewed the SEC's FY 2009 and FY 2010 Quarterly Budget Reports from Momentum for each subdivision of funds level, as identified in Tables 1 and 2.

**Table 1: FY 2009 Quarterly Budget Reports**

<i>FY 2009:</i>	1 <sup>st</sup> Qtr	2 <sup>nd</sup> Qtr	3 <sup>rd</sup> Qtr	4 <sup>th</sup> Qtr	Total
Apportionment	\$240,215,085	\$239,954,490	\$270,647,332	\$209,183,093	\$960,000,000
Allocation	\$240,014,086	\$239,977,606	\$270,542,267	\$209,104,835	\$959,638,794
Suballocation	\$239,902,358	\$240,001,294	\$270,647,017	\$209,310,360	\$959,861,029

Source: Momentum.

**Table 2: FY 2010 Quarterly Budget Reports**

<i>FY 2010:</i>	1 <sup>st</sup> Qtr	2 <sup>nd</sup> Qtr	3 <sup>rd</sup> Qtr	4 <sup>th</sup> Qtr	Total
Apportionment	\$277,750,000	\$412,839,397	\$263,296,391	\$157,114,212	\$1,111,000,000
Allocation	\$277,908,320	\$412,838,768	\$263,299,391	\$157,105,290	\$1,111,151,769
Suballocation	\$277,759,535	\$412,837,684	\$263,296,391	\$157,106,390	\$1,111,000,000

Source: Momentum.

We noted discrepancies between the subdivision of funds levels for each fiscal year. For FY 2009, for example, we found that the total suballocation amount of \$959,861,029 exceeded the total allocation amount of \$959,638,794. Further, for FY 2010, we found that the total allocation amount of \$1,111,151,769 exceeded the total apportionment amount of \$1,111,000,000. Upon further research into the FY 2010 subdivision of funds discrepancy, the following five budget documents, as shown in Table 3, were identified as the root cause of the issue:<sup>16</sup>

<sup>16</sup> A budget document is a mechanism within Momentum to add (i.e., positive action) or reduce (i.e., negative action) funds at each of the subdivision of funds levels.

**Table 3: Budget Documents Reviewed**

<b>Document No.</b>	<b>Process Date</b>	<b>Purpose</b>	<b>Amount</b>
AA/SEC-1-136	Sept. 30, 2010	Travel/Transportation	\$ 3,000
AC/SEC-10-152	Oct. 22, 2010	Payroll Awards	148,785
AC/SEC10-163	Oct. 22, 2010	Payroll	1,084
AC/SEC-10-179	Nov. 3, 2010	Payroll	-100
AC/SEC-10-198	Dec. 1, 2010	Payroll	-1,000
<b>Net Effect of Budget Document Changes</b>			<b>\$151,769</b>

Source: OIG Generated.

The Momentum application has budgetary controls designed to mitigate the risk of funding overallocation and are activated through a set value of "Reject" (i.e., attempts to exceed a given budget level will be rejected by the application) following the importation of budget document transactions from BPPAS. SEC personnel are prevented from exceeding a given budget level unless the application budgetary controls are changed directly within Momentum.

Our audit found that certain designated OFM budget staff are empowered to process budget documents directly into the Momentum application. Currently, OFM has granted Momentum system rights to the two OFM senior budget analysts that, among other things, permit the analysts to override Momentum's budgetary controls.

During our research into the FY 2010 subdivision of funds discrepancy, we were advised that a senior budget analyst had overridden the Momentum budgetary controls to facilitate the processing of several budget documents directly into Momentum. Despite being requested, no evidence was provided to support the senior or executive management authorization of the inactivation of Momentum budget document controls. The inactivation of Momentum budget document controls allowed the sum of the allocation amounts that were issued to exceed the FY 2010 apportionment.

On September 16, 2010, OFM management established OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*, to address the lack of formal policies or procedures for managing the risk of fraud and the override of internal controls. The guide describes the SEC's actions and processes designed to establish a positive ethical environment and to address the risk of fraud and override of internal controls, and the methods to monitor and report instances of override of internal control.

Our review of OFM Reference Guide 01-06 noted that the document's effective date preceded the budget document processing dates when the Momentum budgetary controls were overridden. Further, we found that no budget execution controls were identified as high-risk and included in the baseline risk assessment completed by the Risk Assessment team as referenced in OFM Reference Guide 01-06 and, therefore, the Reference Guide was not applicable to the override of the Momentum budgetary controls by OFM's budget staff. Moreover, while OFM

Reference Guide 01-06 provides a methodology for logging an override of internal control, there is no requirement to document follow-up actions to ensure financial integrity or statutory compliance.

The override of the Momentum budgetary controls by the OFM senior budget analyst allowed the sum of the allocation amounts to exceed the FY2010 apportionment. OMB Circular A-11, Appendix H, refers to the fact that violations of allotments are violations of the Antideficiency Act. The SEC utilizes allocations in lieu of allotments and, accordingly, the fact that the SEC's allocation exceeded its apportionment was inconsistent with the requirements of OMB Circular A-11, Appendix H, and SEC-R 14-1. Moreover, the override of the Momentum budgetary controls could lead to a situation in which obligations or expenditures exceed the apportionment, in violation of the Antideficiency Act.<sup>17</sup>

### **Recommendation 3:**

The Office of Financial Management should complete a risk reassessment and include the inactivation of Momentum budget controls as a high-risk area in OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management's full comments.

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

### **Recommendation 4:**

The Office of Financial Management should revise the Internal Control Override Template included in OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*, to include a section for follow-up actions to ensure financial integrity or statutory compliance and ensure that significant overriding of financial controls be required to be approved by senior-level officials.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management's full comments.

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

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<sup>17</sup> Antideficiency Act, 31 USC 1517(a).

### **Recommendation 5:**

The Office of Financial Management should formally document its allotments as required by Appendix H of Office of Management and Budget Circular A-11 to evidence the transfer of legal responsibility of funds to the recipient.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management's full comments.

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

## **Finding 3: The SEC's BPPAS System Is Not Configured to Accept More Than One Appropriation**

The BPPAS system is not configured to accept more than one Treasury Appropriation Fund Symbol (TAFS). As a result, the SEC does not have a full view of its budgetary authority and the purposes for which it is used.

The SEC's BPPAS is an activity-based costing/performance-based budgeting application that electronically facilitates the annual budget formulation and management of budget authority for the Commission.

BPPAS serves as the original point of entry for all SEC budgetary information in the year of budget execution and acts a feeder system to the Momentum application (Version 6.1.5), the SEC's core financial system of record. Budgetary transactions are exchanged between BPPAS and Momentum through an automated two-way interface.

During the year of budget execution, appropriated funds are allocated to SEC offices/divisions through BPPAS. Further, budget authority reprogramming and realignment actions are also requested and approved through the BPPAS application. Budgetary information in BPPAS is utilized as a baseline for comparison to financial plans during the SEC semi-annual financial reviews of budget execution.

For FY 2009 and FY 2010, the SEC was funded by multiple appropriations. As noted previously, the SEC is normally financed through an annual general appropriation of funds enacted by Congress that may remain available until expended ("no-year" funds) to fund the Commission's necessary expenses in fulfilling its mission. These expenses include payroll and related expenses,

travel, printing, IT, and other equipment purchases and services. Further, as part of the appropriations language in each FY's appropriations act, the SEC is required to offset its appropriations through offsetting collections.<sup>18,19</sup> The Treasury has designated the SEC annual general appropriation with the TAFS "50X0100."

Pursuant to P.L. 111-32, enacted on June 24, 2009, the SEC received a supplemental appropriation of \$10 million for FYs 2009 and 2010 for the stated purpose of "investigation of securities fraud."<sup>20</sup> The supplemental appropriation was not subject to financing through offsetting collections as is required for the SEC's general annual appropriation. Further, Treasury designated the supplemental appropriation with the separate and distinct TAFS of "5009/100100," which is referred to and designated in the SEC core financial accounting system as the "M0100" appropriation.

Our fieldwork found that BPPAS is configured to track only one appropriation symbol. Current OFM management practice for budgetary transactions of appropriations other than the annual general appropriation requires direct data entry into the Momentum core financial system of record through manual override of established budgetary controls. Momentum has an inherent limitation in the informational detail that can be stored within the application for the purpose and use of authorized funds (i.e., narrative justification).

Effective FY 2012, under Section 991 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress has established a separate appropriation titled "Securities and Exchange Commission Reserve Fund" in addition to the Commission's annual general appropriation. This fund is to be financed through registration fee collections with a balance that cannot exceed \$100 million. In accordance with the Act,

The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any one fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.<sup>21</sup>

In an environment of multiple appropriations, the SEC needs to have BPPAS configured to accept more than one appropriation to avoid an increased level of manual override activity and mitigate the increased effort required to support congressional reporting requirements under the Dodd-Frank Act. Without full

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<sup>18</sup> P.L. 111-8, op. cit. p. 148.

<sup>19</sup> P.L. 111-17, op. cit. p. 164.

<sup>20</sup> P.L. 111-32, op. cit. p. 21.

<sup>21</sup> Dodd-Frank Act, Sec. 991(e)(1)(3).

visibility of the purpose and use of funds, the SEC may be at risk of future Purpose Statute and Antideficiency Act violations related to the separate “Securities and Exchange Commission Reserve Fund” appropriation established under the Dodd-Frank Act.

**Recommendation 6:**

The Office of Financial Management should initiate a review of the Budget and Program Performance Analysis System’s capability to accommodate multiple appropriations.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management’s full comments.

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

## **Finding 4: OFM Does Not Have a Formal Budgetary Training Program**

OFM does not have a formal ongoing budgetary training program to ensure that all personnel with budgetary responsibilities are appropriately aware of the requirements associated with their job functions.

We noted while conducting interviews of SEC personnel with varying budgetary responsibilities that OFM lacks a formal SEC-focused training program for individuals with budgetary responsibilities. In particular, we made the following observations in OFM:

- Personnel have typically acquired their budgetary knowledge and skills through on-the-job training that was passed on by senior peers/supervisory employees. This has been a common experience regardless of the individual’s Federal agency background and was not specific to the SEC.
- On-the-job training materials consist of personal, handwritten steps or notes on a notebook, steno pad, etc.
- Knowledge of career path training courses to enhance employees’ skill sets are subject to being communicated through an informal peer network.
- Junior personnel are aware of how to perform specific tasks, but they lack awareness of the compliance purpose behind their task (e.g., avoidance of Antideficiency Act violations).

Reliance on on-the-job training increases the risk that budgetary personnel may be introduced to inconsistent and bad practices by senior peers or supervisory personnel who also acquired their knowledge and skills through on-the-job training. Tasks are at risk of being performed on a rote basis by junior employees who may not have a clear understanding of the purpose and function of their work.

Formal training can strengthen the analytical, planning, and implementation skills of employees with budget execution responsibilities. OPM has determined that continuous investment in training and development is essential for improving the performance of the Federal workforce and enhancing the services provided by the Federal government. Further, availability of training and development is essential to attract and retain a knowledgeable and skilled workforce.<sup>22</sup>

The SEC is currently in the process of preparing for the release of its new Office of Human Resources Plateau system, which consists of two components: the Learning Management System (LMS) and the Performance Management Information System (PMIS). While the LMS and PMIS modules are intended to eventually be applied on an agency-wide basis, there is no current plan related to budgetary training offerings and performance management of budget execution positions.

**Recommendation 7:**

The Office of Financial Management, in consultation with the Office of Human Resources, should develop and establish a formal, ongoing Securities and Exchange Commission–focused budgetary training program.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management’s full comments.

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

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<sup>22</sup> Office of Personnel Management, Training and Development Policy Webpage.

## **Finding 5: OFM Does Not Require Written Authorization of Reprogramming and Realignment Actions Between Budget Object Classes**

OFM does not require written authorization of reprogramming and realignment actions between Budget Object Classes. As a result, OFM has a control deficiency in the design of internal control for reprogramming and realignment actions.

Pursuant to OMB Circular A-123, management is responsible for establishing and maintaining internal control to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations.<sup>23</sup>

Further, OMB Circular A-11 provides guidance to Federal agencies on the President's Budget process and the basic laws that regulate the preparation, submission, and execution of the budget. In particular, Part 4 of OMB Circular A-11 contains instructions on budget execution, including guidance on the apportionment and reapportionment process, guidance on reporting on budget execution and budgetary resources, and a checklist for fund control regulations (Appendix H) that each agency must comply with in its respective administrative control of funds regulation.

In Section 10 of Appendix H, Checklist for Fund Control Regulations, each Federal agency's management is responsible for describing the agency's procedures for requesting apportionment of funds. While not required, the agency may opt to include general guidance covering apportionment action in connection with supplemental appropriations, reprogramming of funds, and transfer of funds between accounts.

Our review of the SEC's Administrative Control of Funds Regulation (SEC-R 14-1) noted that paragraph 9.d (6) provides the following:

Changes to allotments, suballotments, and allowances will occur only when approved by the CFO, or designee.  
Changes will be made to reflect supplemental appropriations and reprogramming.

During our fieldwork and discussion with OFM management, we noted that current management practice requires the approval of the Budget Officer or

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<sup>23</sup> OMB Circular A-123, op. cit.

Assistant Director, Planning and Budget, or higher for any reprogramming and/or realignment actions between different BOCs. A BOC identifies the specific purpose for which the funds are being used by a federal agency.

We judgmentally selected and tested 45 reprogramming and realignment actions taken from FY 2009 and FY 2010. Our testing found that 3 of the 45 reprogramming actions could not be verified as having been approved in accordance with current management practice (i.e., approved by the Budget Officer or Assistant Director, Planning and Budget). Upon further request for supporting documentation evidencing appropriate approval by the Budget Officer or Assistant Director, Planning and Budget, we were advised that current management practice for authorization of reprogramming and realignment actions between BOCs may be provided orally. In the absence of evidence for the authorization (e.g., emails, memoranda), we could not verify that the three reprogramming actions were processed in accordance with the SEC's Administrative Control of Funds Regulation. Therefore, we determined that this matter represents a control deficiency in the design of OFM's internal controls.

**Recommendation 8:**

The Office of Financial Management should revise the current reprogramming and realignment procedures to require that the Budget Officer or the Assistant Director, Planning and Budget, approve in writing all reprogramming and realignment actions that cross two-digit Budget Object Classes.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management's full comments.

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

## **Finding 6: Reprogramming and Realignment of Funds Are Not Sufficiently Tracked by OFM**

SEC reprogramming and realignment actions are subject to a diminished audit trail and a lack of timely monitoring throughout the year of budget execution. As a result, the SEC has an increased risk of exceeding established Appropriations Act reprogramming thresholds during the year of execution.

Reprogramming is defined as "the use of funds for purposes other than those originally contemplated at the time of appropriation." This definition is supported in the GAO decision in the matter of *Budget Programming, B-*

223474 (Washington, D.C., July 16, 1986). Realignment is a reallocation of funds, such as between SEC offices/divisions, usually for the same purpose (i.e., with the same BOC). However, in practice, the terms are used interchangeably.

Each fiscal year, Section 608 of the relevant appropriations act (P.L. 111-8 for 2009, P.L. 111-117 for FY 2010), provides the SEC with additional authority to reprogram or realign the appropriated funds for emergent requirements subject to certain limits. These limits are as follows:

[None of the funds] shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; (5) augments existing programs, projects, or activities in excess of \$5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is less; or (7) creates or reorganizes offices, programs, or activities unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate.<sup>24,25</sup>

In accordance with each enacted appropriations act, reprogramming actions in excess of the established reprogramming thresholds (lesser of \$5 million or 10 percent) must receive prior approval by the Committees on Appropriations of the House of Representatives and the Senate. Once approved, these reprogrammed funds re-establish the SEC's baseline for reprogramming activities.

During the year of budget execution, OFM current management practice is for realignment and reprogramming actions to be initiated through BPPAS. As applicable, realignment and reprogramming actions during a year of execution may be initiated through either of the following BPPAS processes: (1) Budget IntraAgency Transfer, for daily operational realignment and reprogramming actions, or (2) Financial Review Process, for reprogramming and realignment actions included in the initial fund allocation, mid-year review, and end-year financial review.

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<sup>24</sup> P.L. 111-8, Div. D, Sec. 608, p. 152.

<sup>25</sup> P.L. 111-117, Div. C, Sec. 608, p. 169.

Post-fiscal-year-end reprogramming and realignment actions are processed directly into the Momentum system and are not initiated through BPPAS.

We could not identify detailed transactions in BPPAS for the following FY 2010 reprogramming and realignment actions:

- \$1,280,500 realigned from BOC 32 (Buildings and Alterations) after the initial baseline for reprogramming was established.
- “Prior approval” reprogrammings for:
  - \$4 million on May 27 (with further information provided on June 11) from BOCs 11 and 12 (Pay and Benefits) to BOCs 25 and 31 (Other Services and Equipment),
  - \$7.5 million on July 16 from BOCs 11 and 12 to BOCs 25 and 31.
- Mid-year review.
- End-year financial review.

We found during our fieldwork that OFM does not retain detailed reprogramming and realignment actions in a common data table in either the BPPAS or Momentum applications:

- Daily operational realignment and reprogramming actions processed through the Budget IntraAgency Transfer process are retained in detail in a separate Budget IntraAgency Transfers log within BPPAS.
- Financial review actions are compiled and stored on a four-digit summary net change basis in a separate Financial Review data table within BPPAS.
- Post-fiscal-year-end reprogramming and realignment actions are processed directly into the Momentum system. Momentum has an inherent limitation in the informational detail that can be stored within the application concerning the purpose and use of authorized funds (i.e., narrative justification).

Each appropriations act directs the SEC to submit a report to Congress not later than 60 days after its enactment.<sup>26,27</sup> The report, delineated by BOC, establishes the baseline for reprogramming and discloses to Congress amounts requested in the President’s Budget, the appropriation actions taken by Congress, and any initial realignments.

OFM management monitors the enacted reprogramming thresholds through a password-protected Reprogramming Limitations Tracking spreadsheet that is maintained by a senior budget analyst. However, we found that the SEC’s first Reprogramming Limitations Tracking worksheets were not produced for FY 2009 and FY 2010 until July 24, 2009, and July 9, 2010, respectively. In addition, we

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<sup>26</sup> P.L. 111-8, op. cit., p. 152.

<sup>27</sup> P.L. 111-117, op. cit., p. 169.

found that each FY's first Reprogramming Limitations Tracking worksheet failed to provide an appropriate audit trail of individual reprogramming actions prior to the worksheet date. Subsequent discussion with OFM management indicated that the current OFM management practice is to not update the Reprogramming Limitations Tracking worksheet after the close of each FY, due to the expiration of the reprogramming limitations. The purpose of maintaining a complete tracking of reprogramming/ realignment actions, even subsequent to the fiscal year end, is to provide information to management regarding completed actions that may influence future budget decisions and also provides a complete audit trail of a fiscal year's budget activity.

The diminished audit trail for reprogramming and realignment actions processed through BPPAS and the lack of timely and complete Reprogramming Limitations Tracking worksheets increase the SEC's risk of exceeding established reprogramming thresholds during the year of budget execution.

While we acknowledge that there is no statutory penalty for exceeding reprogramming thresholds, Congress may react negatively to such a violation by reducing or entirely removing the SEC's reprogramming authority, resulting in a loss of flexibility in the use of funds.

**Recommendation 9:**

The Office of Financial Management should establish a process to sufficiently and accurately track reprogramming/realignment activities in one central location.

**Management Comments.** OFM concurred with the recommendation. See Appendix VI for management's full comments.

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

## Acronyms/Abbreviations

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BOC	Budget Object Class
BPPAS	Budget and Program Performance Analysis System
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
COSO	Committee of Sponsoring Organizations of the Treadway Commission
FAM	Financial Audit Manual
GAO	Government Accountability Office
IT	Information Technology
LMS	Learning Management System
OAS	Office of Administrative Services
OED	Office of Executive Director
OFM	Office of Financial Management
OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
PCIE	President's Council on Integrity and Efficiency
PMIS	Performance Management Information System
SEC or Commission	U.S. Securities and Exchange Commission
SEC-R	SEC Administrative Regulation
TAFS	Treasury Appropriation Fund Symbol
USC	United States Code

## Scope and Methodology

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This performance audit was conducted 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.** OIG contracted with Acuity to conduct a performance audit and identify potential areas for improvement with regard to the Commission's budget execution processes. The overall objective of the audit was to determine whether sufficient management controls over the SEC's budget execution processes were in place and were operating effectively. The scope of the audit covered the SEC's budget execution activities for FYs 2009 and 2010 and included examining the following:

- The various lines of authority and responsibility with regard to Commission budget decisions
- The Commission's processes for administrative division and subdivision of funds
- The policies and procedures in place to ensure appropriate spending of approved budgets
- The SEC's policies and procedures for monitoring obligations incurred to ensure that apportionments and allotments are not exceeded

Additional work conducted included testing gaps and deficiencies in budget execution activities with respect to non-payroll obligations, de-obligation reviews, and contract closeout procedures. Acuity conducted its fieldwork from August 2010 to February 2011.

**Methodology.** To meet the overall objective of determining whether sufficient management controls over the SEC's budget execution processes were in place and were operating effectively and appropriately, the Acuity team discharged its professional responsibilities and adopted a top-down, risk-based approach to plan the audit. In the audit plan, consideration was given to risks that might affect the audit's objectives, operations, and resources.

Further, additional considerations were given to identify sufficient, appropriate audit evidence and to establish a basis for determining the timing and extent of Acuity's testing activities. Where appropriate, Acuity reviewed and relied upon workpapers and testing completed during the OMB Circular A-123 review in

October 2010. As applicable, Acuity used of technology-based audit tools and other data analysis techniques.

In order to accomplish the audit objectives, Acuity conducted interviews with selected personnel with budgetary responsibilities. Our purpose was to assess whether SEC personnel had the necessary technical competency, skills, and appropriate empowerment to discharge their budget decision responsibilities and to ensure compliance with all applicable regulations and legislation.

In addition, Acuity gathered information to determine whether the SEC clearly communicates the necessary core competencies to Budget Execution Cycle personnel with budget decision responsibilities and provides a formal, SEC-focused budgetary training program for its personnel.

Further, in order to accomplish our audit objectives we reviewed the SEC policies and procedures pertaining to ensuring appropriate spending of approved budgets, monitoring obligations incurred to ensure that apportionments and allotments are not exceeded, and administrative division and subdivision of funds.

Our audit objectives also included evaluating the design of the Commission's processes and related Budget Execution internal control activities. The evaluation of internal controls and design effectiveness was measured against the budget control objectives identified in the GAO/President's Council on Integrity and Efficiency (PCIE) Financial Audit Manual (FAM).<sup>28</sup>

In addition to evaluating the design effectiveness of internal controls, we deemed that effective controls must operate as designed. We conducted tests of key applications, processes, and controls to ensure that they functioned effectively and aligned with management's assertion of the controls. Our testing further included reviewing select gaps that were identified by OFM's contractor and deficiencies in budget execution activities with respect to non-payroll obligations, de-obligation reviews, and contract closeout procedures.

**Internal Controls.** The July 2007 revision of GAO *Government Auditing Standards*, effective January 1, 2008, includes the requirement to understand internal controls that are significant within the context of the audit objectives. The revised standards indirectly refer to internal control guidance contained in Internal Control – Integrated Framework (COSO Report), published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The COSO report provides the framework for organizations to design, implement, and evaluate controls that will facilitate compliance with Federal laws, regulations, and program compliance requirements. To ensure that the SEC continues its standard of excellence and transparency in reporting, the COSO

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<sup>28</sup> GAO/PCIE Financial Audit Manual, Volume I, GAO-08-585G, p. 395 F-1.

Integrated Framework, as supported by GAO, is the framework that the SEC's control activities were measured against for this audit.

To facilitate our understanding of applicable Budget Execution Cycle process controls, Acuity compiled information in the GAO audit accounting cycle memoranda, FY 2010 OMB Circular A-123 risk control matrices, current policies and procedures, memoranda, and other applicable documentation provided by management into a process narrative document.

We reviewed the management control activities as they pertained to the audit objectives and assessed the budget execution cycle's structure key controls and design effectiveness.

**Sampling.** The sampling methodology employed was a combination of statistical and judgmental techniques as applicable to the respective key controls. Statistical and judgmental sample sizes were established in accordance with the GAO/PCIE FAM. Select SEC offices/divisions (e.g., the Fort Worth Regional Office) were subject to specific sampling to address additional fraud risk that was found during our initial survey fieldwork.

Judgmental sampling techniques were employed where the use of statistical sampling was not the appropriate technique or where evidence was readily available from another source that provided a more accurate basis or had greater evidentiary value. Judgmental sample sizes were determined after giving consideration to the type of control (i.e., manual or automated), frequency of control, complexity of the control, and professional judgment.

Further, we specifically identified and tested a universe of 12 contracts that cited both the "M0100" and "X0100" appropriations during the period in scope. The supporting contracts and respective modifications were reviewed to assess the propriety of compliance with the Purpose Statute.

Statistically based sampling techniques were applied against two separate universes of obligation and de-obligation transactions that occurred between October 1, 2008, and September 30, 2010. Statistically selected dollar-unit, or monetary-unit, samples were selected for dual testing purposes and compiled through the use of IDEA software.

## Criteria

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### 31 United States Code

§ 1301(a) **The Purpose Statute.** Governs the use of appropriated funds.

§ 1341(a) **The Antideficiency Act.** Governs limitations, exceptions, and penalties on obligations in excess of or advance of appropriations or allocations.

§ 1517 **The Antideficiency Act.** Governs limitations, exceptions, and reports on obligations in excess of apportionments.

**FY 2009 Consolidated Appropriations Act (Public Law 111-8), Division D, Section 608.** Provides guidance on the amount of enacted funding, reprogramming limitations, and submission of a baseline report to Congress.

**FY 2009 Supplemental Appropriations Act (Public Law 111-32), Division D, Section 608.** Provides guidance on the amount and purpose of enacted supplemental funding and restrictions.

**FY2010 Consolidated Appropriations Act (Public Law 111-117), Division C, Section 608.** Provides guidance on the enacted funding, reprogramming limitations, and submission of a baseline report to the Congress.

**Office of Management and Budget Circular A-11, Preparation, Submission and Execution of the Budget, July 2010, Part 4 and Appendix H.** Provides guidance on apportionment and budget execution and content of regulations governing administrative control of funds.

**Government Accountability Office Principles of Federal Appropriations Law (Red Book), Third Edition, Volume I, Chapter 2.B.2.b.** Provides guidance on the appropriate treatment for two appropriations available for the same purpose. Volume II, Chapter 6.C.2.d, provides guidance on specific appropriation limitations/purpose violations.

**Budget and Accounting Procedures Act of 1950.** Directs the Comptroller General, in consultation with the Director of OMB and the Secretary of the Treasury, to prescribe accounting principles, standards, and related requirements.

**Federal Financial Management Improvement Act of 1996.** Mandates that Federal financial systems provide accurate, reliable, and timely financial management information to Federal managers.

**OMB Circular A-127 (Issued September 2009).** Establishes the requirements for Federal financial management systems.

**SEC Administrative Regulation 30-1 (Issued June 1996).** Prescribes procedures for establishment, maintenance, and evaluation of management controls.

**SEC Administrative Regulation 14-1 (Revised August 18, 2010).** Establishes the policies and procedures for administrative control of funds.

## List of Recommendations

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### Recommendation 1:

The Office of Financial Management, in consultation with the Office of General Counsel, should request a formal opinion from the Comptroller General as to whether the Commission violated the Purpose Statute, and as a consequence the Antideficiency Act, by charging certain costs of information technology projects and expert witness fees to both the general and supplemental appropriations.

### Recommendation 2:

The Office of Financial Management, in consultation with the Office of the Executive Director and the Office of General Counsel, should establish policies and guidance on how to fund expenditures where there are multiple appropriations available for the same purpose.

### Recommendation 3:

The Office of Financial Management should complete a risk reassessment and include the inactivation of Momentum budget controls as a high-risk area in the OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*.

### Recommendation 4:

The Office of Financial Management should revise the Internal Control Override Template included in OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*, to include a section for follow-up actions to ensure financial integrity or statutory compliance and ensure that significant overriding of financial controls be required to be approved by senior-level officials.

### Recommendation 5:

The Office of Financial Management should formally document its allotments as required by Appendix H of Office of Management and Budget Circular A-11 to evidence the transfer of legal responsibility of funds to the recipient.

**Recommendation 6:**

The Office of Financial Management should initiate a review of the Budget and Program Performance Analysis System's capability to accommodate multiple appropriations.

**Recommendation 7:**

The Office of Financial Management, in consultation with the Office of Human Resources, should develop and establish a formal, ongoing Securities and Exchange Commission–focused budgetary training program.

**Recommendation 8:**

The Office of Financial Management should revise the current reprogramming and realignment procedures to require that the Budget Officer or the Assistant Director, Planning and Budget, approve in writing all reprogramming and realignment actions that cross two-digit Budget Object Classes.

**Recommendation 9:**

The Office of Financial Management should establish a process to sufficiently and accurately track reprogramming/realignment activities in one central location.



## Management's Comments

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### MEMORANDUM

March 25, 2011

**TO:** H. David Kotz  
Inspector General

**FROM:** Kenneth A. Johnson /s/  
Chief Financial Officer  
Office of Financial Management

**SUBJECT:** Office of Financial Management (OFM) Management Response to Draft Report No. 488, *Audit of the SEC Budget Execution Cycle*

Thank you for the opportunity to review and respond to the Office of Inspector General's Draft Report No. 488, entitled *Audit of the SEC Budget Execution Cycle*. We concur with the nine recommendations presented in the report and have begun taking appropriate steps to implement them.

#### **Recommendation 1:**

OFM concurs. OFM and the Office of the General Counsel (OGC) have studied the issue of whether charging certain costs to both: a) the general appropriations available during fiscal years 2009 and 2010; and b) the Supplemental Appropriations Act, 2009, P.L. 111-32 (June 24, 2009) violated the Purpose Statute. We believe no such violation took place, because of the guidance provided in Chapter 2 of the GAO Redbook, "*Specific versus General Appropriations*," section b. "*Two Appropriations Available for Same Purpose*," which states: "Of course, where statutory language clearly demonstrates congressional intent to make one appropriation available to supplement or increase a different appropriation for the same type of work, both appropriations are available." Both the Supplemental Appropriation and the accompanying Conference Report make clear that the Supplemental Appropriation was to provide an "additional" amount for investigations of securities fraud. Accordingly, our view is that the agency's use of the Supplemental Appropriation did not violate the Purpose Statute or the Anti-Deficiency Act.

We appreciate your discussion of this viewpoint in your report, and concur with the recommendation that the agency reach out to the Government Accountability Office to request a formal opinion from the Comptroller General. OFM and OGC already have initiated that process.

**Recommendation 2:**

OFM concurs. OFM, in consultation with the Office of the Executive Director and OGC, will establish policies and guidance on the use of multiple appropriations available for the same purpose.

**Recommendation 3:**

OFM concurs. A risk reassessment will be completed and OFM Reference Guide 01-06, *General Guidance: Override of Internal Control*, will be updated to include inactivation of Momentum budget controls as a high-risk area.

**Recommendation 4:**

OFM concurs. The Internal Control Override Template included in OFM Reference Guide 001-06, *General Guidance: Override of Internal Control*, will be revised to include a section for follow-up actions to ensure financial integrity/statutory compliance and that senior-level officials approve significant overrides of financial controls.

**Recommendation 5:**

OFM concurs. In accordance with Appendix H of OMB Circular A-11, *Preparation, Submission and Execution of the Budget*, and the delegation authority in section 3c(2) of SEC-R 14-1, *Administrative Control of Funds*, the Chief Financial Officer will formally issue allotments. This will evidence the transfer of legal responsibility to the Budget Officer.

**Recommendation 6:**

OFM concurs. OFM will review the Budget and Program Performance Analysis System's (BPPAS) capability to accommodate multiple appropriations.

**Recommendation 7:**

OFM concurs. Within overall agency funding constraints, OFM, in consultation with the Office of Human Resources, will develop a formal budget training program based on the budget execution standard operating procedures.

**Recommendation 8:**

OFM concurs. The budget execution operating procedures will be updated to ensure all reprogramming and realignment actions that cross two-digit budget object classes will be approved in writing by the appropriate officials.

**Recommendation 9:**

OFM concurs. OFM will update its budget execution operating procedures to incorporate steps for tracking reprogramming and realignment activities in one central location.

## OIG Response to Management's Comments

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OFM concurred with all of the report's nine recommendations and indicated that it would take action to implement the recommendations. We believe that OFM's proposed actions are responsive to our findings, and we are pleased that it has already initiated actions to implement some of the recommendations. The full implementation by OFM of all of the OIG's recommendations will result in significant improvements to the SEC's budget execution processes.

# Audit Requests and Ideas

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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

U.S. Securities and Exchange Commission  
Office of Inspector General  
Attn: Assistant Inspector General, Audits (Audit Request/Idea)  
100 F Street, N.E.  
Washington D.C. 20549-2736

Tel. #: 202-551-6061

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## Hotline

To report fraud, waste, abuse, and mismanagement at the SEC,  
contact the Office of Inspector General at:

Phone: 877.442.0854

Web-Based Hotline Complaint Form:  
[www.reportlineweb.com/sec\\_oig](http://www.reportlineweb.com/sec_oig)