



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

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# SEC's Records Management Practices



September 30, 2012  
Report No. 505

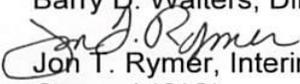


OFFICE OF  
INSPECTOR GENERAL

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

**MEMORANDUM**

September 30, 2012

**To:** Barry D. Walters, Director, Office of Support Operations (OSO)  
**From:**  Jon T. Rymer, Interim Inspector General, Office of Inspector General (OIG)  
**Subject:** *SEC's Records Management Practices*, Report No. 505

This memorandum transmits the U.S. Securities and Exchange Commission OIG's final report detailing the results on our audit of the SEC's records management practices. 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 12 recommendations which if fully implemented should strengthen the SEC's records management program. OSO concurred with all the recommendations. Your written response to the draft report is included in Appendix VII.

Within the next 45 days, please provide OIG with a written corrective action plan (CAP) that addresses each agreed upon recommendation. The CAP should include information such as the name of the designated responsible official or point of contact for the recommendations, estimated timeframes for completing required actions, and milestones identifying how each recommendation will be addressed.

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 audit staff.

Attachment

cc: Erica Williams, Deputy Chief of Staff, Office of the Chairman  
Luis A. Aguilar, Commissioner  
Troy A. Paredes, Commissioner  
Elisse B. Walter, Commissioner  
Daniel Gallagher, Commissioner  
Jeff Heslop, Chief Operating Officer, Office of the Chief Operating Officer

# SEC's Records Management Practices

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## Executive Summary

**Background.** SEC's records include confidential treatment requests files, correspondence, investigation records, matters under inquiry records, transcripts, working papers, consumer complaint files, Congressional and Chairman files, administrative proceedings files, self-regulatory files, bankruptcy files, effective orders, etc.

On November 28, 2011, a presidential memorandum was issued on managing government records. This memorandum emphasized the importance of having well-managed records management program that includes reducing redundant efforts, minimizing costs and sharing institutional knowledge within and across organizations. Further, the memorandum states that "proper records management is the backbone of open Government."<sup>1</sup>

The Office of Records Management Services (ORMS) is responsible for coordinating, overseeing and implementing the U.S. Securities and Exchange Commission's (SEC or Commission) records management program at its Headquarters, Operations Center, and 11 Regional Office locations.<sup>2</sup> ORMS and the Office of Security Services (OSS) are direct reporting units to the Office of Support Operations (OSO). OSS has oversight of the SEC's vital records program.

ORMS oversees the SEC's overall records management program through points-of-contacts (POC) in most offices and divisions. The POCs provide oversight of their individual records management program and practices.<sup>3</sup> ORMS' responsibilities include "providing reference services for Commission staffers, other Federal, state and local entities and members of the public that are essential in assisting the SEC in achieving its mission."<sup>4</sup> Additionally, the office "coordinates with the Commission's Office of Investor Education and Advocacy and Public Reference Room for records reference requests from the public."<sup>5</sup> Further, ORMS assists the Office of Freedom of Information Act (FOIA) Services, in responding to requests for nonpublic records under FOIA. SEC staff can find answers to questions on "How to Request Records" and "Frequently Asked Questions About Records" on the SEC Intranet.

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<sup>1</sup> Presidential Memorandum – *Managing Government Records*, (Nov. 28, 2011), p.1.

<sup>2</sup> SEC's headquarters and regional offices are comprised of 36 offices and divisions that are headed by Directors. SEC also has the Chairman's office and 4 Commissioners' offices.

<sup>3</sup> POCs are mainly comprised of administrative officers and business managers. Other serving in this role include assistant directors and personnel with various other titles.

<sup>4</sup> ORMS, Standard Operating Policy 2.1, *Requestors*, p.1.

<sup>5</sup> *Id.*

**Objectives.** The objectives of our audit were to examine whether ORMS:

- established a viable records management program that ensures permanent SEC records are appropriately maintained and preserved in accordance with applicable Federal statutes and regulations; and
- adhered to applicable Federal statutes and regulations regarding the retention, disposal, transfer, and recovery of SEC records.

Where appropriate OIG identified best practices.

**Results.** The SEC does not have an active staff assistance program and periodic agency-wide staff assistance visits were not conducted by ORMS or its predecessors. Although ORMS provided assistance to SEC offices and divisions to identify their records and has scheduled records for disposition, it has not conducted staff assistance visits of all 36 SEC offices and divisions. Therefore, confusion exists among POCs regarding their records management responsibilities.

In addition, our audit revealed that although ORMS readily answered agency staff questions about records matters, provided basic records management training during SEC's new employee orientation, and provided training to staff in the Regional Offices, the office did not provide records management training to staff agency-wide. OIG determined that this has caused confusion among employees.

Our review of a sample number of records requests found that some staff in ORMS did not follow the office's standard operating policy in processing requests and several requests were not completed in ORMS' goal of seven business days goal for non-urgent records requests.

We also identified offices that did not have records retention schedules and other offices whose records retention schedules were outdated. Additionally, we found offices ORMS had not met with to determine if they had records.

OIG determined that many offices and divisions do not have proper records management procedures and ensure that active records are properly and economically maintained, and used on a regular basis. Further, we found that inactive records are not regularly disposed.

Several POCs informed OIG they do not know when their records should be disposed of and they do not dispose of records annually. Additionally, until recently, ORMS had not reviewed the contents of 256 boxes their contractor identified in a report that was issued to ORMS in November 2010. ORMS

informed OIG that it has now reviewed 98 of the boxes and they are coordinating with the Federal Records Center (FRC) to review the remaining boxes.

Our audit also found that ORMS has not performed a timely review of Commission records that are eligible for destruction. Thus, a backlog exists that represents approximately 10 years of records that are eligible for destruction, but have not been destroyed. Although ORMS maintains hard copies of disposal forms the FRC provides for their review, approval, and destruction for records, the office does not maintain a list of the Commission records the FRC has identified as eligible for destruction.

Further, we determined that some offices and divisions do not have records management POCs. We also found that SEC's records management directives do not require offices or divisions to have records management POCs. As a result, some SEC employees do not understand their records management responsibilities. Also, the Federal regulations and SEC policies covering records management are not being followed properly.

OSS has oversight of the SEC's vital records program and is working with ORMS to evaluate the program. Thus, OSS has not defined the SEC's vital records and did not review or update the agency's vital records at least annually. As a result, SEC's listing of vital records is incomplete and outdated. Further, the SEC has not definitively established how it will protect and retrieve vital records in an emergency situation. Due to changes in responsibilities for vital records management, confusion exists regarding the SEC's compliance with the National Archives and Records Administration's (NARA) guidance on vital records. Consequently, the SEC did not comply with certain vital records management regulations.

Lastly, our audit found that the SEC's records management administrative regulations and vital records handbook are outdated. The administrative regulations contain terminology, processes and forms that are no longer current and the Vital Records Handbook includes a form the SEC has never used.

**Summary of Recommendations.** This report contains 12 recommendations to aid in ensuring SEC's records are properly managed and to strengthen the SEC's records management program. Based on the results of our audit, we recommended that ORMS periodically conduct agency-wide staff assistance visits of the SEC's records management programs in accordance with SECR 7-1, *Securities and Exchange Commission's Records Management Program*. ORMS should also develop a records management training program and offer training sessions on records management to all SEC employees. We also recommended that ORMS develop more robust internal controls to provide oversight to its employees in processing records requests. Further, we recommended that ORMS work with offices and divisions agency-wide to ensure they have current

and complete records retention schedules. ORMS should also establish records management procedures that enable SEC offices and divisions to properly manage their records in accordance with applicable Federal regulations and the SEC's administrative regulations.

Additionally, ORMS should develop a definitive plan and milestones to review the backlog of records that are maintained at the FRC and determine how the records will be treated. We also recommended that ORMS develop an action plan to address the 10-year backlog of records the FRC has identified as being eligible for destruction. ORMS should also require all offices and divisions to designate a POC for records management matters, then periodically verify the listing. We further recommended that OSS, in coordination with ORMS, develop a vital records program that includes processes and procedures, and establish and maintain the SEC's vital records in accordance with applicable Federal regulations and NARA's guidance on vital records management.

We also recommended ORMS update its administrative regulations covering records management and train SEC employees on the new regulations. Lastly, OSS and ORMS should coordinate reviewing SEC's Vital Records Handbook and determine if it will be revised or rescinded.

**Management's Response to the Report's Recommendations.** OIG provided OSO with the formal draft report on September 21, 2012. OSO concurred with all 12 of the report's recommendations. OIG considers the report's recommendations resolved. However, each recommendation will remain open until documentation is provided to us that supports the recommendation has been fully implemented.

OSO's responses to each recommendation and OIG's analysis of the responses are presented after each recommendation in the body of this report. OIG's response to OSO's overall comments to the report is included in Appendix VIII.

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# Background and Objectives

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## Background

Agency records management programs must have effective controls over the creation, maintenance, and use of records in the conduct of current business. Further, agencies must cooperate with the Archivist and the Administrator of General Services Administration in applying standards, procedures, and techniques that are designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and destruction of records of temporary value.<sup>6</sup>

On November 28, 2011, a presidential memorandum was issued on managing government records. The memorandum emphasizes the importance of having well-managed records management program such as reducing redundant efforts, minimizing costs and sharing institutional knowledge within and across organizations. Further, the memorandum states that “proper records management is the backbone of open Government.”<sup>7</sup>

The Office of Records Management Services (ORMS) and the Office of Security Services (OSS) are direct reporting units to the Office of Support Operations (OSO). Previously, ORMS was part of the Office of FOIA, Records Management and Security. OSS has oversight of the SEC’s vital records program.

Since May 2007, ORMS has been led by an Archivist who is responsible for coordinating, overseeing and implementing the U.S. Securities and Exchange Commission’s (SEC or Commission) records management program at its Headquarters, Operations Center, and 11 Regional Office locations.<sup>8</sup> The office is comprised of two branches and has a records officer who provides assistance to ORMS’ Archivist. Over the past few years ORMS has taken the following measures to improve the Commission’s records management program:

- Developed relationships with records management points-of-contact (POC) and/or employees in SEC offices and divisions;
- Adopted standard operating policy (SOP);
- Improved its records request completion time;

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<sup>6</sup> 36 C.F.R. § 1220.30.

<sup>7</sup> Presidential Memorandum – *Managing Government Records*, (Nov. 28, 2011), p.1.

<sup>8</sup> SEC’s headquarters and regional offices are comprised of 36 offices and divisions that are headed by Directors. SEC also has the Chairman’s office and 4 Commissioners’ offices.

- Annually sends staff to National Archives and Records Administration (NARA) records management training, as well as other records management training;
- Provided basic records management training during SEC's new employee orientation; and
- Since January 2012, ORMS has conducted assessments of five Regional Offices' records management programs and provided training to the staff.

SEC's records include confidential treatment requests files, correspondence, investigation records, matters under inquiry records, transcripts, working papers, consumer complaint files, Congressional and Chairman files, administrative proceedings files, self-regulatory files, bankruptcy files, effective orders, etc.

Though ORMS oversees the SEC's overall records management program, most offices and divisions have POCs who provide oversight of their individual records management program and practices.<sup>9</sup> ORMS works with POCs to develop and obtain NARA's approval of records retention schedules for records they either create or receive from internal and external sources. With few exceptions the offices and divisions have records retention schedules that ORMS has reviewed and NARA has approved. ORMS maintains the Commission's overall records retention schedule that identifies each office's and division's individual records retention schedules.

ORMS' other responsibilities include "providing reference services for Commission staffers, other Federal, state and local entities and members of the public that are essential in assisting the SEC in achieving its mission."<sup>10</sup> Additionally, the office "coordinates with the Commission's Office of Investor Education and Advocacy and Public Reference Room for records reference requests from the public."<sup>11</sup> Further, ORMS assists the Office of Freedom of Information Act (FOIA) Services, in responding to requests for nonpublic records under FOIA. SEC staff can find answers to questions on "How to Request Records" and "Frequently Asked Questions About Records" on the SEC Intranet, the Commission's internal website.

In September 2010, ORMS hired a contractor to assess its requirements for an automated Records Management System. As part of this process the contractor conducted an assessment of the SEC's overall records management program and identified areas of improvement. In November 2010, the contractor issued the office a report that among other things, recommended ORMS establish working groups or have meetings with record management POCs to enable the

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<sup>9</sup> POCs are mainly comprised of administrative officers and business managers. Others serving in this role include assistant directors and personnel with various other titles.

<sup>10</sup> ORMS, Standard Operating Policy 2.1, *Requestors*, p.1.

<sup>11</sup> *Id.*

SEC to deliver timely and current records management guidance to its offices and divisions. Further, the report recommended ORMS provide training to SEC staff and develop a communication plan that would “provide a consistent means of information-sharing and ensure that all offices and staff members are receiving current direction on records management issues.” Additionally, the report recommended ORMS develop “a 3 to 5 year records management strategic and program operation plan.” Further, the report recommended ORMS “update its records management policies and directives.”<sup>12</sup>

**National Archives and Records Administration.** NARA defines records as “all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of data in them.”<sup>13</sup>

From the Federal government’s perspective, records management is the “planning, controlling, directing, organizing, training, promoting, and other managerial activities involved in creating, maintaining, using and disposing of records, to achieve adequate and proper documentation of the policies and transactions of the government, and effective and economical management of the agency’s operations.”<sup>14</sup> The main tool to manage the disposition of records is records retention schedules.

Scheduled records represent Federal records whose final disposition has been approved by NARA. Scheduled records are identified in a records retention schedule and include both permanent and temporary records.<sup>15</sup> Unscheduled records represent Federal records whose final disposition have not been approved by NARA, and are not based on the Standard Form (SF) 115, *Request for Records Disposition Authority*. NARA requires that unscheduled records must be treated as permanent records until it approves their final disposition.

NARA’s 2010 and 2011 Records Management Self-Assessment reports<sup>16</sup> on the Federal government’s records management programs found the SEC’s records management program scored a 38 in 2010 and a 93 in 2011. ORMS stated that

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<sup>12</sup> T-White Parker Strategy & Management Consulting, *SEC Records Management Policies and Business Process Assessment*, (Nov. 2010), pp. 23-25.

<sup>13</sup> 44 U.S.C. § 3301.

<sup>14</sup> 44 U.S.C. § 2901(2).

<sup>15</sup> Not all records are destroyed.

<sup>16</sup> The self-assessment reports scored federal agencies on their compliance with federal statute, including NARA guidance, on records management.

the SEC was considered a high risk agency in 2010, but is now considered a low risk agency.

**OIG Survey.** In December 2011, we administered a survey to designated POCs in offices and divisions regarding their records management program, coordination with ORMS, training, etc. The purpose of the survey was to obtain an understanding of the offices and divisions records management practices and procedures. The overall response rate to the survey was over 60 percent.

**Objectives.** The objectives of our audit were to examine whether ORMS:

- established a viable records management program that ensures permanent SEC records are appropriately maintained and preserved in accordance with applicable Federal statutes and regulations; and
- adhered to applicable Federal statutes and regulations regarding the retention, disposal, transfer, and recovery of SEC records.

Where appropriate OIG also identified best practices.

Specific Federal agencies records management responsibilities are described in Appendix I of this report. Definitions for “records” terminology are included in Appendix VI of this report.

# Findings and Recommendations

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## Finding 1: Agency-Wide Staff Assistance Visits of SEC Records Management Programs Were Not Periodically Conducted

ORMS and its predecessors did not periodically conduct agency-wide staff assistance visits of SEC offices' and divisions' records management programs.

The SEC does not have an active staff assistance program and there is no evidence that periodic staff assistance visits were conducted by ORMS or its predecessors on all SEC offices and divisions. Not carrying out these responsibilities is inconsistent with the requirements in SECR 7-1, *Securities and Exchange Commission's Records Management Program*, September 29, 1996 (SECR 7-1).

SECR 7-1 indicates the records officer should schedule and make staff assistance visits to each SEC office of record at least every 18 months. It further says to ensure the efficient and economical creation, management and disposition of records SEC-wide, the Records Officer will establish and operate an active and continuing staff assistance program. Also, SECR 7-1 states that staff assistance visits should cover the records management program, electronic records and micrographic records, among other records management disciplines such as directives, forms, mail, etc.

**Assistance ORMS Provided to Offices and Divisions.** Over the years ORMS has continually provided assistance to SEC offices and divisions in identifying their records and scheduling records for disposition. NARA's guidance does not specifically define formal evaluations and thus, ORMS' management considers the assistance it provides to offices and divisions as formal evaluations. ORMS Archivist informed OIG that prior to January 2012, he was unable to regularly conduct the visits as required in SECR 7-1, due to staff shortages. He further stated there were other urgent issues the office's limited resources were focused on when he assumed the position in May 2007, such as addressing the backlog of records that was in storage. He further told OIG that ORMS is generally aware of unique records management matters applicable to each SEC office and division. Since January 2012, ORMS has evaluated five Regional Offices' records management programs and has plans to evaluate the remaining offices.

**Feedback From SEC Records Management POCs.** In addition to issuing a survey to the records management POCs, OIG met and conducted phone interviews with them to garner information about their office's or division's records management program and responsibilities. When asked when was the last time they reviewed their records retention schedules and disposed of records, 13 percent of POCs indicated they had not disposed of any records because they did not have a records retention schedule; did not have staffing resources to do so; or were not knowledgeable about their schedule. Forty percent stated their office had never disposed of any records. Another 40 percent indicated they had worked at the SEC for two years or less and had not disposed of any records. The latter POCs further indicated they did not know when their office had last disposed of records.

In interviews, two POCs informed OIG they had received new documents from external sources and had created new documents in late 2011. However, neither knew if documents were considered records and they had not consulted with ORMS. As discussed in Finding 2 of this report, some POCs are unaware ORMS is available to provide assistance with determining the disposition of records.

Not disposing of records in accordance with the approved records retention schedule is inconsistent with 36 C.F.R. § 1228.156 (f), which states that Federal agencies "must ensure that disposable records, including restricted records (security classified or exempted from disclosure by statute, including the Privacy Act, or regulation), are destroyed in accordance with the requirements specified in 36 C.F.R. §1228.58."<sup>17</sup>

**Conclusion.** An inactive agency-wide staff assistance program can cause confusion among POCs. Misunderstanding of records management responsibilities prevents organizations from achieving the benefits of a well-managed program, such as maintaining institutional knowledge and preserving pertinent information.

ORMS should periodically conduct agency-wide staff assistance visits of SEC's records management programs in accordance with SECR 7-1, so they are aware of newly created records and they can provide assurance the SEC is properly retaining and scheduling records for disposition. Further, ORMS should inform SEC staff they can find answers to questions on the hyperlinks "How to Request Records" and "Frequently Asked Questions About Records," that are located on the SEC's Intranet. Useful answers to questions that can be found in the hyperlinks include "what I need to know about records management, recycling and destroying records, record retentions schedules, clearance from records management for departing SEC employees," etc.

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<sup>17</sup> 36 C.F.R. § 1228.156 (f).

### **Recommendation 1:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) periodically conducts agency-wide staff assistance visits of the Securities and Exchange Commission offices' and divisions' records management programs in accordance with SECR 7-1, *Securities and Exchange Commission's Records Management Program*. To assist in this process, ORMS should develop a plan that identifies a timeline for the conduct and scope of the staff assistance visits.

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

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

## **Finding 2: Records Management Training Was Not Provided to All SEC Staff on Their Responsibilities**

ORMS did not provide training on records management to employees and POCs agency-wide on their responsibilities, which is inconsistent with a requirement in 36 C.F.R. § 1220.34(f).

During the scope of our audit, we determined that ORMS readily answered questions from agency staff that inquired about records matters and provided them assistance. ORMS also conducts a 10-minute informative session on records management during SEC's New Employee Orientation for new employees, contractors and interns. Additionally, ORMS conducted a training session on records management at the Office of the Chief Operating Officer's (OCOO) Mission Support Conference that was held in February 2012.

Nonetheless, ORMS has not provided agency-wide records management training to all staff on a general basis regarding their records management responsibilities, in accordance with 36 C.F.R. § 1220.34(f). According to 36 C.F.R. § 1220.34(f), Federal agencies should "provide guidance and training to all agency personnel on their records management responsibilities, including the identification of Federal records, in all formats and media."<sup>18</sup> It should be noted that 36 C.F.R. § 1220.34 does not address the frequency training should be offered to staff.

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<sup>18</sup> 36 C.F.R. §1220.34 (f).

In the survey OIG administered to records management POCs, 82 percent of the respondents indicated they had not received any records management training from ORMS. Our audit found that this lack of training has caused confusion among employees who do not understand their records management responsibilities or ORMS' role and responsibilities. The following examples illustrate the confusion regarding records management that POCs shared with OIG:

- A POC stated that based on her understanding of the Federal regulations related to records management, she thought it was ORMS' responsibility to review their records retention schedule and to dispose of records.
- A senior level staff member who no longer works at the SEC, left documents in her office and staff did not know who had the responsibility to review them and if the documents should be retained or disposed.

**ORMS Records Management Program and Training.** Since January 2012, ORMS has provided records management training to five Regional Offices. Feedback from the Regional Offices indicates the training has been helpful. In early May 2012, ORMS hired two branch chiefs to assist with records operations and policy, training and compliance. ORMS' management says the branch chiefs will prepare a branch specific strategic plan and establish a program that offers periodic records management training to SEC employees.

The lack of systematic records management training has resulted in POCs retaining records that probably should have been disposed.

**Other Agencies' Records Management Programs and Training.** NARA provided OIG with the names of three Federal agencies they believe have well-managed records program. Two agencies responded to our request for feedback on their programs. Both agencies told us they provide ongoing training through web-based, on-line, and in-person avenues. They further offer training on a variety of records management subjects and the training varies depending on the audience. For instance, different training courses are available for agency employees needing basic records management knowledge and for records management POCs who are more familiar with records management regulations.

**Conclusion.** ORMS did not provide records management training to staff agency-wide on their records management responsibilities. As a result, confusion exists regarding their responsibilities and ORMS' records management role and responsibilities. ORMS should develop a systematic records management training program that is geared towards all SEC staff and then provide training to all.

## **Recommendation 2:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops a records management training program that covers training sessions for all Securities and Exchange Commission employees. ORMS should determine the audience, scope, material, and training schedule. Training factors ORMS should consider include defining records, how to treat records in accordance with Federal regulations and records retention schedule, records management responsibilities for employees and designated points-of-contact.

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

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

## **Finding 3: Some Records Requests Processing Did Not Align With ORMS' Established Business Goals and Records Requests Were Not Completed in Accordance with the SOP**

ORMS did not process records requests within their established internal business goals. In most cases ORMS staff did not inform its management about the delays in writing, as required per the office's SOP. Further, ORMS staff did not follow their SOP when processing records requests the office received.

### **ORMS Services and Processes**

ORMS provides reference services to staff, as well as "other Federal, state and local entities and members of the public that are essential in assisting the SEC in achieving its mission."<sup>19</sup> Additionally, ORMS "coordinates with the Commission's Office of Investor Education and Advocacy and Public Reference Room to service records reference requests from the public"<sup>20</sup> and assists the Office of FOIA Services with responding to FOIA requests from the public for nonpublic records.

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<sup>19</sup> ORMS, *Standard Operating Policy for Properly Servicing and Completing a Request for Records – the Lifecycle of a Request*, p.1.

<sup>20</sup> *Id.*

ORMS only accepts records requests from SEC employees. SEC employees can request records by completing the “Request For Records Template” that is available on SEC’s Intranet. Completed templates are emailed to ORMS’ records requests inbox. ORMS maintains a log of record requests to track when records are received and processed. Among other items, the template includes a box that can be checked covering areas such as confidential treatment requests files, correspondence, investigation records, matters under inquiry records, transcripts, workpapers, consumer complaint files, Congressional and Chairman files, administrative proceedings files, self-regulatory files, bankruptcy files, and effective orders, etc. Based on fiscal years 2010 and 2011 data we reviewed, OIG determined that ORMS receives approximately 210 records requests each month from SEC employees and FOIA.<sup>21</sup>

ORMS’ SOP indicates the office’s goal is to process requested records within three business days for urgent requests and seven business days for non-urgent requests.<sup>22</sup>

**Records Requests.** To assess the average length of time ORMS spent processing records requests, OIG obtained and reviewed a sample of 105 records requests<sup>23</sup> the office had received. Thirty-eight (38) of 105 records in our sample were for non-urgent requests. Our analysis revealed they were not processed within ORMS’ seven business days goal for non-urgent requests. In some cases it took ORMS up to eight months to process requests. ORMS informed OIG that the delays occurred because some of their staff lacked the skills and aptitude needed to properly process requests in a timely fashion.

ORMS data on its records requests turnaround time revealed that 80 percent of records requested in fiscal year 2012 were processed within eight business days.

**Requests and ORMS’ SOP.** Our audit determined that ORMS staff did not follow its SOP that requires them to notify management regarding delays that occur when they processed records that took more than 20 days. ORMS informed us this requirement became effective August 24, 2009. OIG found that it took more than 20 days to process 10 of 38 non-urgent records requests in our sample. Only 1 of the 10 requests indicated the reason for the delay was communicated to management. ORMS informed us that although the delay was not properly identified on the records request document, it is possible staff verbally communicated the reasons for the delay to management; however it was not documented according to the office’s SOP.

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<sup>21</sup> The public submits FOIA requests for SEC records to the Office of FOIA Services.

<sup>22</sup> ORMS, *Standard Operating Policy for Properly Servicing and Completing a Request for Records – the Lifecycle of a Request*, p.1.

<sup>23</sup> Our sample included urgent and non-urgent requests dating from January 2008 to September 2011.

ORMS' SOP further requires its employees to "place copies of all documents (emails, notes or any other information) pertaining to requests in the dossier and return the assigned request for records in the dossier to ORMS staff members who are responsible for managing the request for records mailbox and log, the ORMS Chief, or his (her) designee."<sup>24</sup> For 18 of 105 records in our sample, sufficient information was not identified in the dossier such as the request form, status of the request, and completion date. This lack of information prevented OIG from determining what the requests were and whether the requests were completed.

ORMS' SOP also requires the "staffer who processed the records request returns the assigned request for records dossier to the ORMS staffer responsible for managing the request for records mailbox and log, the ORMS Chief or designee. The ORMS employee responsible for managing the records requests mailbox and log uses the supporting documentation to code the requested service. [The] ORMS staff [who completed the records request] does not code the serviced request."<sup>25</sup> ORMS uses a system of "approved codes" as shown in Table 1 below, to assess the status of records requests the office receives.

**Table 1: ORMS Approved Action Codes for Records Requests**

ORMS Code	Action Taken for the Request
0	Requestor cancelled the records request.
1	ORMS closed the records request by referring the requestor to other sources such as SEC subscription database.
2	ORMS completed the records request.
R	ORMS reassigned the records request to another staff member.

Source: OIG generated

There were 2 of 105 records in our sample coded as "2-completed requests," but ORMS could not locate these records. To aid in resolving this problem, ORMS should develop a new code to categorize requested records that cannot be located. ORMS management agreed a new code is needed. ORMS further stated its staff had previously made this suggestion, but due to other priorities it was not pursued further.

Another record in our sample was coded as "8." ORMS management told us the code had not been approved and staff had developed it to describe actions they had taken.

When asked whether ORMS reviews a sample number of processed records requests, we were told the office had done so in the past, but not consistently.

<sup>24</sup> ORMS, *Standard Operating Policy for Properly Servicing and Completing a Request for Records – the Lifecycle of a Request*, p. 7.

<sup>25</sup> *Id.*

ORMS believes the office can best monitor records requests and other items if the process is automated.

**Best Practices.** In identifying best practices, OIG consulted with a records officer from another Federal agency who told us their automated records management system contributes to the office's efficiency. She further relayed that the records management system "has outstanding features such as tracking records, when the records are due back to the records office, what records are up for destruction, etc. It has allowed the records office to locate where records are and better track them and identify where permanent assets are." Having an automated system for records management may contribute to ORMS efficiently overseeing the SEC's records management program.

**Conclusion.** As evidenced by OIG's review of a sample number of records requests, some ORMS staff did not follow the office's SOP records requests procedures and requests were not completed within ORMS' goal. ORMS should implement additional internal controls such as a more robust management review of records requests to ensure staff complete requests within its goal and they comply with their SOP (e.g., including required information in a dossier and notifying management of delays in processing records that take more than 20 days).

The Office of Management and Budget Circular A-123 "Management's Responsibility for Internal Control" establishes that management has a fundamental responsibility to develop and maintain effective internal controls. Ineffective internal controls have prevented ORMS from timely processing records requests and it has led to confusion on whether records were completed. Further, "effective controls over the creation, maintenance, and use of records in its current business"<sup>26</sup> will aid ORMS improve the management and maintenance of the SEC's records management program.

### **Recommendation 3:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops internal controls that assure ORMS staff are provided oversight and adhere to the office's standard operating policy.

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

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

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<sup>26</sup> 36 C.F.R. § 1220.30.

## **Finding 4: Some SEC Offices or Divisions Do Not Have Records Retention Schedules and Others Should Be Updated**

SEC has newly created offices that do not have records retention schedules and there are other offices that ORMS has not met with to create their records retention schedules.

According to NARA, Federal agencies are to “develop records schedules for all records created and received by the agency and obtain NARA approval of the schedules prior to implementation, in accordance with 36 C.F.R. parts 1225 and 1226.”<sup>27</sup> Federal agencies have common records such as personnel, payroll, and training records that NARA has classified and are included in General Records Schedules (GRS). GRS are “issued by the management of the United States to provide disposition authorization for records common to several or all agencies of the Federal Government. They include records relating to civilian personnel, fiscal accounting, procurement, communications, printing, and other common functions, and certain non-textual records. They also include records relating to temporary commissions, boards, councils and committees. Because these schedules are designed to cover records common to several agencies, many record descriptions are general. Agency records officers may either use the schedules as an appendix to an agency printed schedule or tailor the general schedules to the agency’s own particular needs and incorporate them into agency schedules.”<sup>28</sup> The SEC has five offices that are covered by GRS:<sup>29</sup>

1. Office of Equal Employment Opportunity
2. Office of Financial Management
3. Office of Human Resources (OHR)
4. Office of Information Technology (OIT)
5. Office of Support Operations

According to SECR 7-1, Section B. 8, division directors, office heads, regional directors and district administrators should “make sure that active records are properly and economically maintained and used, and systematic disposition of inactive records are made on a regularly scheduled basis.”

### **Records Retention Schedules**

SEC offices and divisions are responsible for maintaining their records in accordance with their approved retention schedules. As previously discussed,

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<sup>27</sup> 36 C.F.R. § 1220.34.

<sup>28</sup> GRS is the retention schedule for these offices. See NARA’s website (<http://www.archives.gov>), *Introduction to the General Records Schedules*.

<sup>29</sup> OCOO and OSS also have records that are on GRS, as well as records that are not on GRS.

most offices and divisions have records retention schedules that have been filed with ORMS. However, the SEC's comprehensive records schedule is dated September 1997. Since then the SEC has added new offices and combined, abolished and/or renamed others. Some offices and divisions that are not covered by GRS either do not have records retention schedules or are in the process of revising their current retention schedules.<sup>30</sup> Additionally, the offices which fall under GRS do not have records retention schedules, other than GRS, which is the retention schedule for these offices.

Our review of records retention schedules and records management processes found that a particular division identified several risks for the division's records management program such as identifying records owners and outdated records management policies. Another office was in the process of redefining the documents it created and received from internal and external sources during our audit. Subsequently, the office conducted a full inventory to identify "scheduled"<sup>31</sup> records and has been working with ORMS to get its "unscheduled"<sup>32</sup> records appropriately scheduled.

OIG further identified POCs from two offices who had not met with ORMS regarding documents the office generated that met the records definition or to determine if a retention schedule was needed. One of the offices indicated that in late 2011, staff turned over in its records management function. The office recently hired a managing executive and a business manager to enhance its operational functions which includes records management. The POC indicated the office's prior records management practice was to work with ORMS as issues arose and they had no continuous or consistent contact with ORMS. The office subsequently met with ORMS to identify its records and modify its records retention schedule.

A POC from the second office in our example informed OIG he did not think his office had created any records. The POC stated the records the office "create[s] would be typically managed in systems or files external to [their] office." He also said they would "rely on the email retention mechanisms to manage those external records to their office. [Hence], the office does not have any specific practices and procedures defined [for records management] and [they] do not have retention schedules beyond those of the Commission's policies as a whole."

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<sup>30</sup> While the retention schedules are being revised, SEC offices and divisions are expected to follow their current records retention schedules.

<sup>31</sup> Scheduled records represent federal records whose final disposition is approved by NARA. Scheduled records are identified in a records retention schedule when the records will be destroyed.

<sup>32</sup> Unscheduled records represent federal records whose final dispositions have not been approved by NARA, and are based on the Form SF 115, *Request for Records Disposition Authority*. NARA requires that unscheduled records must be treated as permanent records until it approves a final disposition for the records.

Forty-two percent of personnel in our survey indicated their office or division did not have a records retention schedule. This indicates there is a lack of understanding of records retention schedules. For example, a records management POC initially thought his office had not finalized its records retention schedule. However, our review of ORMS' comprehensive records schedule and inquiries revealed the office did in fact have a schedule.

ORMS should ensure the SEC's records retention schedules are current. Not having records retention schedules for all offices and divisions could cause POCs to misunderstand their roles and responsibilities. In addition, it could potentially result in retaining unnecessary records or discard records that should have been preserved. ORMS' management informed us that while they want to actively interact with SEC offices and divisions on a continuous basis, it does not have sufficient resources to do so. A few POCs informed us that ORMS should actively engage with Commission's offices and divisions to ensure that robust records management processes and procedures are in place and are being carried out by Commission staff.

**Recommendation 4:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) works with the Securities and Exchange Commission (SEC) offices and divisions to ensure they all have current records retention schedules that encompass the office's or division's records. Accordingly, ORMS should determine whether it should update the SEC's comprehensive records retention schedule to ensure it is reflective of current SEC offices' and divisions' records.

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

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

## **Finding 5: Some SEC Offices and Divisions Did Not Review Their Records Retention Schedules and Dispose of Records in Accordance with Their Schedules**

Some offices and divisions kept all the records they created and received and did not periodically review their records retention schedules and dispose of records in accordance with their schedules.

Some offices keep all the records they create and receive. This could potentially lead to inefficient utilization of office space in the future. An office that was established in 2009 indicated they maintained the records the office created. They are in the process of creating a records retention schedule. ORMS indicated that as of late July 2012, NARA was reviewing this office's records retention schedule.

A POC informed OIG that it does not have a records retention schedule, but has met with ORMS to discuss what type of records it has and to determine if a records retention schedule is necessary. The POC believes that from a risk perspective, because the office has approximately 50 employees and generally does not generate or receive many original records, a records retention schedule may not be needed. He further said many of their employees work in a field that encourages the preservation of documents. The office maintains a file room that has historical documents dating back to the 1940s. ORMS was unaware the office had not disposed of any records. OIG confirmed that the office does have a records retention schedule. Subsequently, ORMS met with the POC to discuss the office's records and scheduling processes.

OIG met with two POCs whose records are covered by GRS. The first POC informed us they had not reviewed records management regulations regarding disposing and managing the office's records, due to a lack of resources. She further indicated the office needed training on records management. ORMS' management told OIG that because its office follows GRS their records should be disposed of in accordance with GRS, which requires that most records have a two-year retention period. The second POC stated since her arrival at the SEC in November 2009, the office had not reviewed their records to determine how and what should be disposed of, and had contacted NARA for guidance. The office plans to review the disposition of its records in the near future.

**Backlog of Records at FRC Need to Be Reviewed.** Additionally, our audit found that ORMS had not reviewed the content of 256 boxes their contractor identified in its November 2010 report. The boxes contained records ORMS received from various sources and ORMS needs to review the content of the boxes to determine the disposition and dates of the records.<sup>33</sup> In September 2012, ORMS informed OIG that it has now reviewed 98 boxes and they are coordinating with the FRC to review the content of the remaining boxes.

**Proper Records Management Procedures.** We determined that many offices and divisions do not have proper records management procedures and do not ensure active records are properly and economically maintained and used on a regular basis. Further, the systematic disposition of inactive records is not regularly performed. Many POCs indicated they are unsure when the offices' and divisions' records should be disposed of and do not do so annually.

When a FOIA request for a record is received and the record is available, Federal agencies are expected to provide the record after a reasonable search has been conducted. Whether the record should be disposed of in accordance with the retention schedule is irrelevant. If the record exists, even though it should have been disposed of in accordance with the retention schedule, the SEC is required to provide it in a FOIA request. As such, there is a risk the SEC could provide information that should have been disposed. The FOIA office informed OIG that during the litigation discovery period for records, Federal agencies are expected to perform extensive searches and provide the record if the agency has it, regardless of the record's retention period.

Not having a records management program or procedures that enable offices and divisions to review records retention schedule and to properly dispose of records violates 36 C.F.R. § 1220.34(d) which states that agencies must "assign records management responsibilities in each program (mission) and administrative area to ensure the incorporation of recordkeeping requirements and records maintenance, storage, and disposition practices into agency programs, processes, system and procedures. Moreover, it violates 36 C.F.R. § 1220.34 (g) which states that agencies must "develop records schedules for all records created and received by the agency and obtain NARA approval of the schedules prior to implementation, in accordance with 36 C.F.R. § 1225 and 1226."<sup>34</sup>

ORMS has not periodically contacted all records management POCs and provided them with guidance regarding their responsibility to identify records for disposal. By not disposing of records in a timely manner and taking full action to

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<sup>33</sup> The report ORMS' contractor issued in November 2010 identified the 256 boxes. ORMS stated the initial size of the backlog was approximately 1,000 boxes.

<sup>34</sup> 36 C.F.R. § 1220.34 (d) and (g).

preserve records having no administrative, legal, or other value, could cause the SEC to inefficiently use office space and increase the cost to preserve records.

**Conclusion.** Several offices did not dispose of their records in accordance with the records retention schedules. Additionally, our audit revealed that ORMS has a backlog of records that was identified in 2010 that still needs to be reviewed to determine the proper treatment of the records. ORMS' actions has led non-compliance with Federal regulations that requires records be properly disposed of based on the records retention schedules. Further, not disposing of records in accordance with the records retention schedules poses a risk the SEC is providing information when a FOIA request is made.

**Recommendation 5:**

The Office of Support Operations should ensure the Office of Records Management Services establishes records management procedures that enable the offices and divisions to properly manage their records in accordance with applicable federal regulations and Securities and Exchange Commission's administrative regulations.

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

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

**Recommendation 6:**

The Office of Support Operations should ensure the Office of Records Management Services establishes a definitive plan and milestones to review the remaining backlog of boxes that are being maintained at the Federal Records Center and ensures proper disposition of the records that are contained in the boxes.

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

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

### **Recommendation 7:**

The Office of Support Operations should ensure the Office of Records Management Services provides guidance to records management points-of-contact and requires, at least annually, they determine whether there are any records requiring disposal for their individual offices and divisions.

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

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

## **Finding 6: The Backlog of Records Being Maintained at FRC Were Not Reviewed**

ORMS has 10-year backlog of SEC records at the FRC that are eligible for destruction and they did not review and approve the records for destruction.

ORMS has not timely reviewed Commission records that are eligible for destruction. ORMS Archivist inherited a substantial backlog of records upon his arrival to the SEC in May 2007. The backlog represents approximately 10 years of records that are eligible for destruction. ORMS must review and approve these records before they can be destroyed.

**ORMS Records Disposal Cycle.** At the end of each fiscal year FRC sends a records disposal form to ORMS that lists all the SEC's records in their possession that are eligible for permanent destruction. The disposition form includes a job number and the year the record is due to be destroyed. The form also identifies if the records are temporary. FRC submits a request to ORMS for its approval before it destroys the records.<sup>35</sup>

FRC informed ORMS they had 29,345 cubic feet of records eligible for destruction at the end of fiscal year 2011. ORMS approved the destruction of 2,306 cubic feet of these records. We concluded that had ORMS timely reviewed the records in prior years, the backlog would not exist.

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<sup>35</sup> 44 U.S.C., Disposal of Records, § 3303a(e), requires an examination by Archivist of lists and schedules of records lacking preservation value. Further, it states "[The Archivist of the United States] may approve and effect the disposal of records that are in his legal custody, provided that records that had been in the custody of another existing agency may not be disposed of without the written consent of the head of the agency."

As part of our sampling, OIG requested the following information from ORMS:

- The number of records ORMS disposed of each year;
- The number of records that remains to be destroyed by year; and
- The total number of records the SEC created from 1999 to 2011.

ORMS was unable to provide the information we requested because it does not have a viable method to track the information.

Further, OIG found that ORMS does not maintain a list of the Commission records that are eligible for destruction identified by FRC. However, the office does maintain hard copies of the disposal forms the FRC provides to ORMS. OIG's review of the approved disposal forms for fiscal year 2011 found that a form was completed for all disposals and the disposals were properly approved.

OIG could not perform a walkthrough of ORMS' record disposal process because our observation of their records indexing<sup>36</sup> was problematic.<sup>37</sup> For example, based on ORMS' record indexing we requested records for our review. However, none of the records were found because the index was incorrect. ORMS says the indexing problem only exists for records that were created before 2008. Further, ORMS stated until they can do a full inventory of the Commission's records that are located at the FRC and verify the records, none of them can be destroyed.

**Conclusion.** ORMS did not dispose of SEC records in accordance with the retention schedules, which is inconsistent with 44 U.S.C. § 3102, *Establishment of Program of Management*, that requires Federal agencies establish and maintain an active, continuing program for the economical and efficient management of the agency records.<sup>38</sup>

### **Recommendation 8:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops an action plan to address the 10-year backlog of records that the Federal Records Center (FRC) identified as eligible for destruction. In developing an action plan, ORMS should determine a timeline to address the backlog of records, a timeline to conduct a full inventory of the Security and Exchange Commission's records, and how ORMS will address the indexing system for archived records.

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<sup>36</sup> ORMS indexes records by maintaining a log that states where the records are located.

<sup>37</sup> In September 2012, ORMS management informed OIG that the records have been reviewed and legacy issues were identified that must now be resolved before the records can be approved for destruction.

<sup>38</sup> 44 U.S.C. § 3102.

**Management Comments.** OSO concurred with this recommendation. See Appendix VII for management’s full comments.

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

## **Finding 7: Records Management Points-of-Contact Have Not Been Identified for All SEC Offices and Divisions**

While most offices and divisions have appointed POCs for records management matters, some have not; therefore, ORMS cannot clearly identify POCs for each office or division. OIG could not determine who all the designated records management POCs were for individual offices or divisions based on ORMS’ listing of meetings held with SEC offices and divisions for records management matters.

NARA, 36 C.F.R., Section 1220.34(d) requires Federal agencies to “assign records management responsibilities in each program (mission) and administrative area to ensure incorporation of recordkeeping requirements and records maintenance, storage, and disposition practices into agency programs, processes, systems, and procedures.”<sup>39</sup>

OIG requested a list of SEC’s records management POCs and learned that although ORMS does not maintain an official listing, it has a list of offices and the names of people they worked with on records management matters. At the SEC, business managers and administrative officers typically serve as records management POCs, but other employees such as assistant directors, legal counsel, etc., also serve in this role. ORMS has established relationships with offices and divisions and they address any questions and concerns they may have regarding records matters. ORMS provided us with a list of employees they met with over the past few years regarding records matters, and employees they consider to be POCs.

We determined that ORMS’ list needs to be updated to include all POCs. While most offices and divisions have appointed POCs for records management matters, some have not. Moreover, our audit found some offices and divisions did not have designated POCs until 2011 or 2012. Furthermore, there appears to be confusion between ORMS and offices and divisions pertaining to who is

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<sup>39</sup> 36 C.F.R. § 1220.34(d).

designated as the records management POC. For example, OIG was informed of a particular employee who had been the office's records management POC since the 1990s, but he was not on ORMS' list. In another instance, ORMS' list identified an employee from an office as the records management POC. However, the employee said he only worked with ORMS on records matters for his branch and not for the entire office. We later found that the office director had assigned its assistant directors as records management POCs. However, the names of the assistant directors were not on ORMS' records management list. Moreover, an employee ORMS identified as a POC for another office told OIG she was not the records management POC. OIG was later informed that the head of the office, along with two employees, were responsible for the office's records; however, they were not identified as POCs on ORMS' list. Further, an office told us they did not have a POC due to staff turnover. Subsequently, the office appointed a records management POC. Lastly, one office just designated a records management POC in January 2012.

Additionally, our audit found that ORMS has not reviewed the records management program of two headquarters offices. ORMS stated that one of the office directors started at the SEC in November 2011, and due to other priorities they had not contacted the office but planned to do so. ORMS told us that not all offices and divisions consider records management a priority and it has been difficult for certain offices and divisions to focus on records management practices. This is consistent with NARA officials' observations. NARA officials told us that the lack of priority for records management is common in Federal agencies. However, because of a records destruction matter that occurred at the SEC, it appears offices and divisions are now more supportive of ORMS' initiatives.

A management official informed us she thought ORMS was responsible for reviewing the office's retention schedule, when in fact this responsibility resides with each office or division. Further, an administrative officer who serves as the records management POC stated she has not worked with ORMS since 2008 and was unfamiliar with record rules and ORMS' responsibilities.

Based on a recommendation from NARA, OIG contacted two Federal agencies and an independent Federal agency from the financial industry, and asked them how they communicated with offices in their agencies regarding records management matters. The agencies told us they have records management POCs in each office at their respective agency.

**Conclusion.** SEC's records management directives do not require offices or divisions to have records management POCs. ORMS management agrees that establishing records management POCs for all offices and divisions is important, but say they need the support and assistance of SEC offices and divisions to do so.

Not having records management POCs has contributed to ineffective communication between ORMS and SEC offices and divisions on records management matters, such as misunderstandings regarding responsibilities and staff not properly following Federal regulations and SEC policies on records management.

**Recommendation 9:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) issues a directive, requiring all Securities and Exchange Commission offices and divisions to designate a point-of-contact (POC) for records management matters and inform ORMS of their designated POC. ORMS should maintain a list of POCs that is verified annually.

**Management Comments.** OSO concurred with this recommendation. See Appendix VII for management’s full comments.

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

## **Finding 8: SEC’s Vital Records Management Program Needs Improvement**

Offices and divisions are not reviewing their vital records listing annually in compliance with Federal regulations. Further, we determined the SEC’s vital records are not current and complete based on our review of vital records in 12 offices and divisions.

Designated staff in SEC offices and divisions are not annually reviewing and/or updating their vital records in accordance with Federal Continuity Directive 1 (FCD 1), *Federal Executive Branch National Continuity Program and Requirements*, which states that “at a minimum, vital records should be annually reviewed, rotated, or cycled so that the latest version will be available.”<sup>40</sup> Further, the SEC is not in compliance with 36 C.F.R. § 1223.14(c) which states that agencies must “ensure that the designation of vital records is current and complete.”

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<sup>40</sup> Federal Continuity Directive 1 (FCD 1), *Federal Executive Branch National Continuity Program and Requirements*, (Feb. 2008), Annex I, p. I-3.

OSS is responsible for SEC’s vital records management. OSS provided OIG with the SEC’s Continuity of Operations (COOP) Plan (2010 COOP Plan), dated April 2010, which included a listing of vital records for SEC offices and divisions. OIG also obtained and reviewed SEC’s draft 2011 vital records listing. We found that the 2010 COOP Plan and the draft 2011 vital records listing include vital records of an office that no longer exists and whose function was merged into another office that was created in September 2009.

**Vital Records at the SEC.** According to SEC’s 2010 COOP plan, vital records are “electronic and hardcopy documents, references, and records needed to support essential functions during a continuity of operations situation. The two basic categories of records are emergency operating records and legal and financial records.” SEC defines emergency operating records as “records that support the execution of an agency’s essential functions.” In addition, SEC defines legal and financial records as “records that are needed to protect the legal and financial rights of the Government and of the persons affected by its actions.”

**SEC Offices and Divisions Are Not Reviewing Their Vital Records Listing Annually.** OIG interviewed staff from 12 offices and divisions that were on SEC’s Continuity Task Force, and had responsibility for maintaining their office or division’s vital records listing.<sup>41</sup> Staff was asked “When was the last time you reviewed and/or updated your vital records listing?” Our audit found the answers shown in Table 2.

**Table 2: Survey Results of SEC Offices and Divisions Vital Records Listings**

Number of Offices	Category Results
2	Reviewed their vital records listing annually
2	Reviewed their vital records listing continuously
2	Did not review their vital records listing annually
2	Reviewed their vital records listing a year or more ago
3	Did not know when they last reviewed or updated their vital records listing
1	Other
<b>Total 12</b>	

Source: OIG Generated.

<sup>41</sup> SEC’s Continuity Task Force was made up of agency-wide personal designees who have oversight of their offices’ or divisions’ vital records and periodically met with the defunct Office of the Executive Director to discuss COOP matters and their vital records responsibilities.

One designee in the “reviewed their vital records listing continuously” category was unable to provide the vital records listing due to staff turnover. One designee in the “reviewed their vital records listing annually” category admitted the last time they updated its vital records listing was in May 2010 in preparation for the May 2010 exercise. The designee further stated the office reviews its vital records listing prior to the national COOP government exercise that occurs every two years. A second designee in this category stated that the last time they reviewed and updated its vital records listing was in June 2006. A designee in the “did not know when they last reviewed or updated their vital records listing” category stated that OSS recommended the office not rely on old vital records listing and to disregard it because the list may contain items that are not vital records. Further, the designee stated OSS informed them that the way SEC previously identified and maintained vital records may change. A designee in the “reviewed their vital records listing a year or more ago” category stated that it currently updates the vital records listing as changes occur and they will review it quarterly. Finally, the designee in the “other” category stated that December 2011 was the first time the office had formally reviewed and updated its vital records listing and the office has kept a catalog of its vital records from its inception in 2009.

**Vital Records Listing.** We obtained the 12 offices and divisions vital records listings and compared them to the vital records that were included in the 2010 COOP Plan and the draft 2011 listing. Our testing revealed the following results as illustrated in Table 3.

**Table 3: Survey Results of SEC Offices and Divisions Vital Records Listings, as Compared to the Vital Records in 2010 COOP Plan and the Draft 2011 Listing**

Office/ Division	Vital Records Agreed	Agreed to 2010 COOP Plan	Did Not Agree to 2010 COOP Plan	Did Not Agree to Draft 2011 Vital Records Listing	New Office-No Vital Records in 2010 COOP Plan/No Draft 2011 Vital Records Listing	No Vital Records Received From Office/ Division
1	✓					
2	✓					
3	✓					
4		✓		✓		
5			✓	✓		
6			✓	✓		
7			✓	✓		
8						✓
9						✓
10						✓
11						✓
12					✓	

Source: OIG Generated.

Specifically, we found that only three offices and divisions records agreed to the draft 2011 vital records list. OIG’s findings demonstrate that although SEC offices and divisions are responsible for reviewing their vital records listing annually and updating the vital records as necessary, oversight is needed to ensure all offices and divisions monitor their vital records listing at least annually and verify their compliance with Federal regulations.

**Defunct Office of the Executive Director.** Prior to OSO the defunct Office of the Executive Director was responsible for coordinating SEC’s continuity efforts, continuity of operations,<sup>42</sup> and vital records management which is a component of the COOP. The defunct Office of the Executive Director, with OIT’s assistance, created the Continuity Support Center (CSC), which is a computer system that designated vital records staff in SEC offices and divisions could access and post key documents and vital records electronically. Though OSS’ Chief of Security Services says he has accessed the CSC, OSS has not determined if it will be used to maintain the SEC’s vital records until a full assessment of the vital records program has been performed.

<sup>42</sup> Vital records management is a component of continuity of operations according to FEMA. See *Elements of Viable Continuity Capability* at <http://www.fema.gov/about/org/ncp/coop/index.shtm>. According to FEMA, continuity of operations, as defined in the National Security Presidential Directive-51/Homeland Security Presidential Directive-20 (NSPD-51/HSPD-20) and the National Continuity Policy Implementation Plan (NCPIP), is an effort within individual executive departments and agencies to ensure that Primary Mission Essential Functions (PMEF) continue to be performed during a wide range of emergencies, including localized acts of nature, accidents and technological or attack-related emergencies.

In prior years the defunct Office of the Executive Director oversaw Continuity Task Force meetings that were held to keep vital records personnel abreast of COOP matters and remind them to update their vital records. OIG reviewed a copy of a Continuity Task Force meeting that was held on January 25, 2011.<sup>43</sup> The agenda reminded staff that vital records listing should be updated continuously and kept available electronically and in hard-copy.

**OSS and ORMS Vital Records Roles.** OSS' Chief of Security Services and ORMS management are working together to evaluate the SEC's vital records program. OSS' Chief of Security Services informed us that his office had not yet determined what constitutes a SEC vital record and a contractor the office hired in June 2012, will assist them not only with COOP management, but will also assess the SEC's vital records management program. OIG determined that without defining what vital records are, the SEC cannot ensure its vital records are adequately protected, accessible and immediately usable.

**Required Annual Review of SEC's Vital Records Program.** OIG's review of NARA's *2010 Records Management Self-Assessment Report*<sup>44</sup> found that Federal agencies are required to perform an annual review of their vital records program,<sup>45</sup> consistent with FCD 1, which states vital records program "must include an annual review of the program to address new security issues, identify problem areas, update information, and incorporate any additional vital records generated by new agency programs or functions or by organization changes to existing programs or function..."<sup>46</sup> OSS could not provide us with support to show that annual reviews of SEC's vital records program were previously performed.

**Compliance with NARA Guidance and Federal Regulations.** When OIG asked OSS how it ensures the SEC complies with NARA guidance and Federal regulations for vital records program, we were told that based on its initial review of existing vital records program, "the SEC might not have vital records in accordance with NARA guidance."

36 C.F.R. § 1223.14 states that agencies must "appropriately inform all staff about vital records." Except for a training session SEC employees took on vital records in 2010, OSS officials were unsure how SEC previously informed its staff

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<sup>43</sup> In the past Continuity Task Force meetings were held to inform SEC offices and divisions about COOP matters and to remind them of their responsibility to update their vital records listing.

<sup>44</sup> According to the report's executive summary, "the goal of the self-assessment is to determine whether federal agencies are compliant with statutory and regulatory records management requirements." NARA, *2010 Records Management Self-Assessment Report, An Assessment of Records Management Programs in the Federal Government*, (Feb. 22, 2011), p.2.

<sup>45</sup> NARA, *2010 Records Management Self-Assessment Report, An Assessment of Records Management Programs in the Federal Government*, (Feb. 22, 2011), p.30.

<sup>46</sup> Federal Continuity Directive 1 (FCD 1), *Federal Executive Branch National Continuity Program and Requirements*, (Feb. 2008), Annex I, p. I-3.

about vital records. We were also informed that the SEC has not established retrieval procedures for vital records.

OSS will work with their contractor to validate COOP and vital records requirements, establish retrieval procedures for vital records and ensure the vital records and COOP program complies with NARA and Federal regulations.

**Conclusion.** SEC has not defined its vital records and does not review or update vital records annually. As a result, SEC's listing of vital records are not complete or current. Further, the SEC has not definitively established how it will protect and retrieve vital records in emergency situations. The SEC must ensure it develops and fully supports a vital records management program that is adequately tested, protected, accessible and available to support its mission.

Non-compliance with NARA's guidance on vital records occurred because this responsibility was transferred to OSS and ORMS and the predecessor (defunct Office of the Executive Director) did not retain adequate records or documentation regarding the SEC's vital records program. As a result, there has been confusion regarding who is responsible for reviewing NARA guidance and ensuring the SEC's vital records program complies with NARA guidance. If not corrected, the conditions outlined in this finding could potentially prevent the SEC from performing mission essential functions in emergency or other situations that could cause disruptions in its normal operations.

**Recommendation 10:**

The Office of Support Operations should ensure the Office of Security Services, in coordination with the Office of Records Management Services, develops a vital records program that includes processes and procedures to establish and maintain the Securities and Exchange Commission's vital records in accordance with applicable Federal regulations and the National Archives and Records Administration's guidance on vital records management.

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

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

**Recommendation 11:**

The Office of Support Operations should ensure the Securities and Exchange Commission's (SEC) procedures and processes for vital records management include, but are not limited to:

- 1) Designating points-of-contact (POC) for offices or division that have vital records;
- 2) Ensuring appropriate hardware, software and system documentation are adequate to operate the systems and can access SEC's vital records in cases of emergencies;
- 3) Ensuring vital records information is updated throughout the year and reviewed annually; and
- 4) Providing designated POCs with vital records requirements or new information at least once a year.

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

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

## **Finding 9: SEC's Records Management Administrative Regulations, Retention Schedule, and Handbook Are Outdated**

SEC's records management administrative regulations, records retention schedule, and the Vital Records Handbook have not been revised in a number of years. Additionally, the administrative regulations refer to sample forms and processes that are no longer available or are no longer followed, respectively.

Specifically, SEC's administrative regulations (SECR-7 series) related to records management have not been revised dating as far back as May 1991.<sup>47</sup> Further, SEC's records retention schedule has not been revised or updated since September 1997. ORMS informed OIG that they are in the process of updating the administrative regulations. We were also told that ORMS conducted a high level review of the regulations and did not find any grossly incorrect information. Moreover, regarding the SECR-7 series covering electronic records management, OIT informed us that they are working with ORMS to update the policies and procedures on electronic records.

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<sup>47</sup> The SEC administrative regulations in the SECR-7 series that are discussed in this report are comprised of the following five SECRs that are related to records management: SECR 7-1, *Records Management Program* (September 29, 1996); SECR 7-2, *Records Management, Creation, Maintenance and Use of Records, Including Files* (August 5, 1993); SECR 7-3, *Disposition of Securities and Exchange Commission Records* (July 21, 1993); SECR 7-6, *Electronic Records* (May 23, 1991); and SECR 7-7, *Records Management, Vital Records* (July 21, 1993).

NARA does not provide specific guidance on when or how often Federal agencies should update their administrative regulations, procedures, and policies on records management. However, according to NARA's 2010 Records Management Self-Assessment Report "a third of the respondents...have not updated their directive(s) in a number of years." NARA further asserts that "this is a deficiency in their records management programs. They are not accounting for new records series, and they are not keeping up with records management best practices." Additionally, NARA stated that bulletins and related guidance on records management are issued on an ongoing basis. NARA believes that agencies need to incorporate pertinent portions of such guidance into their directives and other issuances.<sup>48</sup> NARA's 2011 Records Management Self-Assessment Report described updating directives continues to be a problematic area as it stated that there was "little change in the data....30 percent [of respondents] said they have not updated their directive since FY 2006 or earlier."<sup>49</sup>

ORMS stated that while it agrees with NARA's assessment, NARA should provide clear guidance on how often or when directives should be updated.

OIG determined that ORMS' outdated administrative records management regulations and records retention schedule have caused confusion among SEC staff. One management official stated that when she reviewed the SECR 7-2, "Creation, Maintenance and Use of Records, Including Files," August 5, 1993, located on the SEC's Intranet and clicked the hyperlinks for Figures 3-1 and 3-2, the figures were not available. ORMS was unaware of this matter and said they would look into it. Further, ORMS stated by the end of September 2012, the office will issue updated administrative regulations on records management.

**SEC's Vital Records Handbook.** OIG's review of SEC's Vital Records Handbook (Handbook), dated August 30, 1996, revealed that much of the information and procedures outlined in the Handbook are outdated. For example the Handbook indicates that individuals responsible for their offices' records management must prepare the SEC Form 2883, as of September 30 each year and submit it to the SEC records officer before November 1 of that year. It further explains that Form 2883 is an annual status report of the vital records program and discusses "the status of each individual office or region's progress in implementing the vital records management program or if implemented, that inventories of records selected have been examined and are still valid." However, we found that the SEC Form 2883 is no longer in use and is not available in SEC's internal forms listing. In addition, our inquiry with ORMS'

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<sup>48</sup> NARA, *2010 Records Management Self-Assessment Report, An Assessment of Records Management Programs in the Federal Government*, (Feb.22, 2011), p.15.

<sup>49</sup> *Id.*, p.8.

former records officer who has been with the office since 1999 revealed that to his recollection, no SEC office or division has sent a Form 2883 to ORMS.

OSS informed OIG they have not reviewed the Handbook. OSS' and ORMS' management indicated the Handbook will be reviewed as part of OSS' contractor's requirements to assess the vital records program.

**Conclusion.** To lessen confusion and ensure current and updated information is provided to SEC staff, the records management SECR-7 series and the Handbook should either be revised or rescinded. These items contain terminology, processes, and assign responsibilities that are outdated and thus need to be revisited. For example, terms such as automatic data processing, automatic data processing equipment, electronic, information processing center or mainframe are outdated, but can be found in some SECR-7 series and the Handbook.

As discussed in the Presidential Memorandum – *Managing Government Records*, (Nov. 28, 2011), current and relevant records management information is needed to ensure the SEC's records are properly managed. Outdated records management and vital records information has resulted in SEC staff not effectively managing records and has resulted in staff not fully complying with governing Federal records management statutes and the requirements that are established in the SECR-7 series.

**Recommendation 12:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) revises the Securities and Exchange Commission's (SEC) administrative regulations on records management and determines whether it will rescind the Vital Records Handbook. Once ORMS updates the SEC administrative regulations it should inform and train SEC employees on the updated records management administrative regulations.

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

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

## Federal Agencies Records Management Responsibilities

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Agency heads have specific legal requirements for records management which include:

- Making and preserving records that contain adequate and proper documentation of the organization's functions, policies, decisions, procedures, and essential transactions. The records must be designed to furnish the information needed to protect the legal and financial rights of the government and persons directly affected by the agency's activities;<sup>50</sup>
- Establishing and maintaining an active, continuous program for the economical and efficient management of the agency's records;<sup>51</sup>
- Establishing safeguards against the removal or loss of records and making requirements and penalties known to agency officials and employees; and<sup>52</sup>
- Notifying the Archivist of any actual, impending, or threatened unlawful destruction of records and assisting in their recovery.<sup>53</sup>

36 C.F.R. § 1220.32, dictates that federal agencies must create and maintain authentic, reliable, and usable records and ensure that they remain so for the length of their authorized retention period. A comprehensive records management program provides policies and procedures for ensuring that:

- (a) Records documenting agency business are created or captured;
- (b) Records are organized and maintained to facilitate their use and ensure integrity throughout their authorized retention periods;
- (c) Records are available when needed, where needed, and in a usable format to conduct agency business;
- (d) Legal and regulatory requirements, relevant standards, and agency policies are followed;
- (e) Records, regardless of format, are protected in a safe and secure environment and removal or destruction is carried out only as authorized in records schedules; and

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<sup>50</sup> 44 U.S.C. § 3101.

<sup>51</sup> 44 U.S.C. § 3102.

<sup>52</sup> 44 U.S.C. § 3105.

<sup>53</sup> 44 U.S.C. § 3106.

- (f) Continuity of operations is supported by a vital records program (see part 1223 of this subchapter).<sup>54</sup>

Further, 36 C.F.R. § 1220.34, discusses the following activities federal agencies must perform for records management:

- (a) Assign records management responsibility to a person and office with appropriate authority within the agency to coordinate and oversee implementation of the agency comprehensive records management program principles in § 1220.32;
- (b) Advise NARA and agency managers of the name(s) of the individual(s) assigned operational responsibility for the agency records management program;
- (c) Issue a directive(s) establishing program objectives, responsibilities, and authorities for the creation, maintenance, and disposition of agency records. Copies of the directive(s) (including subsequent amendments or supplements) must be disseminated throughout the agency, as appropriate, and a copy must be sent to NARA;
- (d) Assign records management responsibilities in each program (mission) and administrative area to ensure incorporation of recordkeeping requirements and records maintenance, storage, and disposition practices into agency programs, processes, systems, and procedures;
- (e) Integrate records management and archival requirements into the design, development, and implementation of electronic information systems as specified in § 1236.12 of this subchapter;
- (f) Provide guidance and training to all agency personnel on their records management responsibilities, including identification of Federal records, in all formats and media;
- (g) Develop records schedules for all records created and received by the agency and obtain NARA approval of the schedules prior to implementation, in accordance with 36 C.F.R. parts 1225 and 1226 of this subchapter;
- (h) Comply with applicable policies, procedures, and standards relating to records management and recordkeeping requirements issued by the Office of Management and Budget, NARA, General Services Administration, or other agencies, as appropriate;
- (i) Institute controls ensuring that all records, regardless of format or medium, are properly organized, classified or

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<sup>54</sup> 36 C.F.R. § 1220.32.

- indexed, and described, and made available for use by all appropriate agency staff; and
- (j) Conduct evaluations to measure the effectiveness of records management programs and practices, and to ensure that they comply with NARA regulations in this subchapter.

## Abbreviations

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CFR	Code of Federal Regulations
COOP	Continuity of Operations
CSC	Continuity Services Center
FCD	Federal Continuity Directive
FEMA	Federal Emergency Management Agency
FOIA	Freedom of Information Act
FRC	Federal Records Center
GRS	General Records Schedules
NARA	National Archives and Records Administration
NFC	Department of Agriculture's National Finance Center
OCOO	Office of the Chief Operating Officer
OFIS	Office of Filings and Information Services
OHR	Office of Human Resources
OIG	Office of Inspector General
OIT	Office of Information Technology
ORMS	Office of Records Management Services
OSO	Office of Support Operations
OSS	Office of Security Services
POC	Point-of-Contact
SEC or Commission	U.S. Securities and Exchange Commission
SECR	SEC Administrative Regulation
SF	Standard Form
SOP	Standard Operating Policy

## Scope and Methodology

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As part of our annual audit plan the OIG conducted an audit of the SEC's records management program.

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.** The scope of our audit covered calendar years 2008 to 2010 and January 2011 to September 2011. Our initial fieldwork was conducted from late October 2011 to February 2012. Our audit focused on SEC's records management program and practices and determining whether its records management program enables the agency to properly handle records in accordance with applicable federal statute and guidance. In addition, we reviewed records management procedures and practices that SEC offices and divisions follow to assess whether they are in compliance with the SEC's administrative regulations and federal laws on records management.

Due to a staffing shortage, the audit was temporarily suspended from March to early July 2012. The report's findings, conclusions and recommendations for this report were reconfirmed from mid-July to August 2012.

**Methodology.** To meet the objectives of assessing whether ORMS established a viable records management program that ensures permanent SEC records are appropriately maintained and preserved in accordance with applicable federal statutes and regulations, we obtained and reviewed applicable records management federal regulations and examined SEC's records management program and practices to determine whether the Commission complies with the federal statute and regulations. OIG met with ORMS management and its staff to discuss SEC's records management program and compliance with federal laws on records management. We inquired NARA officials about their assessment of SEC's records management program. Further, we reviewed NARA's 2010 and 2011 records management self-assessment reports on records management programs in the federal government. The self-assessment reports scored federal agencies on their compliance with federal statute, including NARA guidance, on records management. We reviewed the results of SEC's records management program that were included in the self-assessment reports. We also met with records management POCs as well as other management officials who are responsible for records management program in SEC offices and divisions to

assess whether their practices and procedures complied with federal statute on records management. Also, we contacted three federal agencies to learn about their records management program and to determine how they comply with records management federal regulations. We also developed and administered a survey to directors, business managers, administrative officers in SEC offices and divisions regarding their records management program and knowledge about federal statute on records management. OIG reviewed and analyzed the results of the survey.

To achieve the objective of examining whether ORMS adheres to applicable federal statutes and regulations regarding the retention, disposal, transfer, and recovery of SEC records, we reviewed a sample of records requests that were processed by ORMS. We examined SEC offices and divisions records management practices for retaining and disposing of records and their process for reviewing their records retention schedule. We also inquired ORMS management, its staff, and SEC offices and divisions about the procedures in place to ensure SEC complies with federal statutes and regulations regarding the retention, disposal, transfer and recovery of SEC records. Further, we also examined SEC's records management practices to determine if they are in compliance with SEC's administrative regulations on records management. Some of the questions in the survey we administered to directors, business managers, and administrative officers addressed matters related to their handling of records they created or received from external sources.

Finally, we identified areas which improvement could be made, documented the results of our audit work and facilitated implementation of recommendations noted in the report.

**Internal Controls.** For this audit, we based our assessment of ORMS' internal controls that were significant to the audit objectives on the Committee of Sponsoring Organizations of the Treadway Commission framework, such as control environment, control activities, information and communication, and monitoring. Among the internal controls that we assessed were ORMS' controls related to processing records requests, management's monitoring process over records requests that could not be processed within 20 days, and ORMS' policies and procedures to meet its objectives.

**Judgmental and Statistical Sampling.** ORMS provided us with a list of all records requests it received from January 1, 2008 to September 30, 2011. ORMS' universe of records requests totaled 8,015. We used the EZ Quant Statistical Analysis Audit tool to generate a statistical sample of 89 records requests. The sample was designed to project rates of occurrence with 90 percent confidence that the point estimate is within  $\pm 5$  percent of the audit universe.

We also judgmentally selected additional 16 records requests from the list to ensure that our sample included the various types of records requests such as records requested by external parties. Because we used both judgmental and statistical sampling techniques, we did not try to project the results of records requests reviewed in our sample to the entire population.

**Prior Audit Coverage.** In 1997, the OIG performed an audit of the SEC's automation of records management to determine if the Commission has established sufficient policies and procedures for electronic records and to identify possible improvements to electronic records management.

- *Automated Records Management*, Report No. 262, September 29, 1997.

The report included six recommendations. Three recommendations were issued to the former Office of Filings and Information Services (OFIS) which included records management function and the remaining three recommendations were issued to OIT. Both OFIS and OIT concurred with the recommendations that were issued to them. For the recommendations that were issued to OFIS, OIG asked ORMS management on the status of the recommendations. ORMS management stated that since ORMS Archivist's arrival at the SEC, they enacted processes that were responsive to all of the recommendations directed to OFIS. Based on supporting documents ORMS management provided, OIG determined that the recommendations issued to OFIS were addressed and closed. Further, OIG determined that OIT addressed the recommendations issued to them, and these recommendations were also closed.

## Criteria

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**36 C.F.R. § 1220 Federal Records: General, Subpart A, General Provisions and Subpart B, Agency Records Management Program Responsibilities.**

Discusses, among other things, who is responsible for records management, NARA's responsibilities for records management such as issuing regulations on records management, establishing standards for the retention of records having continuing value, etc., and federal agencies' records management responsibilities and what federal agencies must do to carry out their records management responsibilities.

**44 U.S.C. § 2901 - Definitions.** Provides definitions for terms used for records management, including records disposition.

**44 U.S.C. § 31- Records Management by Federal Agencies.** States general duties of records management by agency heads, establishment of program of records management, and transfer of records to records center, etc.

**44 U.S.C. § 33 - Disposal of Records.** Discusses, among other things, definition of records, regulations covering lists of records for disposal and procedure for disposal.

**Federal Continuity Directive 1 (FCD 1), Federal Executive Branch National Continuity Program and Requirements.** Discusses a requirement for federal agencies to have a vital records program that must include an annual review of the program to address new security issues, identify problem areas, update information, and incorporate any additional vital records generated by new agency programs or functions or by organization changes to existing programs or function.

**SECR 7-1, SEC Administrative Regulation, Records Management Program (September 29, 1996).** Lists SEC's records management program requirements and objectives and assigns responsibilities for records management.

**SECR 7-2, SEC Administrative Regulation, Records Management, Creation, Maintenance and Use of Records, Including Files (August 5, 1993).** Discusses SEC's procedures and policies for records management.

**SECR7-3, SEC Administrative Regulation, Disposition of Securities and Exchange Commission Records (July 21, 1993).** Prescribes policies, responsibilities, program objectives, and procedures for disposing, retiring or transferring records. Applies to personnel who create or accumulate records agency-wide.

**SECR7-6, SEC Administrative Regulation, Electronic Records**

**(May 23, 1991).** Prescribes policies, responsibilities, and procedures for establishing, testing, and implementing electronic recordkeeping as alternatives to or in conjunction with paper records subject to SECR 7-2. Provides guidance to ensure permanent preservation of archival information which is in machine-readable form.

**SECR7-7, SEC Administrative Regulation, Records Management, Vital**

**Records (July 21, 1993).** Establishes SEC's vital records program and provides guidance and instructions for implementing the program. Applies to agency-wide staff and activities.

**ORMS' Standard Operating Policy.** The SOP identifies ORMS' policies and procedures for processing records requests and it identifies the offices' responsibilities.

**OMB Circular A-123, Management's Responsibility for Internal Control,**

**(December 21, 2004) (Revised).** Establishes that management has a fundamental responsibility to develop and maintain effective internal control.

## List of Recommendations

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### Recommendation 1:

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) periodically conducts agency-wide staff assistance visits of the Securities and Exchange Commission offices' and divisions' records management programs in accordance with SECR 7-1, *Securities and Exchange Commission's Records Management Program*. To assist in this process, ORMS should develop a plan that identifies the timeline for the conduct and scope of the staff assistance visits.

### Recommendation 2:

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops a records management training program that covers training sessions for all Securities and Exchange Commission employees. ORMS should determine the audience, scope, material, and training schedule. Training factors ORMS should consider include defining records, how to treat records in accordance with Federal regulations and records retention schedule, records management responsibilities for employees and designated points-of-contact.

### Recommendation 3:

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops internal controls that assure ORMS staff are provided oversight and adhere to the office's standard operating policy.

### Recommendation 4:

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) works with the Securities and Exchange Commission (SEC) offices and divisions to ensure they all have current records retention schedules that encompass the office's or division's records. Accordingly, ORMS should determine whether it should update the SEC's comprehensive records retention schedule to ensure it is reflective of current SEC offices' and divisions' records.

**Recommendation 5:**

The Office of Support Operations should ensure the Office of Records Management Services establishes records management procedures that enable the offices and divisions to properly manage their records in accordance with applicable federal regulations and Securities and Exchange Commission's administrative regulations.

**Recommendation 6:**

The Office of Support Operations should ensure the Office of Records Management Services establishes a definitive plan and milestones to review the remaining backlog of boxes that are being maintained at the Federal Records Center and ensures proper disposition of the records that are contained in the boxes.

**Recommendation 7:**

The Office of Support Operations should ensure the Office of Records Management Services provides guidance to records management points-of-contact and requires, at least annually, they determine whether there are any records requiring disposal for their individual offices and divisions.

**Recommendation 8:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops an action plan to address the 10-year backlog of records that the Federal Records Center (FRC) identified as eligible for destruction. In developing an action plan, ORMS should determine a timeline to address the backlog of records, a timeline to conduct a full inventory of the Security and Exchange Commission's records, and how ORMS will address the indexing system for archived records.

**Recommendation 9:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) issues a directive, requiring all Securities and Exchange Commission offices and divisions to designate a point-of-contact (POC) for records management matters and inform ORMS of their designated POC. ORMS should maintain a list of POCs that is verified annually.

**Recommendation 10:**

The Office of Support Operations should ensure the Office of Security Services, in coordination with the Office of Records Management Services, develops a vital records program that includes processes and procedures to establish and maintain the Securities and Exchange Commission's vital records in accordance with applicable Federal regulations and the National Archives and Records Administration's guidance on vital records management.

**Recommendation 11:**

The Office of Support Operations should ensure the Securities and Exchange Commission's (SEC) procedures and processes for vital records management include, but are not limited to:

- 1) Designating points-of-contact (POC) for offices or division that have vital records;
- 2) Ensuring appropriate hardware, software and system documentation are adequate to operate the systems and can access SEC's vital records in cases of emergencies;
- 3) Ensuring vital records information is updated throughout the year and reviewed annually; and
- 4) Providing designated POCs with vital records requirements or new information at least once a year.

**Recommendation 12:**

The Office of Support Operations should ensure the Office of Records Management Services (ORMS) revises the Securities and Exchange Commission's (SEC) administrative regulations on records management and determines whether it will rescind the Vital Records Handbook. Once ORMS updates the SEC administrative regulations it should inform and train SEC employees on the updated records management administrative regulations.

## Definitions

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1. **Disposing of Records** - 44 U.S.C. § 2901, defines disposing of records as any activity related to: (a) the destruction of temporary records that are no longer necessary for the conduct of business; (b) transferring records to the Federal agency storage facility such as FRC or a third-party storage; (c) transferring records determined to have sufficient historical or other value warranting continued preservation to NARA; or (d) the transfer of records from one Federal agency to any other Federal agency.
2. **General Records Schedule** - According to NARA, general records schedule is issued by the Archivist of the United States to provide disposition authorization for records common to several or all agencies of the Federal Government. They include records relating to civilian personnel, fiscal accounting, procurement, communications, printing, and other common functions, and certain non-textual records. They also include records relating to temporary commissions, boards, councils and committees. Because these schedules are designed to cover records common to several agencies, many record descriptions are general.
3. **Records** - 44 U.S.C. § 3301 defines records as all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States government under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of data in them.
4. **Records Retention Schedule** - 36 C.F.R. § 1220.18 defines records schedule as any of the following:
  - (1) SF 115, *Request for Records Disposition Authority*, which were approved by NARA to authorize the disposition of Federal records;
  - (2) GRS issued by NARA; or
  - (3) A published agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SF 115s or issued by NARA in the GRS.
5. **Scheduled Records** - Federal records whose final disposition has been approved by NARA on a SF 115, *Request for Records Disposition Authority*, GRS, or in a federal agency's manual or directive containing the records descriptions and disposition instructions approved by NARA.

6. **Temporary Records** - 36 C.F.R. § 1220.18 defines temporary records as any Federal record that has been determined by the Archivist of the United States to have insufficient value (on the basis of current standards) to warrant its preservation by [NARA]. This determination may take the form of: (1) records designated as disposable in an agency records disposition schedule approved by NARA (SF 115, Request for Records Disposition Authority); or (2) records designated as disposable in GRS.
7. **Unscheduled Records** - Federal records whose final disposition has not been approved by NARA on a SF 115, *Request for Records Disposition Authority* or records designated as disposable in GRS. Such records must be treated as permanent until a final disposition is approved.
8. **Vital Records** - According to NARA, vital records are “essential agency records that are needed to meet operational responsibilities under national security emergencies or other emergency conditions (emergency operating records) or to protect the legal and financial rights of the Government and those affected by Government activities (legal and financial rights records).” Additionally NARA defines vital records program as “the policies, plans, and procedures developed and implemented and the resources needed to identify, use, and protect the essential records needed to meet operational responsibilities under national security emergencies or other emergency conditions or to protect the Government’s rights or those of its citizens.”

# Management Comments

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## MEMORANDUM

**TO:** Jacqueline Wilson, Acting Deputy Inspector General/Assistant Inspector General for Audits, Office of Inspector General (OIG)  
*Barry D Walters*

**FROM:** Barry D. Walters, Director, Office of Support Operations (OSO)

**SUBJECT:** SEC's Records Management Practices, Report No. 505

**DATE:** September 26, 2012

This memorandum is in response to the Office of Inspector General's (OIG) Draft Report No. 505, *SEC's Records Management Practices*. Thank you for the opportunity to review and respond to this report

The scope of the audit and the recommendations combine to highlight records issues existing prior to 2008, and thus significantly diminish the accomplishments of the Office of Records Management Services (ORMS) since 2008.

Since the arrival of the SEC Archivist in June 2007, the SEC's Records Management Program has grown from a Branch to an Office and the staff has evolved from file clerks to records managers. To ensure continued improvement of the program, ORMS recently established the Branch of Records Operations and the Branch of Records Policy, Training, and Compliance. Two individuals with extensive records and archival management backgrounds, one from the National Archives and Records Administration (NARA) and the other from the Department of Justice, were hired to lead each Branch. When combined with the Archivist, the SEC has nearly 40 years of professional experience within the records profession to lead its program. With the full support of SEC senior management, this leadership team is focused on continuing to improve the SEC Records Management Program and ensuring that the Agency's Federal records responsibilities are effectively met.

A complete overhaul of the records program is still in progress, but much has been accomplished. Some examples are:

- ORMS conducted 383 records management (RM) related meetings encompassing staff of all five Divisions and seventeen Commission Offices from June 2007 through November 2011
- ORMS provided fifty-two training instances especially tailored to the RM needs of individual Division and Office staff between 2007 and 2011
- ORMS has briefed approximately 1,500 new SEC staff regarding their Federal records responsibilities since June of 2010
- ORMS established a records compliance and training program in October 2011 and ORMS staff have conducted records assessment visits to seven of the

eleven SEC Regional Offices and provided records management training to approximately 600 SEC Regional employees

- ORMS instituted internal controls and standard operating procedures in 2008 leading to the elimination of a 6-plus year backlog in responding to FOIA requests and improving response times from where only 52% of requested records were provided at all to 80% of requested records provided within 8 business days
- ORMS submitted to NARA and received approval for 10 Records Schedules covering the records of one Division and six SEC Offices
- ORMS submitted to NARA for review and approval a comprehensive revision of the Division of Enforcement's records schedule, and the initial records schedule for the Division of Risk, Strategy, and Financial Innovation

These are just some of the many noteworthy ORMS achievements that have occurred in the past five years, but understanding that there is still work to be done, we concur with all recommendations in the audit report and will implement them as resources permit.

**Recommendation 1:** The Office of Support Operations should ensure the Office of Records Management Services (ORMS) periodically conducts agency-wide staff assistance visits of the Securities and Exchange Commission offices' and divisions' records management programs in accordance with SECR 7-1. To assist in this process, ORMS should develop a plan that identifies the timeline for the conduct and scope of the staff assistance visits.

*OSO concurs with this recommendation.*

**Recommendation 2:** The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops a records management training program that covers training sessions for all Securities and Exchange Commission employees. ORMS should determine the audience, scope, material, and training schedule. Training factors ORMS should consider include defining records, how to treat records in accordance with Federal regulations and records retention schedule, records management responsibilities for employees and designated points-of-contact.

*OSO concurs with this recommendation.*

**Recommendation 3:** The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops internal controls that assure ORMS staff are provided oversight and adhere to the office's standard operating policy.

*OSO concurs with this recommendation.*

**Recommendation 4:** The Office of Support Operations should ensure the Office of Records Management Services (ORMS) works with the Securities and Exchange Commission (SEC) offices and divisions to ensure they all have current records

retention schedules that encompass the office's or division's records. Accordingly, ORMS should determine whether it should update the SEC's comprehensive records retention schedule to ensure it is reflective of current SEC offices' and divisions' records.

*OSO concurs with this recommendation.*

**Recommendation 5:** The Office of Support Operations should ensure the Office of Records Management Services establishes records management procedures that enable the offices and divisions to properly manage their records in accordance with applicable federal regulations and Securities and Exchange Commission's administrative regulations.

*OSO concurs with this recommendation.*

**Recommendation 6:** The Office of Support Operations should ensure the Office of Records Management Services establishes a definitive plan and milestones to review the remaining backlog of boxes that are being maintained at the Federal Records Center and ensures proper disposition of the records that are contained in the boxes.

*OSO concurs with this recommendation.*

**Recommendation 7:** The Office of Support Operations should ensure the Office of Records Management Services provides guidance to records management points-of-contact and requires at least annually, they determine whether there are any records requiring disposal for their individual offices and divisions.

*OSO concurs with this recommendation.*

**Recommendation 8:** The Office of Support Operations should ensure the Office of Records Management Services (ORMS) develops an action plan to address the 10-year backlog of records that the Federal Records Center (FRC) identified as eligible for destruction. In developing an action plan, ORMS should determine a timeline to address the backlog of records, a timeline ORMS will conduct a full inventory of the Security and Exchange Commission's records, and how ORMS will address the indexing system for archived records.

*OSO concurs with this recommendation.*

**Recommendation 9:** The Office of Support Operations should ensure the Office of Records Management Services (ORMS) issues a directive, requiring all Securities and Exchange Commission offices and divisions designate a point-of-contact (POC) for records management matters and inform ORMS of their designated POC. ORMS should maintain a list of POCs that is verified annually.

*OSO concurs with this recommendation.*

**Recommendation 10:** The Office of Support Operations should ensure the Office of Security Services, in coordination with the Office of Records Management Services develops a vital records program that includes processes and procedures to establish and maintain the Securities and Exchange Commission's vital records in accordance with applicable Federal regulations and the National Archives and Records Administration's guidance on vital records management.

*OSO concurs with this recommendation.*

**Recommendation 11:** The Office of Support Operations should ensure the Securities and Exchange Commission's (SEC) procedures and processes for vital records management include, but are not limited to:

- 1) Designating points-of-contact (POC) for offices or division that have vital records;
- 2) Ensuring appropriate hardware, software and system documentation are adequate to operate the systems and can access SEC's vital records in cases of emergencies;
- 3) Ensuring vital records information is updated throughout the year and reviewed annually; and
- 4) Providing designated POCs with vital records requirements or new information at least once a year.

*OSO concurs with this recommendation.*

**Recommendation 12:** The Office of Support Operations should ensure the Office of Records Management Services (ORMS) revise the Securities and Exchange Commission's (SEC) administrative regulations on records management and determines whether it will rescind the Vital Records Handbook. Once ORMS updates the SEC administrative regulations it should inform and train SEC employees on the updated records management administrative regulations.

*OSO concurs with this recommendation.*

## OIG's Response to Management's Comments

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We are pleased OSO concurred with all 12 recommendations in our report and are encouraged that the office will take the steps needed to fully implement the recommendations. We believe that the full implementation of these recommendations will serve to strengthen the SEC's records management practices.

However, OIG disagrees with certain statements in OSO's overall response to this report. In particular, OSO's statement that the scope of our audit and recommendations highlight issues that existed prior to 2008 is not factual. The scope of our audit was from January 1, 2008 to September 30, 2011, and our audit results are based on appropriate, factual evidence and OIG observations that were made during the scope of the audit. The administrative regulations that OIG applied to some of our findings and recommendations are based on the five SECRs that are specific to records management, and were issued by the SEC from May 1991 to September 1996. Consequently, OIG recommended and OSO agreed to revise these SECRs.

Further, while OSO's statement the office conducted 383 records management related meetings encompassing staff of 5 SEC divisions and 17 offices may be true, OSO did not provide OIG with any evidence the office conducted staff assistance visits from 2008 to 2011 of the SEC's 36 offices, divisions, and regional offices, in accordance with SECR 7-1, *Securities and Exchange Commission's Records Management Program*, which states the records officer should schedule and make staff assistance visits to each SEC office of record at least every 18 months.

Additionally, though ORMS provided records management training to a large number of SEC staff, it has not provided records management training to all SEC staff in compliance with 36 C.F.R. § 1220.34(f), which indicates Federal agencies must "provide guidance and training to all agency personnel on their records management responsibilities, including the identification of Federal records..."

# 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 for Audits (Audit Request/Idea)  
100 F Street, N.E.  
Washington D.C. 20549-2736

Tel. #: 202-551-6061  
Fax #: 202-772-9265  
Email: [oig@sec.gov](mailto:oig@sec.gov)

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