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Office of Audits

Review of Alternative Work Arrangements, Overtime Compensation, and COOP-Related Activities at the SEC



September 28, 2011
Report No. 491



OFFICE OF
INSPECTOR GENERAL

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

MEMORANDUM

September 28, 2011

To: Cristin Fair, Acting Associate Executive Director, Office of Human Resources
Jayne Seidman, Acting Associate Executive Director, Office of Administrative Services
Barry D. Walters, Director/Chief FOIA Officer, Office of FOIA, Records Management, and Security
Thomas A. Bayer, Director, Chief Information Officer, Office of Information Technology

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

Subject: *Review of Alternative Work Arrangements, Overtime Compensation, and COOP-Related Activities at the SEC, Report No. 491*

This memorandum transmits the U.S. Securities and Exchange Commission OIG's final report detailing the results on our review of the SEC's alternative work arrangements, overtime compensation, and COOP-related activities. This review was conducted as part of our continuous effort to assess management of the Commission's programs and operations and as part of our annual audit plan.

The final report contains 27 recommendations, which if fully implemented should enhance the Commission's alternative work schedule, overtime compensation, telework, and COOP programs. The respective offices concurred with all 27 of the report's recommendations. Your written response to the draft report is included in Appendix V.

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

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

Attachment

cc: James R. Burns, Deputy Chief of Staff, Office of the Chairman
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Jeff Heslop, Chief Operating Officer, Executive Director, Office of Chief of Operations

Review of Alternative Work Arrangements, Overtime Compensation, and COOP-Related Activities at the SEC

Executive Summary

Background. Federal agencies have, in recent years, been directed to provide employees with greater flexibilities in their work and expanded opportunities to telework. In addition, agencies are now required to have continuity of operations (COOP) plans and to incorporate telework into these plans.

With respect to flexible work schedules, President Clinton's memorandum of July 11, 1994, "Expanding Family-Friendly Work Arrangements in the Executive Branch," directed the heads of all executive agencies to establish a program to encourage and support the expansion of flexible family-friendly work arrangements. In a subsequent memorandum, "Implementing Federal Family Friendly Work Arrangements," dated June 21, 1996, President Clinton directed the heads of executive agencies to review their personnel practices and develop a plan of action to utilize the flexible policies in place and, to the extent feasible, expand the ability to provide employees with flexible hours and telecommuting opportunities.

In addition, federal legislation has focused on telework. For example, on December 8, 2004, Congress enacted Public Law 108-447, which required the SEC to certify within two months that telecommuting opportunities were made available to 100 percent of the eligible workforce. The law also required the SEC to provide quarterly reports to the U.S. House and Senate Committees on Appropriations on the status of telecommuting programs, including the number of federal employees eligible for, and participating in, such programs, and to designate a telework coordinator responsible for overseeing the implementation and operation of its telework programs. On December 9, 2010, the Telework Enhancement Act of 2010 was enacted. This statute also required, among other things, that within 180 days, executive agencies establish a telework policy authorizing telework for all eligible employees, determine the eligibility of all employees to participate in telework programs, and notify all employees of their eligibility to telework.

Telework has also become an important part of COOP, which is an effort within 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. The Telework Enhancement Act of 2010 required agencies to incorporate telework into their COOP plans.

Within the Securities and Exchange Commission (SEC or the Commission), the Office of Human Resources (OHR) is responsible for developing, implementing, and evaluating the Commission's work/life programs, including alternative work schedule programs and its telework program. Although the existing SEC Personnel Operating Policies and Procedures (POPPS) Manual describes alternative work schedules and telework, as well as overtime compensation for employees, the material is outdated. OHR is developing a new handbook, the Human Capital Directive, to replace the POPPS Manual. The 2007 collective bargaining agreement (CBA) between the SEC and the National Treasury Employees Union (NTEU) addresses alternative work schedules, telework, and overtime compensation in detail and is applicable to all SEC bargaining unit employees. According to OHR, the alternative work schedule programs described in the CBA are also available to nonbargaining unit employees.

To facilitate its review of the SEC's implementation and oversight of flexible work schedule and telework initiatives, the OIG issued a survey to all SEC personnel concerning alternative work schedules, telework, overtime compensation, and COOP. The survey consisted of numerous yes/no and multiple-choice questions and also included an opportunity for respondents to provide written feedback to the OIG.

Objectives. The objectives of our review were to (1) examine how well the SEC has implemented and oversees its alternative work schedule and telework programs; (2) determine whether the SEC complies with applicable federal laws and regulations and SEC policies and procedures pertaining to alternative work schedules, telework, and overtime; and (3) assess the pertinent SEC information technology capabilities and support for the SEC's telework and COOP programs.

Summary of Results. We reviewed data provided by OHR on SEC employees' participation in alternative work schedule programs during fiscal years 2008 through 2010 to determine whether SEC employees were only working properly authorized alternative work schedules. We found, however, that six alternative work schedule programs in which SEC employees participated—3-day workweek, flexible workweek, Maxiflex, 10-hour days biweekly, first 40-hour tours of duty, and rotating shifts—were not among the alternative work schedules included in the CBA or the POPPS Manual. We also obtained confirmation from OHR that these options are not authorized for SEC personnel.

In addition to the three types of alternative work schedules authorized for SEC employees—Flexitour, 5-4/9 compressed, and 10-4 compressed—the Office of Personnel Management (OPM) Handbook on Alternative Work Schedules describes other types of alternative work schedules that federal agencies may choose to implement. We determined that some federal agencies are allowing their employees more flexibility with respect to their arrival and departure times and the length of workdays within the workweek or pay period by implementing

work schedule options such as a gliding schedule, variable day schedule, or variable week schedule. We determined that, due to the benefits that alternative work schedule options provide to employees, the SEC might benefit from making additional flexible work schedule options available to its employees.

Our review also found that the SEC does not have a comprehensive manual that addresses alternative work schedule options that are available to all employees. The CBA, which applies to both nonprofessional and professional SEC employees, but not to managers, supervisors, and certain other excluded employees, references only three types of alternative work schedules: Flexitour with credit hours, compressed 5-4/9, and compressed 4-10. The POPPS Manual addresses only two alternative work schedule options, Flexitour and 5/4-9 compressed, and the pertinent material has not been updated since January 20, 1995. Moreover, the POPPS Manual provision addressing Flexitour schedules and credit hours is inconsistent with the Flexitour provisions of the CBA. Additionally, the POPPS Manual provision addressing compressed work schedules is not only outdated, but contains significant inconsistencies with the CBA. We further determined that the SEC has no official form for employees to use when requesting to participate in an alternative work schedule. We also found that little training on alternative work schedules is available to SEC employees and that this lack of training may have contributed to the use of unauthorized alternative work schedules by SEC employees.

With respect to overtime compensation, we found that SEC employees generally may receive compensation for overtime hours worked in the form of credit hours, overtime pay, or compensatory time off, with credit hours being the most widely used method of overtime compensation. Our review found that the current CBA language allows employees who work a conforming schedule (i.e., one that aligns with the office's official business hours) is inconsistent with federal law providing that credit hours are available only to employees who work flexible schedules. We also found that while the employees of the Senior Executive Service (SES) are prohibited by federal regulation from earning credit hours, Senior Officers at the SEC (who are essentially equivalent to SES members) are permitted to, and do earn credit hours, although the SEC has no official policy addressing this issue. Our review also found that while Senior Officers are prohibited from earning compensatory time off except for religious purposes, one Senior Officer did earn compensatory time off for other than religious purposes during fiscal years 2008 through 2010.

In addition, our review found that while many SEC employees are compensated for overtime work in some manner, other employees are not being compensated for overtime work and are, therefore, volunteering their time. Many of the comments received in response to our work/life survey related to voluntary overtime. In those comments, some employees expressed the belief that uncompensated overtime is unfair to employees, while other employees indicated that they view voluntary overtime as part of the job or that taking pride

in their work and professionalism motivates them to work late. We found that a 1992 provision of the POPPS Manual provided that employees in professional or supervisory positions are expected to have sufficient interest in completing their assignments on a timely basis and keeping their workload reasonably current by performing voluntary work outside of regular work hours on their own initiative whenever necessary. We noted, however, that with respect to bargaining unit employees, this provision appeared to be superseded by the 2007 CBA, which provided that the SEC will not expect or require employees to donate time in lieu of proper overtime compensation. Further, we found no SEC policy document that superseded the 1992 POPPS provision for nonbargaining unit employees, and we found inconsistent views among OHR senior staff with respect to the appropriateness or legality of management's expectation that employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act work some amount of uncompensated overtime.

Our review determined that the SEC's promotional and training activities related to telework are inadequate. Specifically, we determined that an assessment by the federal Telework Advisory Group of the SEC's telework policy completed in June 2010 found the policy lacked clarity and contained some ambiguity and redundancy. We found that new SEC employees receive little information about telework during orientation, and 57 percent of the respondents to our Work/Life survey believed that the SEC's advertisement of its work/life programs could, or should be, improved, with some comments specifically mentioning the lack of information regarding telework. The work/life survey also identified suggested improvements to the SEC's current guidance concerning telework. Further, our analysis of the training materials currently being used for SEC telework courses revealed some gaps in their content, particularly with respect to the teleworking provisions of the CBA.

In addition, our review found that as of December 31, 2010, 125 SEC employees engaged in telework three or more days per week, with 68 of these employees being located in the SEC headquarters facility. We learned, however, that the majority of these frequent teleworkers, including some who telework five days a week, still have private offices at SEC headquarters, notwithstanding that a stated purpose of federal telework programs is to reduce real estate and energy costs and promote management efficiencies.

In reviewing the use of telework at the SEC, we analyzed the telework data that the SEC reported to OPM for calendar years 2008 and 2009 and compared the reported data to other telework data maintained by OHR. We found inconsistencies in the data that were provided to us, and we determined that the reports produced by the SEC for OPM do not track the number of employees whose telework agreements have been denied or terminated. We also noted that the Telework Enhancement Act of 2010 establishes additional requirements for OPM reports based on agency-provided data and that the SEC will be unable to provide the necessary data to OPM without a system for gathering timely and

accurate information on telework. While we found that the SEC's Telework Coordinator has established a Telework program work plan for fiscal year 2011 that includes addressing OPM reporting requirements, the Telework Coordinator has not developed explicit goals and objectives to ensure that the elements of the plan are achieved or any goals and objectives for increasing telework participation.

With regard to telework as it relates to COOP, we found that nearly half—49 percent—of SEC COOP mission-essential personnel do not have telework agreements in place. This lack of telework agreements indicates that these employees may not be teleworking, even on an ad hoc basis, and may not be routinely practicing their remote access capabilities. We also determined that the telework agreements of mission-essential personnel do not include work expectations related to emergency telework and that the SEC does not require its mission-essential personnel to enter into telework agreements.

During our review, we obtained information pertinent to the SEC's participation in COOP exercises and, in particular, reviewed the results of the SEC's test of its telework capability during a 2009 COOP exercise. We found that, in addition to nearly half of the SEC's mission-essential personnel lacking telework agreements, some SEC mission-essential personnel participating in COOP exercises are not required to remotely access the SEC's network during such exercises. We concluded that a significant number of SEC mission-essential personnel are not likely routinely practicing their remote access capabilities, which could impair their ability to perform mission-essential functions during emergency situations.

We further determined that although telework is mentioned in the SEC's headquarters and regional COOP plans, the telework provisions in the COOP plan were not as specific and detailed as those contained in the SEC's April 2009 Pandemic Influenza Preparedness Plan.¹ Under OPM guidance, telework must be part of all agency emergency planning, and management must be committed to implementing telework as broadly as possible to take full advantage of telework for emergency purposes. We found that the current SEC COOP Plan emphasized the use of relocation facilities rather than telework and that the COOP Plan's lack of emphasis on telework could hinder effective planning and preparation for carrying out essential functions during emergencies and catastrophic events.²

¹ In connection with its annual continuity exercises, the SEC has advised us that FEMA has examined the SEC's COOP Plan multiple times and found it to be in compliance with applicable continuity planning requirements, notably those in Federal Continuity Directive I (issued by the Department of Homeland Security in February 2008).

² Although telework is not necessarily preferable to relocation to alternative facilities in particular emergency situations, it is an important continuity-support capability that should be taken fully into account in the SEC's emergency planning.

In addition, our examination of the regional office COOP plans revealed that none of those plans contain all the elements of a viable continuity plan and that some of the plans were outdated. We also determined that the SEC's regional office COOP plans, like the Commission-wide COOP Plan, do not fully address the role of telework.

Finally, we determined that although the SEC has a variety of remote access tools for teleworkers to use, the Office of Information Technology (OIT) has not tested the maximum user limits of the SEC's remote access technology. The failure to conduct stress tests of remote access capabilities gives rise to concerns that increased use of remote access devices and systems could stress SEC remote access resources and the SEC network and strain help desk resources. As a result, SEC users working off-site might be unable to access the system and necessary applications and work materials, and the Commission's ability to function effectively, particularly during emergencies or catastrophic events, would be impaired.

Summary of Recommendations. Our review determined that several improvements are needed to the SEC's alternative work schedule, overtime, telework, and COOP programs.

Specifically, we recommend the following:

- (1) OHR should take necessary actions to ensure that employees do not work unauthorized alternative work schedules, including required revisions to the CBA, and steps to ensure that all Commission managers and staff are fully informed about which alternative work schedules are authorized.
- (2) OHR should ensure that the (a) new Human Capital Directive addresses all alternative work schedules available to SEC employees, and (b) contents of the Human Capital Directive are and remain consistent with the alternative work schedule components of the CBA.
- (3) OHR should ensure that the new Human Capital Directive addresses all SEC employees—supervisory, managerial, professional, nonprofessional, bargaining unit, and nonbargaining unit employees—and contains up-to-date information on all alternative work schedule programs authorized by the Commission.
- (4) OHR should (a) provide comprehensive training to all employees and managers on all available alternative work schedule programs, and (b) make up-to-date information on alternative work schedules and policy available electronically to all employees on the SEC

intranet site and periodically notify employees of its availability and location.

- (5) OHR should develop an alternative work schedule request form that contains sections for the requesting employee's information and certification; the type of alternative work schedule requested, including specific work hours and, if applicable, workdays; the immediate supervisor's approval; and, if applicable, the approving official's decision.
- (6) OHR, in developing the new Human Capital Directive, should work with NTEU to determine whether additional alternative work schedules, such as the gliding, variable day, variable week, three-day workweek, and Maxiflex options described in OPM's Handbook on Alternative Work Schedules, should be adopted as options for SEC employees.
- (7) OHR should include in the new Human Capital Directive clear, up-to-date information on the laws, policies, guidelines, and procedures related to credit hours, compensatory time off, payment for overtime worked, and voluntary and uncompensated services.
- (8) OHR should negotiate revisions to the language in the CBA between the Commission and the NTEU with respect to the use of credit hours by employees working conforming schedules, ensuring that the revised language conforms with applicable law.
- (9) OHR should institute appropriate controls to ensure that Senior Officers do not receive compensatory time off.
- (10) OHR should consult with the Office of the General Counsel and OPM to determine whether the SEC should adopt an official policy that addresses whether Senior Officers are permitted to earn credit hours.
- (11) OHR should ensure that the recommendations made by the Telework Advisory Group in its assessment of the SEC's telework policy are considered, including the recommendation that OHR use the Telework Advisory Group's telework policy evaluation checklist as a resource to further develop the Commission's telework policy.
- (12) OHR should revise the one-page overview of telework provided to new employees to include website references for telework resources; the name, telephone number, and e-mail address of the SEC Telework Coordinator; and page references to article 11, Telework Program, of the 2007 CBA.

- (13) OHR should provide comprehensive telework training sessions to SEC employees that address, among other things, telework tools; policies and procedures for discontinuing telework; what happens when an employee is promoted, reassigned, or detailed; duty station policy; employee availability during telework; employee personal computer usage; mandatory telework-related forms; office supplies and equipment; and protection of government records.
- (14) OHR should provide comprehensive telework training sessions to SEC managers that address, among other things, telework tools, policies, and procedures related to managers' approval and denial of employee telework, managers' right to direct employees to report to work on their telework day, and managers' ability to suspend or terminate telework.
- (15) OHR should require training and recertification for current teleworkers and their managers at least every two years.
- (16) OHR should send administrative notice e-mails to all SEC employees twice each year reminding them of the Commission's telework options and the benefits of participating in the program.
- (17) The Office of Administrative Services should establish and enforce procedures to ensure that employees who telework three or more days a week do not maintain private offices, but rather share office space.
- (18) OHR should develop an improved telework database that will track the processing of telework agreements and store telework agreements to ensure that the data it reports to OPM are reliable and valid.
- (19) OHR should require that SEC managers provide the Telework Coordinator with copies of denied or terminated telework agreements to facilitate tracking of such agreements.
- (20) OHR should develop goals and objectives for accomplishing the work listed in the telework program work plan for fiscal year 2011 and for increasing telework participation by SEC employees.
- (21) OHR should establish a process to monitor progress in meeting the Commission's telework-related goals and objectives and, if the goals and objectives are not being met, OHR should take action to identify and eliminate barriers to meeting the goals and objectives.

- (22) Consistent with governing Federal Emergency Management Agency (FEMA) and OPM directives, and the SEC CBA, OHR, in conjunction with the Office of Freedom of Information Act (FOIA), Records Management, and Security, should require all mission-essential personnel to enter into telework agreements that specifically allow them to conduct their continuity of operations responsibilities and the mission-essential functions they will perform during emergencies or agency closures.
- (23) Consistent with governing FEMA and OPM directives and the SEC CBA, OHR, in conjunction with the Office of FOIA, Records Management, and Security, should require mission-essential personnel who have telework agreements to telework periodically to practice their assigned mission-essential and primary mission-essential functions.
- (24) The Office of FOIA, Records Management, and Security should update the continuity communications section of the SEC's COOP Plan and expand it to expressly address conducting essential functions by telework consistent with governing FEMA and OPM directives and the SEC CBA, and include subsections addressing telework capability, training staff to telework effectively, and exercising agency telework competence as detailed in the SEC's Pandemic Influenza Preparedness Plan.
- (25) The Office of FOIA, Records Management, and Security should instruct regional office directors to revise their regional office COOP plan to address all the essential elements of viable continuity capability specified by FEMA and, to ensure that the plans are reviewed and modified timely and presented in a standard format, the Office of Security Services should establish timelines and submission criteria for the revised plans.
- (26) The Office of FOIA, Records Management, and Security should instruct the directors of the appropriate regional offices to include in their COOP plans strategies for supporting headquarters essential functions during devolution of control.
- (27) OIT should coordinate with other SEC offices and divisions to perform server stress tests, which should incorporate a variety of applications used with remote access.

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Background and Objectives

Background

In recent decades, federal agencies have been directed to provide employees with greater flexibility in their work schedules and expanded opportunities to telework. In addition, federal law requires agencies to incorporate telework into their continuity of operations (COOP) plans.

SEC Work/Life Policy Documents

Within the Securities and Exchange Commission (SEC or the Commission), the Office of Human Resources (OHR) is responsible for developing, implementing, and evaluating the Commission's work/life programs, including alternative work schedule programs and its telework program. Although the existing SEC Personnel Operating Policies and Procedures (POPPS) Manual describes alternative work schedules and telework, as well as overtime compensation for employees, the material is outdated. OHR is developing a new handbook to replace the POPPS Manual. The 2007 collective bargaining agreement (CBA) between the SEC and the National Treasury Employees Union (NTEU) addresses alternative work schedules, telework, and overtime compensation in detail and is applicable to all SEC bargaining unit employees. According to OHR, the alternative work schedules described in the CBA are also available to nonbargaining unit employees.

Work/Life Legislation, Directives, and Guidance

Alternative Work Schedules. The Federal Employees Flexible and Compressed Work Schedules Act of 1982 authorized, but did not require, executive agencies to establish programs that allow the use of flexible work schedules, including compressed work schedules.³ On July 11, 1994, President William J. Clinton issued a memorandum directing the head of each executive department or agency to “establish a program to encourage and support the expansion of flexible family-friendly work arrangements,” including job sharing, part-time employment, alternative work schedules, and telework. The memorandum stated that implementation of flexible work arrangements was necessary in order for the federal government to recruit and retain a workforce “that will provide the highest quality of service to the American people.” The memorandum also requested that independent agencies “adhere to this directive to the extent permitted by law.”⁴

³ 5 U.S.C. § 6120 et seq.

⁴ Memorandum from President William J. Clinton for the Heads of Executive Departments and Agencies, Expanding Family-Friendly Work Arrangements in the Executive Branch (July 11, 1994).

Following up on the July 1994 memorandum, President Clinton issued a memorandum on June 21, 1996, that directed heads of executive departments and agencies “to review their personnel practices and develop a plan of action to utilize the flexible policies already in place” and, to the extent feasible, expand their ability to provide their employees with, among other things, flexible hours and opportunities to telecommute.⁵ Although the decision to establish alternative work schedule programs is at the discretion of agency heads, “this discretion is subject to the obligation to negotiate with the exclusive representative(s) of bargaining unit employees.”⁶ NTEU is the exclusive representative of SEC bargaining unit employees, and article 7 of the 2007 CBA between the SEC and the union lays out the details of the SEC’s alternative work schedule program, which includes both flexible work schedules and two variations of compressed work schedules. The CBA also addresses credit hours, which may be earned by employees who work flexible schedules.

Telework. On December 8, 2004, Congress enacted Public Law 108-447, which required that the SEC certify within two months “that telecommuting opportunities are made available to 100 percent of the eligible workforce.” The law also required that the SEC provide quarterly reports to the Committees on Appropriations on “the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs,” and that it designate a telework coordinator responsible for overseeing the implementation and operation of its telework programs.⁷

On December 9, 2010, the Telework Enhancement Act of 2010 was enacted. It defined telework as an arrangement under which an employee performs his or her duties, responsibilities, and other authorized activities “from an approved worksite other than the location from which the employee would otherwise work.” The law required that within 180 days executive agencies establish a telework policy “under which eligible employees of the agency may be authorized to telework,” determine the eligibility of all employees to participate in telework, and notify all employees of their eligibility to telework. Other requirements of the law included the following:

- Any employee who participates in telework must have a written telework agreement with his or her manager.
- Agency heads must ensure that interactive telework training is provided to employees eligible to telework and to their managers.
- Employees must successfully complete interactive telework training before they enter into a written telework agreement.
- Within 18 months and annually thereafter, the Office of Personnel Management (OPM) must report to Congress, the Comptroller

⁵ Memorandum from President William J. Clinton for the Heads of Executive Departments and Agencies, Implementing Federal Family Friendly Work Arrangements (June 24, 1996).

⁶ OPM, Handbook on Alternative Work Schedules, <http://www2.opm.gov/oca/aws/index.asp#Introduction>.

⁷ Pub. L. No. 108-447, div. B, § 622.

General, and the Office of Management and Budget on telework participation in each executive agency and each agency's progress in meeting its telework participation goal.

- Agencies must incorporate telework into their COOP plans.

The act assigns OPM responsibility for providing telework policy and policy guidance to agencies and for helping them establish appropriate teleworking goals.⁸

Role of Telework in COOP. COOP, as defined in National Security Presidential Directive-51/Homeland Security Presidential Directive-20, is an effort within individual executive departments and agencies to ensure that mission-essential functions (MEF) and 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.⁹ Each agency is required to have a COOP plan, which, according to the Federal Emergency Management Agency (FEMA), is to serve as its roadmap for implementing and managing its COOP program.¹⁰ Personnel identified as mission-essential (or mission critical) are expected to remain in contact with the agency at all times during any emergency closure and “may be called to work during emergencies dealing with national security, extended emergencies, or other unique situations.”¹¹

As previously noted, the Telework Enhancement Act of 2010 requires agencies to incorporate telework into their COOP plans. In addition, OPM's Guide to Telework in the Federal Government encourages federal agency management to implement remote work arrangements as broadly as possible to take full advantage of telework for emergency purposes and ensure, among other things, that equipment and technology have been tested and that employees are comfortable with technology and communications methods.¹² The SEC does not require its mission-essential personnel to enter into telework agreements. However, an October 16, 2007, memorandum from the former SEC Executive Director to division directors and office heads approved telework for all mission-essential personnel during COOP situations without requiring that they have telework agreements in place. In addition, the Telework Enhancement Act of

⁸ Telework Enhancement Act of 2010, Pub. L. No. 111-292.

⁹ National Security Presidential Directive-51/Homeland Security Presidential Directive-20, “National Continuity Policy,” was issued on May 4, 2007, by President George W. Bush. It emphasizes the importance of a comprehensive national program involving all government levels and the private sector; prescribes continuity requirements for all executive departments and agencies; and provides continuity guidance for states, territories, tribal and local governments, and private sector organizations. The National Continuity Policy Implementation Plan was issued in August 2007, and builds upon the National Continuity Policy and provides guidance to executive departments and agencies on appropriately identifying and carrying out their PMEFS. See <http://www.fema.gov/pdf/about/org/ncp/ncpip.pdf>.

¹⁰ <http://www.fema.gov/about/org/ncp/coop/index.shtml>.

¹¹ OPM, A Federal Employee's Emergency Guide, p. 5, <http://www.opm.gov/emergency/pdf/employeesguide.pdf>.

¹² OPM, A Guide to Telework in the Federal Government (April 2011), p. 33, http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

2010 provides that “[d]uring any period that an executive agency is operating under a COOP plan, that plan shall supersede any telework policy.”¹³

Compensatory Time Off. OPM defines compensatory time off as “[t]ime off with pay in lieu of overtime pay for irregular or authorized overtime work”¹⁴ Not all employees who work overtime hours are eligible to receive compensatory time off. For example, consistent with OPM guidance and regulation for members of the Senior Executive Service,¹⁵ the SEC does not permit Senior Officer (SO) employees to earn compensatory time off except for religious purposes. In addition, employees cannot earn compensatory time off if the value of the time off would cause their compensation to exceed an amount equivalent to the salary of a GS-15 step 10 employee.¹⁶

The Antideficiency Act prohibits any officer or employee of the federal government from accepting voluntary services.¹⁷ Some SEC employees have indicated that they are expected to work “voluntary overtime” despite this prohibition. Although the POPPS Manual states that professional or supervisory employees are expected to perform voluntary work outside of their regular work hours in order to complete regular assignments on time,¹⁸ article 10 of the 2007 CBA states that the employer will not expect or require employees to donate time in lieu of compensation for overtime work. The CBA, however, states that it applies only to bargaining unit employees. Moreover, the CBA does not state that covered employees cannot voluntarily donate time beyond their regular work hours.

Work/Life Programs Survey

On December 29, 2010, with the assistance of the Office of Information Technology (OIT), we released a survey to all SEC employees that contained questions about SEC work/life programs. The survey addressed telework (including COOP-related telework), alternative work schedules, and overtime compensation. It consisted of 45 yes/no and multiple-choice questions and an open-ended section in which respondents could provide detailed feedback. Our purpose in administering the survey was to obtain information on the effectiveness and efficiency of SEC work/life programs, including aspects of the telework program related to COOP and OIT technical support for remote access. Survey response was voluntary, and respondents were anonymous unless they elected to identify themselves to us. We encouraged respondents to provide written comments, where applicable, to support and explain their responses. By January 12, 2011, the closing date of the survey, we had received responses

¹³ Pub. L. No. 111-292, 5 U.S.C. § 6504(d)(2).

¹⁴ <http://www.opm.gov/oca/pay/html/comp.htm>.

¹⁵ http://www.opm.gov/ses/about_ses/faqs.asp#, p. 4.

¹⁶ See 5 U.S.C. § 5547.

¹⁷ 31 U.S.C. § 1342.

¹⁸ SEC Personnel Operating Policies and Procedures (POPPS Manual), SECM 6-1, ch. 630.B, § 4(A)(1) (Jan. 17, 1992).

from 1,917 of 3,919 SEC employees, as well as numerous written comments. In addition, 104 of the respondents asked to be contacted for an interview to further discuss their views.

Objectives

The objectives of this review were to examine the SEC's

- implementation and oversight of its telework and alternative work schedule programs;
- compliance with applicable federal and Commission policies and procedures pertaining to telework, alternative work schedules, and overtime; and
- information technology capabilities and support for the telework and COOP programs.

Findings and Recommendations

Finding 1: A Number of SEC Employees Are Working Unauthorized Work Schedules, and SEC Policy on Alternative Work Schedules Is Poorly Documented and Communicated

A number of SEC employees are using alternative work schedules that have not been authorized by the SEC. In addition, the SEC lacks comprehensive written policies and procedures related to alternative work schedules. Further, training on alternative work schedules provided by OHR to employees and managers is minimal and inadequate.

Alternative Work Schedules

By law, federal agencies are authorized to establish programs that allow the use of flexible work schedules.¹⁹ The OPM Handbook on Alternative Work Schedules provides guidance to agencies on the administration of alternative work schedules. It notes that although the decision to establish alternative work programs is at the discretion of the head of each agency, “this discretion is subject to the obligation to negotiate with the exclusive representative(s) of bargaining unit employees.”²⁰

At the SEC, the OHR Office of Labor and Employee Relations manages, administers, and establishes policies for the Commission’s alternative work schedule programs in negotiation with NTEU, which is the exclusive representative of SEC bargaining unit employees.²¹ Article 7 of the 2007 CBA between the SEC and NTEU addresses work schedules, including alternative work schedules.²² In addition, two chapters of the POPPS Manual address alternative work schedules. Chapter 610.A addresses Flexitour schedules and credit hours, and chapter 610.C addresses compressed work schedules. Both chapters are dated January 20, 1995.

OPM’s definition of “alternative work schedule” includes both flexible work schedules and compressed work schedules. The OPM Handbook on Alternative Work Schedules defines a flexible work schedule as meaning the following:

¹⁹ 5 U.S.C. § 6122.

²⁰ OPM, Handbook on Alternative Work Schedules (OPM Handbook), <http://www2.opm.gov/oca/aws/index.asp#Introduction>.

²¹ Collective Bargaining Agreement Between the United States Securities and Exchange Commission and the National Treasury Employees Union (2007) (CBA), article 1, § 1.

²² CBA, art. 7, “Work Schedules,” pp. 23–37.

(1) in the case of a full-time employee, . . . an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the agency; and
(2) in the case of a part-time employee, . . . a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within the limits set by the agency.²³

The handbook defines a compressed work schedule as meaning the following:

(1) in the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled by an agency for less than 10 workdays; and
(2) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled by an agency for less than 10 workdays and that may require the employee to work more than 8 hours in a day.²⁴

The SEC has authorized use of three types of alternative work schedules: a flexible schedule, known as Flexitour; a 5/4-9 compressed schedule; and a 4-10 compressed schedule.²⁵ These three alternative schedules, and others, are described below.

SEC Employees' Use of Alternative Work Schedules

OHR provided us with data on SEC employees' use of alternative work schedules in fiscal years 2008 through 2010. According to the data, which are summarized in table 1, SEC employees used the following eight types of alternative work schedules over the three-year period:

- *5/4-9 compressed schedule.* Employees work eight 9-hour days and one 8-hour day during each 80-hour biweekly pay period. Employees must be present during their office's designated core hours²⁶ and may not earn or use credit hours. For part-time employees, the number of hours worked per week and the number of hours in each biweekly pay period vary.
- *3-day workweek.* Full-time employees work 13 hours and 20 minutes a day, for a total of 40 hours a week, during each 80-hour biweekly pay period. For part-time employees, the number of hours worked per week and the number of hours in each biweekly pay period vary.

²³ OPM Handbook, <http://www2.opm.gov/oca/aws/html/define.asp>.

²⁴ OPM Handbook, <http://www2.opm.gov/oca/aws/html/define.asp>.

²⁵ See CBA, art. 7, "Work Schedules."

²⁶ Core hours are the hours during which full-time employees are required to be at work.

- *4-10 compressed schedule.* Full-time employees work 10 hours a day, four days a week, during each 80-hour biweekly pay period. Employees must be present during their office's designated core hours and may not earn or use credit hours. For part-time employees, the number of hours worked per week and the number of hours in each biweekly pay period vary.
- *Flexible workweek.* Full-time employees work 40 hours each week and 80 hours each pay period, regardless of the number of hours worked per day. Employees vary their arrival and departure times by earning and using credit hours.
- *Maxiflex.* Full-time employees work 80 hours during each biweekly pay period on a schedule that contains core hours on fewer than 10 workdays in the biweekly pay period. Employees may vary the number of hours worked on a given workday or the number of hours worked each week within limits established for the employee's organization.
- *10-hour days biweekly.* Full-time employees must work 10 hours a day and 80 hours during each biweekly pay period.
- *First 40-hour tours of duty.* All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work within the administrative workweek are considered overtime. (This type of alternative schedule may be permitted for employees for whom it is not practical to establish a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek.)²⁷
- *Rotating shift.* Employees have work schedules with hours that change at prescribed intervals.

OHR also informed us that in addition to the above-listed schedules, many SEC employees also used a flexible alternative work schedule known as Flexitour. Full-time employees working Flexitour schedules work eight hours a day, Monday through Friday. Those eight hours must include the office's core hours, but employees on Flexitour schedules may request arrival and departure times within established flexible bands of time that do not coincide with the office's official business hours. Employees on Flexitour schedules are eligible for credit hours.

²⁷ A regularly scheduled administrative workweek is the period an employee is regularly scheduled to work within an administrative workweek. 5 C.F.R. § 610.102. A basic workweek is the officially prescribed days and hours for which a full-time employee is entitled to basic pay. 5 C.F.R. § 532.501.

Table 1: SEC Employees' Use of Alternative Work Schedules Other Than Flexitour, Fiscal Years 2008–2010

Alternate Work Schedule Program	SEC Employees Fiscal Year 2008	SEC Employees Fiscal Year 2009	SEC Employees Fiscal Year 2010
5-4/9 compressed schedule	1,757	1,617	1,691
3-day workweek	2	1	0
4-10 compressed schedule	132	156	165
Flexible workweek	0	0	2
Maxiflex	12	12	10
10-hour day(s) biweekly, full- or part-time	5	5	4
First 40-hour tours of duty	16	10	9
Rotating shift	1	1	1
Total	1,925	1,802	1,882

Source: SEC Office of Inspector General (OIG) analysis of data provided by OHR.

As noted above, the SEC authorizes only three types of alternative work schedules, including Flexitour. However, the OHR data in table 1 show that, in addition to Flexitour, SEC employees used eight types of alternative work schedules in fiscal years 2008 through 2010. After reviewing the data provided by OHR to determine whether all the alternative work schedule codes represented in the data were for valid, SEC-authorized programs, we determined that six of the alternative work programs in which SEC employees participated—3-day workweek, flexible workweek, Maxiflex, 10-hour days biweekly, first 40-hour tours of duty, and rotating shifts—are not among the alternative work schedules included in the CBA or POPPS Manual. We also obtained confirmation from OHR that these options are not authorized for SEC employees.

Availability of Additional Alternative Work Schedules

In addition to the three types of alternative work schedules authorized for SEC employees—Flexitour, 5-4/9 compressed, and 10-4 compressed—and the five unauthorized types described above, the OPM Handbook on Alternative Work Schedules describes other alternative work schedules that federal agencies might choose to implement. For example, the handbook describes the following three additional flexible work schedule options:

- *Gliding schedule.* Full-time employees have a basic work requirement of 8 hours a day and 40 hours a week but may vary their arrival and departure times on a daily basis within the organization's established flexible hours.

- *Variable day schedule.* Full-time employees have a basic work requirement of 40 hours in each week of the biweekly pay period but may vary the number of hours worked on a given workday during the week within the organization's established flexible hours and consistent with any other limits established for the organization.
- *Variable week schedule.* Full-time employees have a basic work requirement of 80 hours for the biweekly pay period but may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

Each of the three options described above gives employees greater flexibility than the basic Flexitour option available at the SEC. We determined that some other federal agencies are allowing their employees more flexibility with respect to their arrival and departure times and the length of individual workdays within the workweek or pay period. The Pension Benefit Guaranty Corporation and the Department of Housing and Urban Development, for example, offer a gliding schedule option to their employees. The Social Security Administration, the Environmental Protection Agency, and the Federal Housing Finance Agency offer variable day and variable week schedule options, as well as a gliding schedule option, to their employees.

According to OPM,

[Alternative work schedule] programs have the potential to enable managers and supervisors to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their personal activities. As employees gain greater control over their time, they can, for example, balance work and family responsibilities more easily, become involved in volunteer activities, and take advantage of educational opportunities. The employee benefits provided by alternative work schedule programs also are useful recruitment and retention tools.²⁸

In light of these potential outcomes, the SEC might benefit from including additional flexible work schedule options, such as the three described above and the options identified in table 1, among the alternative work schedules it offers to employees.

Documentation of SEC Alternative Work Schedule Policy

During our review, we found that the SEC does not have a comprehensive manual that addresses alternative work schedule options that are available to all employees and, in fact, SEC employees are utilizing alternative work schedule

²⁸ OPM Handbook, [https://www.opm.gov/oca/aws/index.asp#Authority and Responsibility](https://www.opm.gov/oca/aws/index.asp#Authority%20and%20Responsibility).

options that are not contained in any SEC guidance. The CBA applies to both nonprofessional and professional SEC employees but excludes all management officials, supervisors, and certain other employees.²⁹ The only alternative work schedules that the CBA references are Flexitour with credit hours, compressed 5-4/9, and compressed 4-10. The POPPS Manual addresses only Flexitour and 5/4-9 compressed alternative work schedules, and the material related to these alternative schedules has not been updated since it was adopted on January 20, 1995. Chapter 610.A of the POPPS Manual, which addresses Flexitour schedules and credit hours, is inconsistent with the Flexitour provisions of the CBA with respect to specifics such as core hours, official business hours, and how frequently employees may request changes in their schedules. Chapter 610.C of the POPPS Manual, which addresses compressed work schedules, has major inconsistencies with the CBA and is clearly outdated. First, it only authorizes use of 5/4-9 compressed schedules, while the CBA also authorizes use of 4-10 schedules. Second, as written, it applies only to individuals with “authorized 5-4-9 compressed work schedule plans submitted by offices with organizational units at the SEC Operations Center and Annex in Alexandria, Virginia and within the Facilities and Printing Branches of the Office of Administrative and Personnel Management.” For other SEC offices and divisions, it only provides requirements for submitting a plan proposing the use of 5/4-9 compressed schedules.³⁰

According to OHR, even though the CBA does not cover management officials and supervisors, the same alternative work schedules are available to and are authorized for all SEC employees, both bargaining and nonbargaining unit employees. OHR further stated that it is developing a new handbook, entitled Human Capital Directive, to replace the POPPS Manual and that the new handbook will clarify that all employees—supervisory, managerial, professional, and nonprofessional—are covered by the same alternative work schedule policies.

We also found that the SEC has no official form for employees to use when requesting alternative work schedules. According to article 7 of the CBA, employees requesting Flexitour or compressed work schedules must submit a written request to their supervisor specifying their first, second, and third choices for their work schedule, and they are to receive a response to their request within 14 calendar days. If an employee's request is denied, the supervisor should provide the employee the reasons for the denial in writing. Although the POPPS Manual refers to employees' responsibility to obtain prior written approval for alternative work schedules and to managers' and supervisors' responsibility to approve, modify, or disapprove Flexitour schedules,³¹ the manual does not refer to procedures for submitting and approving requests for other alternative work schedules.

²⁹ These other employees are described at 5 U.S.C. §§ 7112(b)(2), (3), (4), (6), and (7).

³⁰ POPPS Manual, ch. 610.C, “Compressed Work Schedules.”

³¹ See POPPS Manual, ch. 610, §§ 5(D), 5(E).

Training on Alternative Work Schedules for SEC Employees

During our review, we further found that little training on alternative work schedules is available to SEC employees. We interviewed the director of the OHR Office of Labor and Employee Relations about communication and training related to the alternative work schedule program at the SEC. The director said that the CBA describes the available alternative work schedule options and is provided to employees during new employee orientation. She also said that she provides guidance on the program by telephone in response to inquiries from employees but that the division does not distribute written information on alternative work schedules to employees. In addition, she stated that when the CBA is updated or changed, the Office of Labor and Employee Relations provides training to all managers and the union provides training to bargaining unit employees. Nonbargaining unit employees receive no training on alternative work schedules, however. Citing a lack of Labor and Employee Relations staff to conduct training and her own recent appointment, in November 2010, the Director conceded that training on alternative work schedules for SEC staff needs improvement and further said that she would like to offer brown bag lunch training sessions on the topic for all managers.

We believe that employees may have used unauthorized alternative work schedules because they and their managers lacked knowledge about authorized, available options. This lack of knowledge may have resulted from inadequate written information about authorized alternative work schedules and inadequate training on alternative work schedules for managers and employees.

Recommendation 1:

The Office of Human Resources should take necessary actions to ensure that employees do not work unauthorized alternative work schedules, including required revisions to the collective bargaining agreement and steps to ensure that all Commission managers and staff are fully informed about which alternative work schedules are authorized.

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

OIG Analysis. We are pleased the OHR concurred with this recommendation.

Recommendation 2:

The Office of Human Resources should ensure that the

- 2 a. new Human Capital Directive addresses all alternative work schedules available to Securities and Exchange Commission employees; and
- 2 b. contents of the Human Capital Directive are and remain consistent with the alternative work schedule components of the collective bargaining agreement.

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

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

Recommendation 3:

The Office of Human Resources should ensure that the new Human Capital Directive addresses all Securities and Exchange Commission employees—supervisory, managerial, professional, nonprofessional, bargaining unit, and nonbargaining unit employees—and contains up-to-date information on all alternative work schedule programs authorized by the Commission.

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

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

Recommendation 4:

The Office of Human Resources should

- 4 a. provide comprehensive training to all employees and managers on all available alternative work schedule programs. This training should be provided to all new employees during employee orientation and to all employees and managers whenever significant changes to the policy occur, such as upon completion of the Human Capital Directive or adoption of a new collective bargaining agreement; and

- 4 b. make up-to-date information on alternative work schedules and policy available electronically to all employees on the Securities and Exchange Commission intranet site and periodically notify employees of its availability and location.

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

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

Recommendation 5:

The Office of Human Resources should develop an alternative work schedule request form. The form should contain sections for the requesting employee's information and certification; the type of alternative work schedule requested, including specific work hours and, if applicable, workdays; the immediate supervisor's approval; and, if applicable, the approving official's decision.

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

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

Recommendation 6:

The Office of Human Resources, in developing the new Human Capital Directive, should work with the National Treasury Employees Union to determine whether additional alternative work schedules, such as the gliding, variable day, variable week, three-day workweek, and Maxiflex options described in the Office of Personnel Management Handbook on Alternative Work Schedules, should be adopted as options for Securities and Exchange Commission employees.

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

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

Finding 2: The SEC Lacks Clear Guidance on Overtime Compensation and Uncompensated Services

There is confusion among SEC employees about the types of compensation available for overtime hours worked, eligibility for specific types of compensation, and Commission policy on voluntary overtime. OHR policy and guidance on these issues are incomplete and outdated and in some cases inconsistent with the provisions of the current CBA.

SEC Workforce Categories

OPM assigns combinations of letters to designate workforce categories to agencies that have their own unique pay plans. Since 2002, with the enactment of the SEC's pay parity legislation,³² the Commission has had one of those unique plans. Instead of General Schedule and Senior Executive Service (SES) designations, SEC employees have SK and SO designations. SK employees are similar to employees covered by the General Schedule pay system, and SO employees are similar to SES members.

Types of Compensation in Lieu of Pay for Overtime Worked

Credit Hours. OPM defines credit hours as “hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement so as to vary the length of a workweek or workday.”³³ Credit hours are permitted only for employees who work flexible work schedules and only to the extent permitted by an employee's agency. Credit hours are not available to employees who work compressed schedules.³⁴ Employees are not paid basic pay or overtime pay for credit hours when they earn them. Instead, employees may use credit hours during a subsequent day, week, or pay period, with supervisory approval, to be absent from an equal number of hours of their basic work requirement with no loss of basic pay. SES members are prohibited by regulation from earning credit hours.³⁵

Compensatory Time Off. OPM defines compensatory time off as “[t]ime off with pay in lieu of overtime pay for irregular or occasional overtime work.”³⁶

³² Pub. L. No. 107-123 (Jan. 16, 2002).

³³ OPM Handbook on Alternative Work Schedules, <http://www.opm.gov/oca/aws/html/define.asp>. Agency policies or union agreements may place restrictions on earning or using credit hours.

³⁴ See 5 U.S.C. §§ 6121 and 6122; see also OPM, Handbook on Alternative Work Schedules, <http://www.opm.gov/oca/aws/html/flex.asp>, and CBA, art. 7, “Credit Hours, §§ 5(A)(4), 5(B)(4).

³⁵ 5 C.F.R. § 610.408.

³⁶ OPM, Overtime Compensation (May 30, 2000), <http://www.opm.gov/oca/pay/html/comp.htm>.

Compensatory time off is authorized for employees who are ordered to work overtime hours, and it may be approved both for employees who are covered by the Fair Labor Standards Act (nonexempt employees) and those who are not covered (exempt employees).³⁷ In addition, agencies may require exempt employees whose rate of basic pay exceeds the rate of GS-10, step 10, to accept compensatory time off rather than overtime pay for irregular or occasional overtime work.³⁸ This requirement has been adopted by the SEC and appears in both the CBA and the POPPS Manual.³⁹ Nonexempt employees cannot be required to accept compensatory time off in lieu of overtime pay.⁴⁰ SES members are not eligible to receive compensatory time off because it is considered premium pay, and they are excluded by law from earning premium pay, but they may receive compensatory time off for religious purposes.⁴¹

Compensation for Overtime at the SEC

Subject to certain limitations noted above, compensation for overtime hours worked at the SEC can take the form of credit hours, overtime pay, or compensatory time off. As table 2 shows, credit hours are the most widely used form of overtime compensation at the SEC. For fiscal years 2008 through 2010, credit hours accounted for more than 60 percent of overtime compensation in each fiscal year.

Table 2: Hours of Overtime Compensation Received by SEC Employees, Fiscal Years 2008–2010

Type of Compensation	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010
Credit hours earned	81,980	74,360	75,355
Hours of overtime pay earned	11,907	11,463	13,027
Hours of compensatory time earned	32,787	37,076	34,338
Total overtime hours compensated	126,674	122,899	122,720

Source: OIG analysis of data provided by OHR.

Note: All numbers are rounded to the nearest whole hour.

³⁷ See OPM, Compensatory Time, “Employee Coverage,” <http://www.opm.gov/oca/pay/html/comp.htm>. Nonexempt employees are covered by the minimum wage and overtime provisions of the Fair Labor Standards Act and cannot be required to accept compensatory time in lieu of overtime pay.

³⁸ See OPM, Compensatory Time, “Mandatory,” <http://www.opm.gov/oca/pay/html/comp.htm>.

³⁹ CBA, art. 10, “Overtime and Compensatory Time, § 3(B); POPPS Manual, ch. 630.B, “Compensatory Time,” § 4(B)(2) (Jan. 17, 1992).

⁴⁰ See OPM, Compensatory Time, “Mandatory,” <http://www.opm.gov/oca/pay/html/comp.htm>.

⁴¹ 5 C.F.R. § 534.408.

Eligibility of Employees on Conforming Schedules to Earn Credit Hours.

The CBA states that “[a]n employee on a Conforming or Flexitour Schedule may earn and use credit hours to accommodate appointments or other personal needs without using leave.”⁴² The CBA defines a conforming schedule as a schedule that conforms to the office’s official business hours.⁴³ However, by law and as noted in the OPM Handbook on Alternative Work Schedules, credit hours are available only to employees who work flexible schedules.⁴⁴ According to OHR, “the intent [in the CBA] was to consider the conforming schedule tantamount to an election to work a Flexitour schedule, just matching the official duty hours.” Nevertheless, OHR acknowledged that the current CBA language is inconsistent with the law and that this issue should be addressed as the parties negotiate a new CBA.

Eligibility of SO Employees for Credit Hours. According to OHR, SO employees are eligible to earn credit hours, although the SEC has no official written policy stating that they are eligible for credit hours. OHR’s determination of SO eligibility is based on the language of a November 8, 2002, memorandum containing guidance on the applicability to nonbargaining unit employees of the August 30, 2002, CBA between NTEU and the SEC.⁴⁵ The memorandum does not explicitly state that SO employees are entitled to earn credit hours, but it contains the following statement: “[A]ll non-bargaining unit employees are eligible to earn, and carry-over, 24 credit hours consistent with the provisions of the Work Schedules article [of the CBA].” OHR stated that because the language did not specifically exclude SO employees from earning credit hours—and because it did explicitly exclude them from being eligible for part-time employment or working a compressed schedule (other provisions of the 2002 CBA addressed in the memorandum)—the memorandum was interpreted to mean that SO employees were eligible to earn credit hours.

Although agencies may permit their SES employees to participate in flexible work schedule programs, SES members are prohibited, as previously noted, from earning credit hours.⁴⁶ However, the SEC pay parity legislation enacted in 2002 included a technical amendment that removed the SEC from the SES system.⁴⁷ As a result, the SEC does not have SES members; thus, the prohibition on earning credit hours does not technically apply to the SEC’s SO employees, even though in many respects SO employees are considered equivalent to other

⁴² CBA, art. 7, “Work Schedules,” § 12(A).

⁴³ CBA, art. 7, “Work Schedules,” § 1(C).

⁴⁴ See 5 U.S.C. § 6121(4) and OPM, Handbook on Alternative Work Schedules, <https://www.opm.gov/oca/aws/html/flex.asp>. See also 5 U.S.C. § 6121, which defines “credit hours” as “any hours, *within a flexible schedule* established under section 6122 of [Title V], which are in excess of an employee’s basic work requirement and which the employees elects to work so as to vary the length of a workweek or a workday” (emphasis added).

⁴⁵ Collective Bargaining Agreement and Non-Bargaining Unit Employees, Memorandum From Jayne Seidman, Associate Executive Director (Nov. 8, 2002).

⁴⁶ See 5 C.F.R. § 610.408; OPM Handbook on Alternative Work Schedules, <https://www.opm.gov/oca/aws/html/flex.asp>.

⁴⁷ See 5 U.S.C. § 3132(a)(1)(E).

agencies' SES employees. According to information provided by OHR, SO employees at the Commission do earn credit hours. Data provided by OHR indicated that over an eight-week period beginning on June 5, 2011, and ending on July 30, 2011, 56 SO employees earned a total of 957 credit hours. During that period, the total earned per employee ranged from 2 hours to 52.75 hours. During this same time period, 57 SO employees used a total of 995.5 credit hours. The total used per employee during that period ranged from 1 hour to 50.25 hours.

Eligibility of SO Employees for Compensatory Time Off. With respect to compensatory time off, the SEC carried over requirements from the SES system to SO employees. The SEC does not permit SO employees to earn compensatory time off except for religious purposes. This policy is consistent with the statutory prohibition on SES members earning compensatory time off except for religious purposes. By law, SES members are excluded from earning "premium pay," which includes overtime pay, and are therefore also excluded from earning compensatory time off in lieu of overtime pay.⁴⁸

Despite the prohibition on SO employees earning compensatory time-off, we found that one SO employee did earn compensatory time off during fiscal years 2008 through 2010.

Uncompensated Overtime. We found that some SEC employees are being compensated for overtime hours worked in the form of credit hours, overtime pay, or compensatory time off, but that other employees are not being compensated for overtime hours worked. Employees who do not receive compensation for overtime worked are, technically, volunteering their time. Overtime compensation was among the topics addressed in the work/life survey that we issued to all SEC regional and headquarters employees in December 2010. Some commenters expressed the belief that uncompensated overtime is unfair to employees. Specifically, one respondent commented that Quicktime, the SEC's electronic time and attendance system, does not provide a means to track actual time worked. He further stated that over the past three years, he had worked over 100 hours in excess of credit hours for which he was not compensated. Another respondent stated that he had worked more than 150 hours of unpaid overtime in the past year. Some employees, on the other hand, indicated that they view voluntary overtime as part of the job or that taking pride in their work and professionalism motivates them to work late.

Other comments related to a lack of clarity with respect to overtime rules at the SEC or to informal practices related to overtime in individual offices:

- An employee who was also a manager commented that he found the SEC's overtime rules to be unclear.

⁴⁸ 5 C.F.R. § 534.408.

- An employee stated that accountants and attorneys in his division are expected to show up early and leave late.
- An employee stated that overtime was “normal” for his office.
- An employee stated that, with his supervisor’s knowledge, he works extra hours without being compensated and that he believes it is acceptable for managers to approve late arrivals or early departures for employees if the supervisor knows that they have put in extra time without compensation.
- An employee stated that a few of the supervisors in his division provide some informal overtime compensation by allowing employees who have worked extra hours to come in late or leave early.

With respect to voluntary overtime, the POPPS Manual states the following:

Employees occupying professional or supervisory positions are expected to have a sufficient interest in completing their work assignments on a timely basis or in keeping their workload reasonably current by performing voluntary work outside of regular work hours, on their own initiative, whenever it is necessary. Accordingly, as a general rule, overtime work will not be ordered or approved for professional, administrative and technical employees in grades GS-9 to GS/GM-15, where the only reasons [sic] for such overtime is to perform continuing regular work assignments.⁴⁹

In addition, the manual states that “ordered overtime work for employees in grades GS-9 to GS/GM-15 must be for a specific work project where the supervisor has determined that time is of the essence and it must be completed by a specific deadline.”⁵⁰

The 2007 CBA states, however, that employees “will be compensated for overtime work in accordance with all applicable laws, regulations, and this Article” and that the employer “will not expect or require an employee to donate time in lieu of proper compensation for overtime work.”⁵¹ The CBA also states that exempt employees who are officially ordered to perform overtime work will receive appropriate compensation, but it does not expressly state that employees cannot donate time on their own accord without any expectation or requirement from their employer.⁵²

⁴⁹ POPPS Manual, ch. 630.B, “Compensatory Time,” § 4(A)(1) (Jan. 17, 1992).

⁵⁰ POPPS Manual, ch. 630.B, “Compensatory Time,” § 4(A)(2) (Jan. 17, 1992).

⁵¹ CBA, art. 10, “Overtime and Compensatory Time,” §§ 1(A), 1(B).

⁵² CBA, art. 10, “Overtime and Compensatory Time,” § 2(A).

In a 2005 lawsuit brought by Department of Justice attorneys (exempt employees at the GS-15 level and below) seeking overtime compensation under the Federal Employees Pay Act, the court held that the attorneys were not entitled to compensation under the act for overtime work because the overtime had not been officially ordered or approved in writing, as required,⁵³ even though the government admitted that the attorneys were expected to work overtime without compensation.⁵⁴

According to OHR, the guidelines in the POPPS Manual continue to apply to managerial, nonbargaining unit, and bargaining unit employees, except when they have been superseded by law, regulation, other guidance, or, for bargaining unit employees, the CBA. The 2007 CBA appears to supersede the POPPS Manual provisions with respect to overtime compensation for bargaining unit employees. For the remainder of employees, there appears to be no SEC document that supersedes the 1992 POPPS Manual policy concerning voluntary overtime, although the Antideficiency Act contains the following voluntary services prohibition:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.⁵⁵

To date, though, we have found no instance where a court has held that voluntary overtime by federal employees is barred under the Antideficiency Act.

The lack of a formal written policy on voluntary overtime appears to have led to confusion and inconsistency within OHR as well. During our review, we asked OHR senior staff about SEC guidelines on voluntary overtime, but we received inconsistent responses. For example, an OHR office director acknowledged that technically an employee cannot volunteer or donate time to the government, while other OHR senior staff members opined that employees may voluntarily work additional hours but cannot be ordered to work extra hours without pay. Based upon our discussions with OHR senior officials, there seemed to be some agreement that expecting an employee to perform significant amounts of uncompensated overtime on a regular, recurrent basis could be inappropriate and might be at odds with the statutory prohibition on voluntary services. We found inconsistent views, though, with respect to the appropriateness or legality

⁵³ According to 5 C.F.R. § 550.111(c), "Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated."

⁵⁴ *John Doe v. United States*, 372 F.3d 1347 (Fed. Cir. 2004), *cert. denied*, 544 U.S. 904 (2005). See also *John Doe v. United States*, 463 F.3d 1314, 1321 (Fed. Cir. 2006) (agreeing with the government that the Doe plaintiffs did not have not a viable claim for overtime pay), *cert. denied*, 549 U.S. 1321 (2007).

⁵⁵ 31 U.S.C. § 1342.

of management's expectation that exempt employees work some amount of uncompensated overtime.

Uncertainty About Overtime Compensation Policy. Some of the comments provided by respondents to our work/life survey indicated that they did not fully understand SEC and other federal policy and restrictions related to compensation for overtime worked. Some respondents stated their confusion outright. One respondent said that he did not understand "how the overtime pay versus credit hour distinction was made." Another said that he was underinformed about how compensatory time off, overtime pay, and credit hours work. Other respondents, while not expressing outright confusion, provided comments that demonstrated their lack of understanding of the agency's overtime compensation policy. For example, some employees stated that they would rather receive overtime pay than credit hours, indicating a lack of understanding of the difference between credit hours and overtime pay with respect to their purposes and associated requirements and restrictions.

Recommendation 7:

The Office of Human Resources should include in the new Human Capital Directive clear, up-to-date information on the laws, policies, guidelines, and procedures related to credit hours, compensatory time off, payment for overtime worked, and voluntary and uncompensated services.

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

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

Recommendation 8:

The Office of Human Resources should negotiate revisions to the language in the collective bargaining agreement between the Commission and the National Treasury Employees Union with respect to the use of credit hours by employees working conforming schedules, ensuring that the revised language conforms with applicable law.

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

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

Recommendation 9:

The Office of Human Resources should institute appropriate controls to ensure that Senior Officers do not receive compensatory time off.

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

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

Recommendation 10:

The Office of Human Resources should consult with the Office of the General Counsel and the Office of Personnel Management to determine whether the Securities and Exchange Commission should adopt an official policy that addresses whether Senior Officers are permitted to earn credit hours.

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

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

Finding 3: Promotion and Training Activities for the SEC Telework Program Are Inadequate

OHR has not promoted or publicized the SEC telework program and related policy as effectively as possible and has not made comprehensive telework training available to all SEC employees. Improvements in these areas could increase participation and enhance acceptance of telework among SEC staff and managers.

In their answers to questions in the work/life survey, many SEC employees indicated that telework advertising and telework training at the Commission need improvement. During interviews that we conducted as follow-up to the work/life survey, some employees expressed concerns about the SEC’s telework policy. Employees also stated during interviews that telework rules should be clear and conveniently located in one place.

Previous Internal Assessments of the SEC Telework Program

Two previous internal assessments of the SEC telework program have been conducted.

The first was undertaken by the SEC Telework Coordinator and was completed in fiscal year 2008. The report resulting from the assessment summarized telework services and utilization at the Commission. It noted that a surge in recurring telework agreements had resulted from the Commission's Expanded Telework Trial Program, which gave employees an opportunity to telework three to five days a week.⁵⁶ The report also stated that teleworking at SEC regional offices continued to increase at a faster rate than at headquarters.

The second assessment, completed in June 2010, was performed by the Telework Advisory Group. The Telework Advisory Group, which was established in 2009 by the director of OPM, consists of leaders in telework from selected federal cabinet-level and independent agencies. The group developed a checklist of specific factors that effective telework policies should be expected to address. The overall objectives of the checklist were to ensure that telework policies (1) could be clearly understood and easily used and (2) incorporated criteria fundamental to the development and support of an effective telework program.

In its assessment of whether the SEC's telework policy met the first objective, the Telework Advisory Group commented that the SEC's policy was difficult to follow and contained some ambiguity and redundancy. In addition, the group noted that the Commission's Expanded Telework Trial Program was difficult to reconcile with the rest of the SEC's telework policy. With respect to the second objective, the Telework Advisory Group made numerous comments, including ones related to unclear language, vaguely defined roles and responsibilities, unclear descriptions of telework in situations related to COOP, and vague references to the purpose of telework. Overall, the Telework Advisory Group recommended that the SEC use the group's checklist as a resource to further develop and organize its telework policy. According to the SEC Telework Coordinator, plans are being developed to improve the SEC telework program, and these plans will include implementation of the Telework Advisory Group's recommendations.

SEC Employees' Attitudes Toward Telework

According to comments made by survey respondents during our follow-up interviews, some SEC managers are opposed to allowing their staff to telework. The following were among the comments we received:

⁵⁶ See CBA, art. 11, "Telework Program," § 13, "Expanded Telework Trial Program."

- Staff do not request telework because “they have heard” from coworkers that telework is not acceptable in their division.
- Employees in their division who request telework are subject to management reprisal.
- Employees in their division who request telework would be subject to more stringent work requirements.

In addition, some interviewees stated that management is not responding to telework requests and is failing to notify them when their requests are approved or to provide written responses when their requests are denied.

In response to the work/life survey question about how other SEC employees’ participation in the telework program affected them, about 75 percent of the respondents indicated that it had “no effect.” Most of the remainder responded that it increased their workload or made it inconvenient to reach staff or schedule meetings.

Promotion of Telework at the SEC

We found that new SEC employees receive only very basic information about telework during orientation. We found that the orientation materials provided do not even include website references for telework resources or the name, telephone number, or e-mail address of the SEC Telework Coordinator. We believe that this information is important for new employees who have questions about the program or related policies and procedures.

In response to the work/life survey question about the SEC’s advertisement of its work/life programs, about 57 percent of the respondents answered that it could be improved or needed to be improved. With respect to telework specifically, comments included the following:

- “I have not seen announcements or any information regarding implementation of telework.”
- “There is a general lack of knowledge about what is available to employees, especially regarding ad-hoc telework agreements. Many of my colleagues are not taking advantage of these programs either because they are not aware of them or do not believe they would be eligible to participate.”
- “I have received little to no information about these programs, and what I have learned is through informal channels.”

guidance as average, above average, or excellent. Of the remaining respondents, about 11 percent rated it below average; about 5 percent rated it poor; and about 21 percent said that they did not know. Respondents' negative comments included the following:

- “The telework guidance could be a lot better.”
- “[The SEC should] write a policy to describe what is teleworking and what is not teleworking.”
- “For telework . . . there is no guidance as to how these options are applicable to management.”

During our follow-up interviews with survey respondents, several suggested ways in which the SEC could improve its telework guidance. These suggestions included providing better guidance on what is expected of teleworkers, what constitutes telework tools (e.g., Blackberry, laptop, personal computer), reimbursement for telework expenses, and distance requirements for teleworking.

Telework Training Provided to SEC Employees

The Telework Enhancement Act of 2010 requires that the head of each executive agency ensure that an interactive telework training program is provided to employees eligible to participate in the agency's telework program and to all managers of teleworkers. The law requires that employees successfully complete the interactive training before they can enter into a written agreement to telework.⁵⁷

Because the Telework Enhancement Act of 2010 was signed on December 9, 2010, its training requirements were not in effect during most of our fieldwork or during the period covered by the work/life survey. Although online, interactive telework training was and is available to SEC employees at telework.gov, the joint OPM/General Services Administration (GSA) website, there was no requirement that SEC employees complete any training before entering into a telework agreement. The two courses offered at telework.gov—one for employees and one for managers—are both intended to provide only a “brief, practical introduction to telework” and do not contain detailed, organization-specific information.⁵⁸ We found no specific requirements with respect to the content of telework training provided, either for executive branch employees generally or for SEC employees specifically.

At the SEC, several telework courses with more SEC-specific content have been offered, but only to a limited number of employees and managers. Some

⁵⁷ Pub. L. No. 111-292, (Dec. 9, 2010). 5 U.S.C. §§ 6503(a)(1) and (a)(2).

⁵⁸ See http://www.telework.gov/tools_and_resources/training/employees/index.aspx.

respondents to the work/life survey commented that they believe that more telework training should be provided to SEC managers and new participants in telework programs.

Our analysis of the training materials for the SEC telework courses revealed some gaps in their content, particularly with respect to the telework provisions of the CBA. The following are brief descriptions of the courses, their audiences, and the content gaps we found.

- **What Is Telework?** (training materials developed by the SEC Telework Coordinator), provided in April 2010 at the Regional Administrative Summit and from March through July 2010 at Successful Leaders Program classes. This course addressed the definition of telework, types of telework, the location of telework policy, and the responsibilities of teleworkers and their supervisors. It did not address policy and procedures for approving and denying telework, managers' right to direct an employee to report to work on their telework day, and managers' ability to suspend or terminate telework.
- **Working in a Flexible Workplace**, developed by Work/Life Performance, Inc., presented six times during 2010 to the employees of the Division of Corporation Finance. This training covered existing and pending telework legislation, telework policy in the CBA, characteristics of a good teleworker, strategies for success in teleworking, and employee teleworking scenarios. The training did not cover a number of issues addressed in the CBA, including policy and procedures for discontinuing telework; what happens when an employee is promoted, reassigned, or detailed; duty station policy; employee availability; employee personal computer usage and the self-certification safety checklist; office supplies and SEC equipment; and protection of government records.
- **Managing in a Flexible Workplace**, developed by Work/Life Performance, Inc., presented four times during 2010 to the managers of the Division of Corporation Finance. This training covered existing and pending telework legislation, the advantages to managers of employee telework, strategies for successful management of teleworkers, manager scenarios, and when the manager is the teleworker. The training did not cover a number of issues addressed in the CBA, including policy and procedures for approving and denying telework, managers' right to direct employees to report to work on their telework day, and managers' ability to suspend or terminate telework.

- Telework Training for Supervisors, presented 20 times during spring 2005 to SEC supervisors by the SEC University. The training included discussions on benefits of and barriers to teleworking, eligibility criteria and telework options, techniques for managing teleworkers, communication strategies, spotting problems, security and legal issues, and procedures and access. The appendices to the training materials included a supervisor assessment tool, employee assessment tool, job assessment tool, supervisor checklist, a copy of the CBA telework policy, and procedures for accessing SEC electronic resources from off-site locations. The training materials also included copies of SEC Form 1011, Telework Request and Agreement Form, and SEC Form 1012, Telework Self-Certification Safety Checklist. Although this training was very detailed, it was available only to supervisors.

Some of the negative responses to work/life survey questions about the SEC's implementation of telework may be a consequence of managers' and employees' lack of understanding of the advantages and purpose of the program. If managers have not been trained on the benefits of telework or how to manage a staff working remotely, they may be opposed to telework. The lack of training for SEC employees on how to properly perform telework could affect nonteleworkers' morale and erode their confidence in the telework program. Also, lack of training for teleworkers could lead to abuses of the privilege, which could negatively affect productivity and contribute to waste of resources. In addition, inadequate publicity about the SEC telework program and inadequate dissemination of telework-related information to SEC employees could lead to lower participation levels at a time when federal agencies are expected to facilitate eligible employees' participation in telework programs.

Recommendation 11:

The Office of Human Resources should ensure that the recommendations made by the Telework Advisory Group in its assessment of the Securities and Exchange Commission's telework policy are considered, including the recommendation that OHR use the Telework Advisory Group's telework policy evaluation checklist as a resource to further develop the Commission's telework policy.

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

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

Recommendation 12:

The Office of Human Resources should revise the one-page overview of telework provided to new employees to include website references for telework resources; the name, telephone number, and e-mail address of the Securities and Exchange Commission Telework Coordinator; and page references to article 11, Telework Program, of the 2007 collective bargaining agreement.

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

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

Recommendation 13:

The Office of Human Resources should provide comprehensive telework training sessions to Securities and Exchange Commission employees that address, among other things, telework tools; policies and procedures for discontinuing telework; what happens when an employee is promoted, reassigned, or detailed; duty station policy; employee availability during telework; employee personal computer usage; mandatory telework-related forms; office supplies and equipment; and protection of government records.

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

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

Recommendation 14:

The Office of Human Resources should provide comprehensive telework training sessions to Securities and Exchange Commission managers that address, among other things, telework tools, policies and procedures related to managers' approval and denial of employee telework, managers' right to direct employees to report to work on their telework day, and managers' ability to suspend or terminate telework.

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

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

Recommendation 15:

The Office of Human Resources should require training and recertification for current teleworkers and managers of teleworkers at least every two years.

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

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

Recommendation 16:

The Office of Human Resources should send administrative notice e-mails to all Securities and Exchange Commission employees twice each year reminding them of the Commission’s telework options and the benefits of participating in the program.

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

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

Finding 4: The Majority of Frequent Teleworkers at SEC Headquarters Have Private Offices

One of the justifications for permitting and encouraging telework in the federal government is telework’s potential to help government reduce real estate and energy costs. However, most of the SEC headquarters employees who telework at least three days a week, including those who telework five days a week, have private offices. In addition, we found that the SEC has no requirement and no timeframe for requiring that frequent teleworkers forgo or share office space.

As of December 31, 2010, 125 SEC employees were frequent teleworkers—that is, they engaged in telework three or more days each week. Of these 125, 68 worked at SEC headquarters, and 50 of the 68 worked in the Division of Corporation Finance. At least 10 of the 68 frequent teleworkers in headquarters

teleworked five days a week. The majority of the frequent teleworkers at SEC headquarters, including those who telework five days a week, have private offices.

According to A Guide to Telework in the Federal Government,

Federal telework programs are established primarily to meet agency mission and operational needs. Telework saves money by helping government reduce real estate and energy costs and promote management efficiencies.⁵⁹

In addition, GSA guidelines state that in considering whether to acquire space or other facilities for employees, executive agency heads are required by law to consider whether space needs can be met through alternative workplace arrangements.⁶⁰ The guidelines also direct executive agency heads to consider reduced facility and other costs per person when determining whether the agency's needs can be met through alternative workplace arrangements.⁶¹ In 2007, the SEC initiated a 24-month expanded telework trial program that gave employees the option of teleworking from three to five days a week during the trial period. In its discussion of the expanded telework trial program, the 2007 CBA between the SEC and NTEU stated that participants in the program "may be required to share office space on the days they are in the traditional office regardless of their seniority or office arrangement at the time they apply."⁶²

Despite the references to cost savings and the potential for reduced space requirements in federal law and guidance, and the acknowledgement in the CBA that frequent teleworkers may be required to share offices, the SEC does not require frequent teleworkers to forgo or share office space. According to the Acting Associate Executive Director of the Office of Administrative Services (OAS), requiring frequent teleworkers to share offices is under consideration, but OAS has no current plan or timeframe for implementing such a requirement. In addition, OAS management told us that the Division of Corporation Finance, which contains most of the SEC headquarters frequent teleworkers, opposes requiring teleworkers to share offices.⁶³

By failing to require frequent and full-time teleworkers to forgo or share office space, the SEC is not fully realizing the cost-saving potential of employee

⁵⁹ A Guide to Telework in the Federal Government, p. 2,

http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

⁶⁰ GSA, Federal Management Regulation Bulletin 2006-B3, Guidelines for Alternative Workplace Arrangements, § XII, 71 Fed. Reg. 13,847. The statutory requirement referred to in the guidelines is at 40 U.S.C. § 587(c)(2).

⁶¹ GSA, Financial Management Regulation Bulletin 2006-B3, Guidelines for Alternative Workplace Arrangements, § XIII, 71 Fed. Reg. 13,847.

⁶² Collective Bargaining Agreement, art. 11, Telework, § 13.D.8.

⁶³ According to management in the Division of Corporation Finance, (1) the division does not oppose requiring teleworkers to share offices and (2) 17 of the division's 47 "extended teleworkers" currently share offices.

telework and may continue to lease excessive amounts of office space. Moreover, as telework is further encouraged for federal employees, SEC employees are likely to increase their participation in the Commission's telework program. As a result, unless the SEC implements a requirement that frequent teleworkers forgo or share office space, the issue of underutilized office space will become even more severe, increasing the potential for wasted resources.⁶⁴

Recommendation 17:

The Office of Administrative Services should establish and enforce procedures to ensure that employees who telework three or more days a week do not maintain private offices, but rather share office space.

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

OIG Analysis. We are pleased that OAS concurred with this recommendation.

Finding 5: The SEC Telework Data Reported to OPM Are Inconsistent With Other Telework Data Maintained by OHR

The telework data that OHR reports to OPM in response to OPM's call for telework data are inconsistent with other telework data maintained by OHR. OHR is uncertain about the details of the automated option used to produce the OPM data and why the data it produces differ from other OHR telework data. In addition, the current SEC Microsoft Access telework database is not sufficient to track data for the new reporting requirements established by the Telework Enhancement Act of 2010.

Section 359 of the 2001 Department of Transportation appropriations bill required all executive agencies to establish telecommuting policies.⁶⁵ The law also directed OPM to ensure that this requirement was applied to 25 percent of the

⁶⁴ An investigation by the SEC OIG recently found that OAS entered into a contract to lease at least 900,000 square feet of new office space in Washington, D.C. The SEC has since arranged for other federal agencies to occupy some of that space and is attempting to be released from its obligation for the remainder of that space. See OIG, *Report of Investigation: Improper Actions Relating to the Leasing of Office Space*, Case No. OIG-553 (May 16, 2011). Also, on March 8, 2011, the SEC extended, without competitive bidding, the term of its lease of space in Alexandria, Virginia, by three years. We found no evidence that in making its decision to renew this lease, the SEC considered the potential availability of unoccupied offices at Station Place, in Washington, D.C., that are currently reserved for employees who telecommute full-time.

⁶⁵ Pub. L. No. 106-346.

federal workforce by April 2001 and to an additional 25 percent in each subsequent year. Beginning in 2001, OPM issued the annual OPM Telework Data Call, in partnership with GSA, to track the extent of telework implementation in federal agencies. The call provides insights into participation rates and telework implementation strategies as captured in agency records.

OHR provided us with Excel spreadsheets containing telework data for calendar years 2008 and 2009 and hard copies of the OPM Call for Telework Data reports for calendar years 2008 and 2009. The Excel spreadsheets, according to OHR, listed all SEC employees who participated in telework during the calendar year. For the telework data reported to OPM, OHR uses the “data call for OPM” option in Microsoft Access. According to OHR, both sets of data were developed from data stored in the Microsoft Access telework database. That database contains some data retrieved from SYBASE⁶⁶ and some data from telework agreements that were entered manually into the database by OHR personnel.

We compared the data in the Excel spreadsheets to data provided in response to the OPM Call for Telework Data reports and found that they were inconsistent for both calendar year 2008 and calendar year 2009. As shown in table 3, the numbers of teleworkers that OHR reported to OPM were higher than the numbers of teleworkers shown in the Excel spreadsheets that OHR provided to us.

Table 3: SEC Telework Participation Data Reported to OPM and Telework Participation Data Provided to the OIG, Calendar Years 2008 and 2009

	Calendar Year 2008 Data Reported to OPM	Calendar Year 2008 Data Provided to the OIG	Calendar Year 2009 Data Reported to OPM	Calendar Year 2009 Data Provided to the OIG
Number of SEC employees	3,671	3,637	3,993	3,730
Number of recurring teleworkers	575	500	785	625
Number of ad hoc teleworkers	1,021	709	1,114	905
Total number of teleworkers (recurring plus ad hoc)	1,596	1,209	1,899	1,530

Source: OHR. Note: The OPM *Status of Telework in the Federal Government* reports contain data from the prior calendar year. That is, the 2010 report contains calendar year 2009 data; the 2009 report contains calendar year 2008 data; and so on. The 2010 report, which contains calendar year 2009 data, is the most recent report that OPM has released.

⁶⁶ SYBASE is a relational database that matches data by using common characteristics found within the data set.

For calendar year 2008, OHR reported a total of 387 more teleworkers to OPM than were shown in the Excel spreadsheets provided to us; for calendar year 2009, OHR reported a total of 369 more teleworkers to OPM than were shown in the spreadsheets provided to us.

The SEC Telework Coordinator said that she is not sure of the logic behind the system calculations but continues to use the “data call for OPM” report option because the data from this report are what have been used in the past to report to OPM. The Access database was developed by contractors in the SEC’s Walk-in Development Center in OIT before the current Telework Coordinator was employed by OHR. The contractors who developed the system for producing the Data Call for OPM report no longer work in the Walk-in Development Center. The Telework Coordinator’s current contact for questions involving the telework database is the manager of the Walk-in Development Center, who told us that she did not develop and does not maintain the database but only troubleshoots when the Telework Coordinator has problems with it.

The Telework Coordinator stated that Quicktime would be a better system for tracking telework data but that telework tracking in Quicktime only began in January 2010. Moreover, she said that not all employees are entering all instances of telework in Quicktime because not all teleworkers have been coded correctly by their timekeepers in Quicktime. If an employee is not coded as a teleworker, Quicktime will not allow the employee to enter time teleworked.⁶⁷

We also determined after reviewing the reports produced by the SEC in response to the OPM Call for Telework Data that the reports do not track the number of employees whose telework agreements have been denied or terminated. The Telework Coordinator explained that she does not have a mechanism to track denied agreements and that information on denials is not provided to her. She believes that office and division managers keep this information because they are required to provide written explanations of denials to employees. The Telework Coordinator stated that terminated agreements are also not reported to OHR and that she would not be aware of a termination unless she were contacted for advice on the matter. The OPM Call for Telework Data does not require that agencies provide this information, but it asks for data on denials and terminations from agencies that do track these numbers.⁶⁸ In addition, we believe that tracking terminations and denials can provide useful information about the implementation of the Commission’s telework program.

⁶⁷ On August 19, 2011, the Acting Associate Executive Director of OHR sent an e-mail to all SEC employees that instructed them, effective immediately, to record “all time worked from an alternative worksite” on their QuickTime timesheet. The e-mail contains detailed instructions for entering this information into QuickTime and notes that “[a]ll teleworking employees must have an approved telework agreement in place.” According to the e-mail, “The QuickTime system will allow employees with an approved telework agreement to enter their telework hours.”

⁶⁸ OPM, *Status of Telework in the Federal Government: Report to the Congress* (February 2011), app. A, “2010 Call for Telework Data,” p. 42, http://www.telework.gov/Reports_and_Studies/Annual_Reports/2010teleworkreport.pdf.

The Telework Enhancement Act of 2010 establishes additional requirements for reports submitted by OPM, including information on agencies' progress in meeting their goals for increasing telework participation by their employees. Each report submitted by OPM is to include the following:

- (A) the degree of participation by employees of each executive agency in teleworking during the period covered by the report . . . , including—
 - (i) the total number of employees in the agency;
 - (ii) the number and percent of employees in the agency who are eligible to telework; and
 - (iii) the number and percent of eligible employees in the agency who are teleworking—
 - (I) 3 or more days per pay period;
 - (II) 1 or 2 days per pay period;
 - (III) once per month; and
 - (IV) on an occasional, episodic, or short-term basis;
- (B) the method for gathering telework data in each agency;
- (C) if the total number of employees teleworking is 10 percent higher or lower than the previous year in any agency, the reasons for the positive or negative variation;
- (D) the agency goal for increasing participation to the extent practicable or necessary for the next reporting period . . . ;
- (E) an explanation of whether or not the agency met the goals for the last reporting period and, if not, what actions are being taken to identify and eliminate barriers to maximizing telework opportunities for the next reporting period;
- (F) an assessment of the progress each agency has made in meeting agency participation rate goals during the reporting period, and other agency goals relating to telework, such as the impact of telework on—
 - (i) emergency readiness;
 - (ii) energy use;
 - (iii) recruitment and retention;
 - (iv) performance;
 - (v) productivity; and
 - (vi) employee attitudes and opinions regarding telework; and
- (G) the best practices in agency telework programs.⁶⁹

⁶⁹ Pub. L. No. 111-292, 5 U.S.C. § 6506(b)(2).

OPM must submit the first report containing this information no later than 18 months after the December 9, 2010, enactment of the law and annually thereafter. Given the requirements of the new law, OPM may ask executive departments and agencies for additional telework-related information. Without a system for gathering timely, accurate information on telework, the SEC will be unable to provide the information to OPM that OPM needs to fulfill its statutory telework reporting requirements. In addition, the Commission will be unable to determine whether it is achieving goals and objectives for increased telework participation and whether modifications to strategies to increase participation are necessary.

We further found that the SEC's Telework Coordinator has a telework program work plan for fiscal year 2011 that includes addressing OPM reporting requirements. The plan calls for work in five areas:

- Meeting the requirements of The Telework Enhancement Act of 2010
- Analyzing and evaluating the Expanded Telework Trial Program
- Working with the Labor Relations Branch to identify topics and strategy for upcoming negotiations with NTEU
- Improving storage and reporting of telework information, including research options for a new database and ensuring that all SEC staff are coded as default teleworkers in Quicktime
- Redesigning the telework webpage to include SEC-specific information and links to telework articles and other telework resources

However, the Telework Coordinator has not developed explicit goals and objectives to ensure that the elements of the plan are achieved or any goals and objectives for increasing telework participation. Without accurate data on telework participation, neither OPM nor the SEC can effectively track progress toward meeting telework participation goals. Moreover, the SEC's current lack of goals or objectives for increasing telework participation may give the impression of a lack of commitment to this aim and may hinder the effectiveness of efforts to increase telework participation at the Commission and to assess progress.

Recommendation 18:

The Office of Human Resources should develop an improved telework database that will track the processing of telework agreements and store telework agreements to ensure that the data it reports to the Office of Personnel Management are reliable and valid.

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

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

Recommendation 19:

The Office of Human Resources should require that Securities and Exchange Commission managers provide the Telework Coordinator with copies of denied or terminated telework agreements to facilitate tracking of such agreements.

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

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

Recommendation 20:

The Office of Human Resources should develop goals and objectives for accomplishing the work listed in the telework program work plan for fiscal year 2011 and for increasing telework participation by Securities and Exchange Commission employees.

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

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

Recommendation 21:

The Office of Human Resources should establish a process to monitor progress in meeting the Commission's telework-related goals and objectives. If the goals and objectives are not being met, the Office of Human Resources should take action to identify and eliminate barriers to meeting the goals and objectives.

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

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

Finding 6: Some SEC Mission-Essential Personnel Lack Telework Agreements

Not all SEC mission-essential employees have written telework agreements in place. The telework agreements of those who have them do not include expectations for emergency telework. In addition, mission-essential personnel are not routinely practicing their remote access capabilities to ensure that these capabilities will be functional during an actual emergency.

To determine whether the Commission's mission-essential personnel have the appropriate telework authority and capability to carry out essential SEC functions during an emergency or catastrophic event, we reviewed whether these employees had telework agreements in place and, if so, whether those agreements included provisions for emergency telework. We found not only that some mission-essential personnel lacked telework agreements, but also that existing agreements did not address emergency telework.

Responsibilities of Mission-Essential Personnel

The role of mission-essential staff is to execute the SEC's MEFs and PMEFS under crisis conditions.

Mission-essential personnel are selected by SEC division and office heads based on

- predetermined essential functions that must be performed, regardless of the operational status of the SEC's primary operating facility;
- staff member's knowledge and expertise in performing essential functions; and
- staff member's ability to rapidly deploy to relocation site in an emergency situation.

COOP, as defined in National Security Presidential Directive-51/Homeland Security Presidential Directive-20 (NSPD-51/HSPD-20) and the National Continuity Policy Implementation Plan, is an effort within individual executive departments and agencies to ensure that PMEFS continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.⁷⁰ The continuity program staff within an agency are responsible for coordinating and overseeing the

⁷⁰ See National Continuity Implementation Plan, <http://www.fema.gov/pdf/about/org/ncp/ncpip.pdf>.

development and implementation of COOP plans and supporting procedures.⁷¹ Each agency's COOP plan is to be the roadmap for implementing and managing its COOP program.⁷² Personnel identified as mission-essential are expected to remain in contact with the agency at all times during any emergency closure and may be called to work during emergencies dealing with national security, extended emergencies, or other unique situations.⁷³

The SEC's MEFs, which must be continued throughout a crisis or resumed quickly after a disruption of normal activities, are as follows:

- *Regulation and Policy: Interpret Rules.* Activities involve the SEC's development and dissemination of guidance to assist in the interpretation and implementation of regulations and federal securities laws. Activities also involve clarifying and interpreting the applicability of rules and regulations to specific factual situations or to new products and industry practices for the benefit of investors, securities industry participants, other government agencies, other regulators, and the general public.
- *Regulation and Policy: SEC Commission Approvals.* Involves activities related to the steps performed by the SEC Commission or SEC staff on behalf of the Commission to formally issue an opinion or order, or to approve a rulemaking action.
- *Regulatory Oversight: Review and Take Action on Applications for Exemption from Provisions of Securities Laws.* These activities include receiving, reviewing, tracking, and providing comments and publishing notices of applications for exemption. Further, provides technical and economic analysis for recommendations and actions taken.
- *Regulatory Oversight: Monitor Financial Markets and Provide Crisis Management.* Includes activities to monitor developments that pose potential systemic risks to normal market operations and coordinating inter-market and interagency communications with financial industry participants, SEC registrants and financial agencies responding to the crisis.

⁷¹ Department of Homeland Security, Federal Continuity Directive 1 (FCD 1), Federal Executive Branch National Continuity Program and Requirements (February 2008), p. 3

⁷² <http://fema.gov/about/org/ncp/coop/index.shtm>.

⁷³ OPM, A Federal Employee's Emergency Guide, p. 5, <http://www.opm.gov/emergency/pdf/employeesguide.pdf>.

- *Disseminate Information and Manage External Relationships*: Public Access to Commission Filings and Information. Includes activities to process and publish information that is officially released by the SEC for public access. Activities also include managing web content for both the internal and public facing SEC websites and interfacing with media and news outlets to convey official SEC information.⁷⁴

PMEFs, which are a subset of the agency’s MEFs, must be performed to support the continuation of the federal government’s national essential functions before, during, and in the aftermath of an emergency. The SEC’s agency-level PMEFs are covered in internal guidance entitled Regulatory Oversight: Monitor Financial Markets and Provide Crisis Management. This guidance addresses crisis management response and monitoring for developments caused by catastrophic events that directly or indirectly disrupt normal financial market operations.

Telework Agreements of SEC Mission-Essential Personnel

According to OPM’s A Guide to Telework in the Federal Government, a good telework agreement should include “[e]xpectations for emergency telework”—that is, whether the employee is expected to work in cases of a “continuity event,” such as a national or local emergency or another situation that disrupts normal office operations.⁷⁵

We found that nearly half—49 percent—of SEC COOP mission-essential personnel do not have telework agreements. Their lack of telework agreements indicates that these employees may not be teleworking, even on an ad hoc basis, and may not be routinely practicing their remote access capabilities. We also determined that the telework agreements of mission-essential personnel do not include work expectations related to emergency telework.

To make these determinations, we obtained a list from the SEC Continuity Support Center of the 277 SEC headquarters personnel and the 120 regional office personnel identified as mission-essential as of February 16, 2011.⁷⁶ We compared that list to the list of SEC teleworkers for fiscal year 2010 provided by OHR and found that 156 (56 percent) of headquarters and 40 (33 percent) of regional office mission-essential personnel did not have telework agreements. We then requested a sample of 36 telework agreements for the mission-essential headquarters and regional office personnel who did have agreements in place and found that none of those agreements included expectations for emergency

⁷⁴ SEC Continuity of Operations Plan, “Mission Essential Functions” (April 2010), pp.11-12.

⁷⁵ A Guide to Telework in the Federal Government, p. 19, http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

⁷⁶ The Continuity Support Center is an SEC internal web-based system dedicated to continuity assurance and emergency preparedness.

telework. The sample consisted of telework agreements from 15 headquarters offices and divisions and from all 11 regional offices.

We also found that the SEC does not require its mission-essential personnel to enter into telework agreements. The former Continuity Program Manager for the SEC informed us that he encouraged all mission-essential personnel to request ad hoc telework, but he also noted that the former SEC Executive Director had approved telework by all mission-essential personnel during “COOP situations” without requiring that such employees have telework agreements already in place.⁷⁷ This approval was given in an October 16, 2007, memorandum to division directors and office heads, in which the former Executive Director stated, “By this memorandum, I am approving telework by . . . designated crisis-essential personnel in all COOP situations.”⁷⁸ Failure to require mission-essential personnel to enter into telework agreements may be inconsistent with the Telework Enhancement Act of 2010, however, which requires that employees who telework have written agreements with their managers that outline “the specific work arrangement that is agreed to.”⁷⁹

Remote Access Testing During COOP Exercises

The National Continuity Programs Directorate within FEMA develops and manages COOP exercise programs. These programs range from tabletop exercises designed for federal agencies’ internal use to large, functional, full-scale exercises involving numerous federal and nonfederal entities.

Exercise Eagle Horizon is a full scale, scenario-based exercise focusing on federal organizations’ COOP programs in the National Capital Region. The SEC participates annually in Exercise Eagle Horizon.

Exercise Eagle Horizon was held on May 17 through May 19 in 2010, on May 7 through May 8 in 2008, and on June 17 in 2009. Not all SEC headquarters and regional office mission-essential participated in the Eagle Horizon exercises during these years. The SEC asked its headquarters divisions and offices and its regional offices to participate in each COOP exercise. A small contingent of operations and COOP staff were deployed to an alternate facility to meet the exercise requirements and test continuity capabilities. Approximately 35 headquarters personnel participated in Exercise Eagle Horizon in 2008; approximately 255 headquarters and regional office personnel participated in 2009; and approximately 65 headquarters personnel participated in 2010.

⁷⁷ E-mail dated March 9, 2011, from the former SEC Continuity Program Manager.

⁷⁸ Memorandum from SEC Executive Director to SEC Division Directors and Office Heads, Telework for Continuity Assurance (Oct. 16, 2007). In the memorandum, “crisis-essential employees” are the same as mission-essential personnel.

⁷⁹ Pub. L. No. 111-292, 5 U.S.C. § 6502(b)(2).

During Exercise Eagle Horizon in 2009, the SEC conducted a test of its telework capability. OIT engaged a contractor, Science Applications International Corporation, to evaluate the Commission's participation in the exercise. The results of the remote access testing were included in a report issued by the contractor.⁸⁰ According to the report, 245 SEC personnel participated in the remote access test. These personnel included staff from SEC divisions and offices at headquarters and in regional offices. There were 486 session logons confirmed during the test period.⁸¹ OIT Customer Care received 35 calls related to network connectivity problems during the test period.⁸²

OIT also conducted a survey of SEC participants in the remote access test. Of the 245 participants, 145 completed the survey. Approximately 37 percent of the respondents indicated that they had experienced problems with remote access, and approximately 15 percent of the respondents stated that they had contacted OIT Customer Care as a result of problems they experienced.

During fiscal years 2008 through 2010, the SEC participated in no COOP-related exercises other than Exercise Eagle Horizon. However, OIT sponsors and conducts a variety of limited internal disaster recovery-related and emergency notification system exercises each year.⁸³ From fiscal year 2008 through fiscal year 2010, OIT conducted 23 such exercises. Six exercises were conducted in 2008, 8 in 2009, and 9 in 2010. The number of mission-essential personnel who participated in these exercises was not recorded.

In *A Guide to Telework in the Federal Government*, OPM states that “[t]elework must be part of all agency emergency planning.”⁸⁴ In the guide, OPM also “strongly recommends that agencies include specific language in the telework agreement for any employee who may potentially be asked to telework in case of emergency situations or continuity events” and states that such employees “should be encouraged to practice teleworking on a regular basis and as often as possible.”⁸⁵ In addition, the guide states that managers should be committed to implementing remote work arrangements as broadly as possible to take full advantage of them for COOP purposes and to ensure that

- equipment, technology, and technical support have been tested;

⁸⁰ Eagle Horizon '09: Securities and Exchange Commission (SEC) Office of Information Technology (OIT) Lessons Learned Report (July 8, 2009).

⁸¹ G/On logons accounted for 66 logons, VPN for 85, and Citrix for 335. See table 5 for a definition of these terms.

⁸² G/On users accounted for 4 calls, VPN users for 6, Citrix users for 14, RSA token users for 1, and “other” for 10.

⁸³ NotiFind is the SEC's agency wide notification system for providing critical information to employees in the event of an emergency.

⁸⁴ *A Guide to Telework in the Federal Government*, p. 33, http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

⁸⁵ *A Guide to Telework in the Federal Government*, p. 23, http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

- employees are comfortable with technology and communications methods; and
- managers are comfortable managing a distributed workgroup.⁸⁶

As previously noted, nearly half of the SEC's mission-essential personnel do not have telework agreements. In addition, according to the SEC's Continuity Program Manager, some SEC mission-essential personnel participating in COOP exercises are not required to remotely access the SEC's network during COOP exercises. We therefore concluded that it is likely that a significant number of essential personnel are not routinely practicing their remote access capabilities. Failure to practice these capabilities could impair the ability of these personnel to perform MEFs during emergency situations. When remote access tools, technology, and technical support are not used regularly, it is not possible to identify and correct any problems related to them.

In the work/life survey we conducted, we asked employees who had participated in a government-wide COOP exercise at the SEC to rate their experiences with teleworking during the exercise. About 37 percent of employees rated ease of access as excellent; about 37 percent rated their ability to complete all assigned telework tasks as excellent, and about 24 percent rated the timeliness of OIT's response to telework access issues as excellent. We also asked when employees had last tested their remote access capability for COOP purposes. Approximately 54 percent responded that it had been more than 6 months or that they had never tested it. Finally, we asked employees who had been assigned a laptop for COOP purposes whether they connected their laptops to the SEC network every 30 days to ensure that all patches had been applied, and approximately 43 percent responded that they did not do so.

The lack of telework agreements for all mission-essential SEC personnel, the failure of existing telework agreements to address emergency telework, and the lack of routine testing of remote access capabilities by mission-essential personnel could hinder the SEC's ability to effectively utilize its remote access capabilities during an emergency or catastrophic event that required employees to work off-site in order to carry out essential functions.

Recommendation 22:

Consistent with governing Federal Emergency Management Agency and Office of Personnel Management directives, and the SEC Collective Bargaining Agreement, the Office of Human Resources, in conjunction with the Office of FOIA, Records Management, and Security, should require all mission-essential personnel to enter into telework agreements

⁸⁶ A Guide to Telework in the Federal Government, p. 33, http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

that specifically allow them to conduct their continuity of operations responsibilities and the mission-essential functions they will perform during emergencies or agency closures.

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

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

Recommendation 23:

Consistent with governing Federal Emergency Management Agency and Office of Personnel Management directives, and the SEC Collective Bargaining Agreement, the Office of Human Resources, in conjunction with the Office of FOIA, Records Management, and Security, should require mission-essential personnel who have telework agreements to telework periodically to practice their assigned mission-essential and primary mission-essential functions.

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

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

Finding 7: The SEC COOP Plan Does Not Comprehensively Address the Role of Telework

The role of telework during emergencies and catastrophic events is not comprehensively addressed in the SEC's COOP Plan. Instead, Emergency Relocation Sites are emphasized as the means of performing essential functions for COOP purposes.⁸⁷

Although telework is mentioned many times in the SEC's COOP plan, we found that the COOP plan did not address the telework function as comprehensively as the Commission's April 2009 Pandemic Influenza Preparedness Plan did. According to A Guide to Telework in the Federal Government, "[t]elework must

⁸⁷ An Emergency Relocation Site is an alternate work site that provides the capability to perform minimum essential department or agency functions until normal operations can be resumed.

be part of all agency emergency planning.”⁸⁸ The guide states that management must be committed to implementing telework as broadly as possible to take full advantage of telework for emergency purposes and ensure that equipment and technology have been tested, employees are comfortable with technology and communications methods, and managers are comfortable managing a distributed workgroup.⁸⁹ In addition, the Telework Enhancement Act of 2010 requires that telework be incorporated as part of the COOP plans of executive agencies.⁹⁰

Contents of the SEC’s Pandemic Influenza Preparedness Plan

The SEC’s April 2009 Pandemic Influenza Preparedness Plan specifically and comprehensively addressed telework, stating the following:

The agency’s crisis-essential workforce will engage in sustained telework, linked by a variety of resilient communications equipment, throughout the period of its dispersal. The agency will, therefore, continue aggressively to pursue its program of ensuring that its crisis-essential workforce is fully equipped, trained, and demonstrably able to telework.

The plan’s section on conducting essential functions by telework addressed crisis telework approval and policies, technology and support, telework capability, training staff to telework effectively, exercising agency telework competence, and expanding the agency’s telework-capable workforce. In the subsection on expanding the agency’s telework-capable workforce, the plan stated, “While recognizing that not all employees’ responsibilities lend themselves equally well to telework, the agency believes that it will be better prepared to protect its employees’ health and safety and to conduct its most essential functions, while promoting public health objectives, if it continues to progress steadily towards 100 percent telework-capable workforce.”

Telework Provisions in the SEC’s COOP Plan

The SEC’s COOP Plan, dated April 2010, places more emphasis on essential personnel performing their duties from relocation facilities than by telework. The COOP Plan states that “SEC essential functions will be relocated to the one of three Emergency Relocation Site (ERS) locations.” It further states, “Following activation of the plan and notification of personnel, the SEC will relocate personnel and vital records to a continuity facility . . . SEC continuity personnel will deploy to the assigned continuity facility to perform SEC essential functions

⁸⁸ A Guide to Telework in the Federal Government, p. 33, http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

⁸⁹ A Guide to Telework in the Federal Government, p. 33, http://www.telework.gov/guidance_and_legislation/telework_guide/telework_guide.pdf.

⁹⁰ Pub. L. No. 111-292, 5 U.S.C. § 6504(d)(1). In addition, section 6504(d)(2) of the act states that “[d]uring any period that an executive agency is operating under a continuity of operations plan, that plan shall supersede any telework policy.”

and other continuity tasks.” The COOP Plan also notes that “SEC continuity personnel have access to strategic business applications, market watch data services, and high-speed data lines at its Emergency Relocation Site (ERS) locations and by remote access.” OIT has responsibility for establishing appropriate communications links for remote access and applications and data access for personnel not designated as emergency responders to support the Emergency Relocation Group. The SEC’s COOP Plan specifically acknowledges telework as an option only with the statement that “[o]ther essential staff are put into telework mode” during level 4 of Phase 1: Readiness and Preparedness.

Even though the SEC’s COOP Plan incorporates some elements of the Pandemic Influenza Preparedness Plan’s detailed telework planning, the lack of emphasis on telework in the SEC’s COOP Plan could hinder effective planning and preparation for carrying out MEFs during emergencies and catastrophic events.

Recommendation 24:

The Office of FOIA, Records Management, and Security should update the continuity communications section of the Securities and Exchange Commission’s Continuity of Operations Plan and expand it to expressly address conducting essential functions by telework consistent with governing Federal Emergency Management Agency and Office of Personnel Management directives, and the SEC Collective Bargaining Agreement. It should include subsections addressing telework capability, training staff to telework effectively, and exercising agency telework competence as detailed in the Commission’s Pandemic Influenza Preparedness Plan.

Management Comments. OFRMS concurred with this recommendation. See Appendix V for management’s full comments.

OIG Analysis. We are pleased that OFRMS concurred with this recommendation.

Finding 8: The SEC’s Regional Offices Lack Viable COOP Plans

SEC regional office directors have not fully developed regional-level COOP plans and therefore are not in compliance with federal guidance.

During our review, we determined that none of the SEC regional office COOP plans contain all the elements of a viable continuity plan. In addition, according to the Commission-wide COOP Plan, SEC regional office directors are

responsible for updating regional office COOP plans, but we found that the plans were outdated. During an interview, the SEC COOP Coordinator acknowledged that the regional office COOP plans were very outdated and said that the SEC's Continuity Task Force is forming a regional team to address all of the regional office COOP plans.⁹¹

With respect to telework, the SEC's regional office COOP plans, like the Commission-wide COOP Plan, do not fully address the role of telework. Some regional office COOP plans refer to ensuring that all staff have e-mail capabilities at their telework location and discuss alternative telework arrangements and assignments for mission-essential personnel and monitoring assignments of telework and mission-essential personnel. Other regional office COOP plans refer to ensuring that staff have the ability and equipment to telework as an interim arrangement and to locating essential staff at either the devolution⁹² site or permitting them to telework. None of the regional office COOP plans specify the MEFs and PMEFs to be performed during telework.

Elements of Viable Capability Continuity

Federal Continuity Directive 1, Federal Executive Branch National Continuity Program (FCD 1), states in support of maintaining a comprehensive and effective continuity capability, "[T]he Federal executive branch has developed and implemented a continuity program which is composed of efforts within individual agencies to ensure that their Mission Essential Functions . . . continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies." The directive also states, "All agencies, regardless of their size or location, shall have in place a viable continuity capability to ensure continued performance of their agency's essential functions under all conditions."⁹³

On its website, FEMA states, "The ultimate goal of continuity in the executive branch is the continuation of National Essential Functions (NEFs). In order to achieve that goal, the objective for organizations is to identify their Essential Functions (EFs) and ensure that those functions can be continued throughout, or resumed rapidly after, a disruption of normal activities."⁹⁴

⁹¹ The Continuity Task Force consists of both senior-level and lower-level employees who are subject-matter experts from the various SEC divisions and offices. Its mission is to conduct continuity planning for the Commission.

⁹² "Devolution" is defined by FEMA as the "capability to transfer statutory authority and responsibility for essential functions from an agency's and organization's primary operating staff and facilities to other agency and organization employees and facilities, and to sustain that operational capability for an extended period." See <http://www.fema.gov/about/org/ncp/coop/index.shtm>.

⁹³ Department of Homeland Security, Federal Continuity Directive 1 (FCD 1), Federal Executive Branch National Continuity Program and Requirements (February 2008), p. 2. <http://www.fema.gov/pdf/about/offices/fcd1.pdf>.

⁹⁴ See <http://www.fema.gov/about/org/ncp/coop/index.shtm>. The national essential functions are the eight functions that the president and national leadership will focus on to lead and sustain the nation during a catastrophic emergency: (1) preserving the constitutional form of government; (2) providing visible leadership to the nation; (3) defending the country against all enemies; (4) maintaining and fostering

The FEMA website also lists the “elements of viable continuity capability”:

Essential Functions—a subset of government and other organizational functions that are determined to be critical activities used to identify supporting tasks and resources that must be included in the agency’s and organization’s continuity planning process.

Orders of Succession—essential part of an agency’s and organization’s continuity plan to ensure that agency and organizational personnel know who assumes the authority and responsibility of the agency’s and organization’s leadership if that leadership is incapacitated or becomes otherwise unavailable during a continuity situation.

Delegations of Authority—establish who has the right to make key decisions during a continuity situation.

Continuity Facilities—alternate facilities from which an agency and organization can perform its Essential Functions in a threat-free environment.

Continuity Communications—the availability and redundancy of critical communications systems to support connectivity to internal and external organizations, customers, and the public is vital to the success of agency and organization operations.

Vital Records Management—the identification, protection and ready availability of electronic and hard copy documents, references, records, information systems, data management software and equipment needed to support essential functions during a continuity situation.

Human Capital—provides guidance to emergency employees and other special categories of employees who are activated by an agency and organization to perform assigned response duties during a continuity event.

effective relationships with foreign nations; (5) protecting against threats to the homeland and bringing to justice perpetrators of crimes or attacks against the nation, its citizens, or interests; (6) providing rapid, effective response to and recovery from an attack or other incident; (7) protecting and stabilizing the nation’s economy and ensuring confidence in financial systems; and (8) providing for critical federal government services. Department of Homeland Security, Federal Continuity Directive 1 (FCD 1), Federal Executive Branch National Continuity Program and Requirements (February 2008), annex D, <http://www.fema.gov/pdf/about/offices/fcd1.pdf> .

Tests, Training, and Exercises (TT&E)—Provisions made for the identification, training, and preparedness of personnel capable of relocating to alternate facilities to support the continuation of the performance of essential functions.

Devolution of Control and Direction—capability to transfer statutory authority and responsibility for essential functions from an agency's and organization's primary operating staff and facilities to other agency and organization employees and facilities, and to sustain that operational capability for an extended period.

Reconstitution—the process by which surviving and/or replacement agency and organizational personnel resume normal agency operations from the original or replacement primary operating facility.⁹⁵

Elements of Viable Capability Continuity in Regional Office COOP Plans

During our review, we examined the COOP plans of each of the 11 SEC regional offices to determine whether they contained the elements of viability continuity capability listed in FCD 1 and on FEMA's website. Table 4 summarizes the results of this examination.

⁹⁵ <http://www.fema.gov/about/org/ncp/coop/index.shtm#4>.

Table 4: Elements of Viable Continuity Capability in SEC Regional Offices' COOP Plans

	Atl.	Bos.	Chi.	Den.	Ft. Worth	L.A.	N.Y.	Miami	Phil.	S.F.	Salt Lake City
Essential functions	X		X	X	X		X	X	X	X	X
Orders of succession	X		X	X			X	X	X	X	X
Delegation of authority											
Continuity of facilities	X										
Continuity of communications	X										
Vital records management	X		X	X				X	X	X	X
Human capital	X		X	X			X	X	X	X	X
Tests, training, and exercises		X	X			X	X	X	X	X	X
Devolution of control		X	X			X	X	X	X	X	X
Reconstitution		X	X			X	X	X	X	X	X

Source: OIG.

As shown in table 4, we found that none of the 11 regional offices' COOP plans addressed more than 7 of the 10 elements of viability continuity capability and that 1 regional office's plan addressed only 1 element. We also found that no single element was addressed by all 11 offices. The element addressed most often—by 8 of the offices—was “essential functions.” None of the regional offices' plans covered “delegation of authority,” however, and only 1 addressed continuity of facilities and COOP.

Role of SEC Regional Offices in Meeting Commission-wide COOP Objectives

The SEC's COOP Plan, developed in accordance with FCD 1, contains the following continuity objectives:

- Ensuring that the SEC can perform its essential functions under all conditions
- Reducing loss of life, safeguarding the SEC workforce, and minimizing property damage and loss
- Executing a successful order of succession in the event of a disruption
- Reducing or mitigating disruptions to operations

- Ensuring that the SEC has facilities where it can continue to perform its essential functions
- Protecting essential facilities, equipment, records, and other assets
- Achieving a timely and orderly recovery and reconstitution
- Ensuring and validating continuity readiness through testing, training, and exercises

The plan also states that the SEC's ability to sustain its essential functions under all foreseeable conditions "requires considerable planning throughout the SEC and in all regional offices, strong and redundant communications capabilities, as well as a sustained program of training, testing, and exercises."

We found that the SEC is not meeting its continuity planning objectives at the regional level. As noted earlier and as shown in table 4, the SEC regional offices lack fully developed COOP plans and are therefore not adequately prepared to fulfill their role in helping to ensure that the SEC can meet its Commission-wide COOP objectives.

The SEC COOP Plan specifies that if catastrophic conditions were to prevent the Commission from conducting essential operations at its headquarters location, those operations would be conducted first, at the SEC Operations Center in northern Virginia, and second, at the SEC's principal long-term relocation site in Richmond, Virginia.⁹⁶ If an emergency event made it impossible, unlawful, or imprudent for the Commission's mission-essential workforce to deploy to either of those locations, and devolution of control became necessary, the agency's New York Regional Office would assume responsibility for conducting essential SEC functions. If the New York Regional Office were also unable to conduct essential SEC functions, the Chicago Regional Office would serve as the primary back-up. The Chairman or her designee has the authority to order that certain successor personnel disperse to other offices or locations when circumstances warrant. We determined that neither the New York Regional Office COOP plan nor the Chicago Regional Office COOP plan includes a strategy for supporting SEC headquarters in case of a relocation of personnel and transfer of responsibilities.

Without adequate, comprehensive regional office COOP plans, the Commission's ability to meet its COOP objective of sustaining essential functions under all foreseeable conditions may be compromised.

Effective July 25, 2011, the SEC's Continuity Program Office realigned from the Office of the Executive Director to the Office of Security Services. The Office of Security Services is located within the Office of FOIA, Records Management, and Security, which is under the Office of the Chief Operating Officer. The Director of the Office of FOIA, Records Management, and Security informed us that senior SEC management has directed the Office of the Chief Operating Officer to

⁹⁶ The "principal long-term relocation site" is the primary alternate location from which the SEC's Emergency Relocation Group would perform essential functions for up to a period of 30 days.

perform a thorough review of the entire COOP program to ensure that the program complies with FEMA requirements.

Recommendation 25:

The Office of FOIA, Records Management, and Security should instruct regional office directors to revise their regional office continuity of operations plan to address all the essential elements of viable continuity capability specified by the Federal Emergency Management Agency. To ensure that the plans are reviewed and modified timely and presented in a standard format, the Office of Security Services should establish timelines and submission criteria for the revised plans.

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

OIG Analysis. We are pleased that OFRMS concurred with this recommendation.

Recommendation 26:

The Office of FOIA, Records Management, and Security should instruct the directors of the appropriate regional offices to include in their continuity of operations plans strategies for supporting headquarters essential functions during devolution of control.

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

OIG Analysis. We are pleased that OFRMS concurred with this recommendation.

Finding 9: The SEC Has Not Tested the Maximum User Limit for Remote Access to the SEC Network

The maximum user limit for the SEC's remote access technology has not been tested to determine whether it would perform adequately when fully utilized during an emergency or catastrophic event.

The SEC has a variety of remote access tools for teleworkers, as shown in table 5.

Table 5: SEC Remote Access Tools for Teleworkers

Remote Access Tool	Definition
Outlook Web Access (OWA)	A web-based application used to check e-mail through a website. Users need an RSA token to use the site.
Citrix	Software that enables a user to remotely access the SEC Remote Electronic Terminal portal via an SEC-issued laptop or the user's non-SEC computer. Users need an RSA token to access the SEC Remote Electronic Terminal portal.
SEC Virtual Private Network (VPN)	A remote access solution that requires an SEC laptop configured for VPN and an RSA token for authentication.
RSA SecurID token	A secure authentication device that allows users to connect to the SEC network and meets the National Institute of Standards and Technology two-factor authentication requirement. One authentication is the user's network password or personal identification number (PIN), and the other is a password generated by the RSA token, which changes every 60 seconds.
G/On stick	A USB-based device that allows a user to connect to the SEC network and access common SEC applications or direct access to the user's SEC office computer.

Source: OIG.

Remote Access Capabilities for SEC Teleworkers

We asked respondents to our work/life survey to rate the ease of accessing the SEC network remotely and the timeliness of OIT's response to access issues they encountered. About 69 percent of respondents rated "ease of accessing the network" as above average or excellent. About 54 percent rated "timeliness of OIT's response" as above average or excellent. Some respondents also provided comments along with their responses to these questions. Positive comments included the following:

- "OIT deserves special recognition for the outstanding remote access systems they provide to employees."
- "VPN and OWA work well in my case."
- "Our local IT employee is outstanding in addressing needs and issues."

Negative comments included the following:

- "I have consistently had a bad experience trying to access the SEC's network remotely. I usually am unable to connect using Citrix. This is the reason I occasionally forward work to access on my home computer."
- "There is so much security software on my SEC laptop computer, it causes my connection to the server to be very slow or I will be dropped off the system without any explanation. Very frustrating."

- “I have had nothing but problems with Citrix and therefore carry my SEC laptop back and forth to work which is not an ideal situation.”

According to OIT, its help desk processed 3,411 failure tickets related to remote access connectivity in fiscal year 2010. OIT told us that these 3,411 tickets represented 12.6 percent of all failure tickets reported for that year. In addition, OIT provided us with data, summarized in table 6, on the number of failure tickets for each remote access technology. Nearly half of the failure tickets involved Citrix.

Table 6: OIT Help Desk Failure Tickets Related to Remote Access Technology, Fiscal Year 2010

Technology	Number of Service Desk Failure Tickets	Percentage of All Failure Tickets Related to Remote Access Failures
VPN	538	15.8
RSA token	323	9.5
G/On	677	19.8
Citrix	1,655	48.5
Other ^a	218	6.4

Source: OIT.

^a“Other” includes, for example, problems with OWA, password reset when connecting remotely, and drive mapping through remote access.

As of the date of our fieldwork, OIT had issued approximately 3,600 RSA tokens and approximately 1,700 G/On sticks. According to OIT, the number of devices issued is not necessarily the same as the number actually in use.

Maximum User Limits for SEC Remote Access Technology

OIT has recently begun producing remote access reports that include daily connections statistics. The reports track connections during weekdays, weekday evenings, weekends, and weekend evenings for G/Ons, Citrix, VPN, and OWA. However, OIT’s Remote Access Manager told us that OIT has not tested the maximum user limits of the SEC’s remote access technology. OIT also told us that the highest number of actual G/On connections to the SEC network at one time was approximately 400. In addition, OIT stated that Citrix, G/On, OWA, and VPN have not been fully stress-tested and expressed uncertainty about whether the network could sustain full utilization of remote access devices. In a comment, a respondent to the work/life survey expressed the same uncertainty:

I worry about the operational capacity of remote access overall, should we experience an actual COOP-type of event in which all SEC HQ employees with remote access may have to work at home for several days or weeks. This includes technical infrastructure, and the crisis-essential staff’s own ability to access the SEC network remotely. In this regard, we would benefit from conducting actual tests of wide-scale work-at-home drills—say, quarterly drills

of at least one or two full workdays at home for, at the least, all HQ and regional office crisis-essentials and their subject matter expert staff upon whom they rely. . . .[O]nly by conducting live, large-scale, in-the-field exercises could you somewhat gauge your readiness for the real event.

The OIT Assistant Director for Customer Support and End-User Services said that she and her staff had discussed a structured and systemic test of the maximum user limit for remote access but that the testing had not been pursued. She told us that the stress test could be performed using simulated traffic generators to mimic the maximum user limit but that the test is best performed by actual teleworkers because a variety of SEC applications would need to be tested. In addition, she said that a stress test involving actual teleworkers would give OIT the opportunity to examine its ability to respond if any issues arose during testing.

Because of the failure to conduct stress tests of remote access capabilities, we are concerned that significantly greater use of remote access devices and systems could stress SEC remote access resources, including the SEC network, and strain help desk resources. As a result, SEC users might be unable to gain access to the system, necessary applications, and other work materials when they cannot work on-site, and the Commission's ability to function effectively during emergencies or catastrophic events would be impaired. Even increased nonemergency use, such as use resulting from increased staff size or increased participation in the Commission's telework program, could impair remote access functionality.

Recommendation 27:

The Office of Information Technology should perform server stress tests. Testing should incorporate a variety of applications used with remote access.

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

OIG Analysis. We are pleased that OIT concurred with this recommendation.

Abbreviations

CBA	collective bargaining agreement
COOP	continuity of operations
FEMA	Federal Emergency Management Agency
GSA	General Services Administration
MEF	mission-essential function
NTEU	National Treasury Employees Union
OHR	Office of Human Resources
OIG	Office of Inspector General
OIT	Office of Information Technology
OPM	Office of Personnel Management
OWA	Outlook Web Access
PMEF	primary mission-essential function
POPPS	Personnel Operating Policies and Procedures
SEC or Commission	U.S. Securities and Exchange Commission
SES	Senior Executive Service
SO	Senior Officer
VPN	virtual private network

Scope and Methodology

Scope. We conducted our fieldwork from December 2010 to August 2011. In general, we reviewed SEC activities related to the work/life issues addressed in this report for fiscal years 2008 through 2010. We cited data from fiscal year 2011 with respect to SO employees' use of credit hours. In addition, we examined the Commission's telework-related activities from fiscal year 2005 through fiscal year 2010 to assess changes in telework participation at the SEC since the December 2004 enactment of Public Law 108-447, which required the SEC to certify within two months "that telecommuting opportunities are made available to 100 percent of the eligible workforce."

Methodology. To carry out our review, we obtained an understanding of how laws passed by Congress and guidance issued by the National Institute of Standards and Technology, GSA, and OPM govern telework, alternative work schedules, and overtime compensation. We reviewed the Commission's internal policies and procedures and the portions of its 2007 CBA with NTEU that apply to telework, alternative work schedules, and overtime compensation. In addition, we assessed the Commission's enterprise technologies used for telework, alternative work schedules, and overtime; examined the SEC's Commission-wide COOP plan and regional office COOP plans to determine whether they adequately addressed telework and other components necessary to conduct essential operations remotely; reviewed and assessed responses to the work/life survey that we administered; and interviewed OHR and OIT staff with responsibilities related to telework, alternative work schedules, and overtime.

Internal Controls. To determine whether OHR had established work/life and COOP policies and procedures in compliance with applicable federal laws, regulations, and guidance and consistently followed these policies and procedures, we obtained copies of all work/life, overtime, and COOP policies and procedures from OHR and copies of the applicable federal laws, regulations, and guidance. We reviewed and compared the SEC's policies and procedures to the applicable federal laws, regulations, and guidance.

OHR staff provided documentation of two internal control evaluations related to telework at the SEC. The first, undertaken by the SEC Telework Coordinator and completed during fiscal year 2008, summarized telework services and utilization at the SEC. The second, completed in June 2010 by the interagency Telework Advisory Group established by OPM, assessed whether SEC telework policies (1) could be clearly understood and easily used and (2) incorporated criteria fundamental to the development and support of an effective telework program. In addition, OHR provided us with information on the telework-related results of a May 2010 evaluation of the SEC's COOP program by FEMA. OHR has not

conducted internal control assessments of SEC alternative work schedule programs or overtime compensation.

Prior Audit Coverage. In March 2004, we issued an audit report on the SEC work/life program.⁹⁷ The objective of the audit was to determine whether the Office of Human Resources and Administrative Services (now OHR) managed the SEC work/life program effectively and efficiently; whether the program met its intended goals and objectives; whether the program was run consistent with OPM guidance; and whether the program compared favorably with work/life programs at other agencies. We found that implementation of the program was generally effective, efficient, and in compliance with applicable guidance and that it compared favorably with other agencies' programs. The audit also included four recommendations for improving the program, all of which have been closed.

⁹⁷ OIG, *Commission Work/Life Program*, Report No. 379 (Mar. 29, 2004); <http://www.sec-oig.gov/Reports/AuditsInspections/2004/379fin.pdf>

Criteria

Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. § 6120 et seq. Authorizes executive agencies to establish programs that allow the use of flexible work schedules, including compressed work schedules.

Voluntary Services Prohibition of the Antideficiency Act, 31 U.S.C. § 1342. Prohibits officers or employees of the United States from accepting voluntary services except for emergencies involving the safety of human life or protection or property.

Public Law 106-346, Oct. 23, 2000, § 359. Required that all executive branch agencies establish telework policies.

Public Law 107-123, Jan. 16, 2002. Established pay parity for the SEC by allowing the SEC to create a compensation system similar to the systems of other federal financial regulators, including the authority to appoint and fix the compensation of senior officers, and excepted the SEC from the definition of agency for purposes of the Senior Executive Service.

Public Law 108-447, Dec. 8, 2004, § 622. Required the SEC to certify, no later than two months after the date of the law's enactment, that telecommuting opportunities were made available to 100 percent of the eligible workforce. It further requires that the SEC designate a telework coordinator to be responsible for overseeing the implementation and operations of telecommuting programs.

Telework Enhancement Act of 2010, Public Law 111-292, Dec. 9, 2010. Requires that, no later than 180 days after enactment, executive agencies (1) establish telework policies; (2) determine telework eligibility for all employees; and (3) notify all employees of their eligibility to telework. It requires the head of each agency to establish telework training programs for workers and managers and designate a Telework Managing Officer to oversee telework. In addition, it requires that each agency integrate telework into its COOP planning and provide yearly progress reports to OPM.

5 C.F.R. § 534.408. Provides that members of the SES are not eligible for compensatory time except for religious purposes.

5 C.F.R. § 610.408. Prohibits members of the SES from accumulating credit hours under an alternative work schedule.

GSA, Federal Management Regulation Bulletin 2006-B3, Guidelines for Alternative Workplace Arrangements, Mar. 13, 2006. Establishes guidelines for implementing and operating alternative workplace arrangements.

U.S. Office of Personnel Management, Guide to Telework in the Federal Government, April 2011. Outlines practical information about telework to assist federal agencies, managers, supervisors, other staff responsible for implementing telework, and employees.

U.S. Office of Personnel Management, Handbook on Alternative Work Schedules. Provides a framework for federal agencies to consult in establishing alternative work schedules and contains additional information to assist agencies in administering such programs.

SEC Personnel Operating Policies and Procedures (POPPS Manual), SECM 6-1, Chapter 6.10A, Alternate Work Schedules, Jan. 20, 1995. Establishes SEC policies and procedures for administering the Commission's alternate work schedule program.

SEC Personnel Operating Policies and Procedures (POPPS Manual), SECM 6-1, Chapter 6.10B, Alternate or Flexible Work Locations, Jan. 20, 1995. Establishes SEC policies and procedures for administering work-at-home arrangements and authorizes a one-year experimental flexiplace pilot program.

SEC Personnel Operating Policies and Procedures (POPPS Manual), SECM 6-1, Chapter 6.10C, Compressed Work Schedules, Jan. 20, 1995. Establishes SEC policies and procedures for administering authorized compressed work schedule programs.

SEC Personnel Operating Policies and Procedures (POPPS Manual), SECM 6-1, Chapter 6.30B, Compensatory Time, Jan. 17, 1992. Sets forth SEC policies and procedures for approving and using compensatory time.

SEC Memorandum. Jayne Seidman, Associate Executive Director, Office of Administrative and Personnel Management, Nov. 8, 2002, Collective Bargaining Agreement and Non-Bargaining Unit Employees. Clarified the applicability of some provisions of the CBA implemented on August 30, 2002, to nonbargaining unit employees.

SEC Memorandum. Diego T. Ruiz, Executive Director, Oct. 16, 2007, Telework for Continuity Assurance. Approved telework for designated crisis-essential employees in all COOP situations and for all SEC employees directed to work away from their official workplace during a specified stage influenza pandemic.

Collective Bargaining Agreement Between the United States Securities and Exchange Commission and the National Treasury Employees Union, 2007, Article 7, Work Schedules, Article 10, Overtime and Compensatory Time, and Article 11, Telework Program. Outlines the benefits and rights of the SEC and bargaining unit employees with respect to work schedules, overtime and compensatory time, and telework.

List of Recommendations

Recommendation 1:

The Office of Human Resources should take necessary actions to ensure that employees do not work unauthorized alternative work schedules, including required revisions to the collective bargaining agreements and steps to ensure that all Commission managers and staff are fully informed about which alternative work schedules are authorized.

Recommendation 2:

The Office of Human Resources should ensure that the

- 2 a. new Human Capital Directive addresses all alternative work schedules available to Securities and Exchange Commission employees; and
- 2 b. contents of the Human Capital Directive are and remain consistent with the alternative work schedule components of the collective bargaining agreement.

Recommendation 3:

The Office of Human Resources should ensure that the new Human Capital Directive addresses all Securities and Exchange Commission employees—supervisory, managerial, professional, nonprofessional, bargaining unit, and nonbargaining unit employees—and contains up-to-date information on all alternative work schedule programs authorized by the Commission.

Recommendation 4:

The Office of Human Resources should

- 4 a. provide comprehensive training to all employees and managers on all available alternative work schedule programs. This training should be provided to all new employees during employee orientation and to all employees and managers whenever significant changes to the policy occur, such as upon completion of the Human Capital Directive or adoption of a new collective bargaining agreement; and
- 4 b. make up-to-date information on alternative work schedules and policy available electronically to all employees on the Securities and Exchange Commission intranet site and periodically notify employees of its availability and location.

Recommendation 5:

The Office of Human Resources should develop an alternative work schedule request form. The form should contain sections for the requesting employee's information and certification; the type of alternative work schedule requested, including specific work hours and, if applicable, workdays; the immediate supervisor's approval; and, if applicable, the approving official's decision.

Recommendation 6:

The Office of Human Resources, in developing the new Human Capital Directive, should work with the National Treasury Employees Union to determine whether additional alternative work schedules, such as the gliding, variable day, variable week, three-day workweek, and Maxiflex options described in the Office of Personnel Management Handbook on Alternative Work Schedules, should be adopted as options for Securities and Exchange Commission employees.

Recommendation 7:

The Office of Human Resources should include in the new Human Capital Directive clear, up-to-date information on the laws, policies, guidelines, and procedures related to credit hours, compensatory time off, payment for overtime worked, and voluntary and uncompensated services.

Recommendation 8:

The Office of Human Resources should negotiate revisions to the language in the collective bargaining agreement between the Commission and the National Treasury Employees Union with respect to the use of credit hours by employees working conforming schedules, ensuring that the revised language conforms with applicable law.

Recommendation 9:

The Office of Human Resources should institute appropriate controls to ensure that Senior Officers do not receive compensatory time off.

Recommendation 10:

The Office of Human Resources should consult with the Office of the General Counsel and the Office of Personnel Management to determine whether the Securities and Exchange Commission should adopt an official policy that addresses whether Senior Officers are permitted to earn credit hours.

Recommendation 11:

The Office of Human Resources should ensure that the recommendations made by the Telework Advisory Group in its assessment of the Securities and Exchange Commission's telework policy are considered, including the recommendation that OHR use the Telework Advisory Group's telework policy evaluation checklist as a resource to further develop the Commission's telework policy.

Recommendation 12:

The Office of Human Resources should revise the one-page overview of telework provided to new employees to include website references for telework resources; the name, telephone number, and e-mail address of the Securities and Exchange Commission Telework Coordinator; and page references to article 11, Telework Program, of the 2007 collective bargaining agreement.

Recommendation 13:

The Office of Human Resources should provide comprehensive telework training sessions to Securities and Exchange Commission employees that address, among other things, telework tools; policies and procedures for discontinuing telework; what happens when an employee is promoted, reassigned, or detailed; duty station policy; employee availability during telework; employee personal computer usage; mandatory telework-related forms; office supplies and equipment; and protection of government records.

Recommendation 14:

The Office of Human Resources should provide comprehensive telework training sessions to Securities and Exchange Commission managers that address, among other things, telework tools, policies and procedures related to managers' approval and denial of employee telework, managers' right to direct employees to report to work on their telework day, and managers' ability to suspend or terminate telework.

Recommendation 15:

The Office of Human Resources should require training and recertification for current teleworkers and managers of teleworkers at least every two years.

Recommendation 16:

The Office of Human Resources should send administrative notice e-mails to all Securities and Exchange Commission employees twice each year reminding them of the Commission's telework options and the benefits of participating in the program.

Recommendation 17:

The Office of Administrative Services should establish and enforce procedures to ensure that employees who telework three or more days a week do not maintain private offices, but rather share office space.

Recommendation 18:

The Office of Human Resources should develop an improved telework database that will track the processing of telework agreements and store telework agreements to ensure that the data it reports to the Office of Personnel Management are reliable and valid.

Recommendation 19:

The Office of Human Resources should require that Securities and Exchange Commission managers provide the Telework Coordinator with copies of denied or terminated telework agreements to facilitate tracking of such agreements.

Recommendation 20:

The Office of Human Resources should develop goals and objectives for accomplishing the work listed in the telework program work plan for fiscal year 2011 and for increasing telework participation by Securities and Exchange Commission employees.

Recommendation 21:

The Office of Human Resources should establish a process to monitor progress in meeting the Commission's telework-related goals and objectives. If the goals and objectives are not being met, the Office of Human Resources should take action to identify and eliminate barriers to meeting the goals and objectives.

Recommendation 22:

Consistent with governing Federal Emergency Management Agency and Office of Personnel Management directives, and the SEC Collective Bargaining Agreement, the Office of Human Resources, in conjunction with the Office of FOIA, Records Management, and Security, should require all mission-essential personnel to enter into telework agreements that specifically allow them to conduct their continuity of operations responsibilities and the mission-essential functions they will perform during emergencies or agency closures.

Recommendation 23:

Consistent with governing Federal Emergency Management Agency and Office of Personnel Management directives, and the SEC Collective Bargaining Agreement, the Office of Human Resources, in conjunction with the Office of FOIA, Records Management, and Security, should require mission-essential personnel who have telework agreements to telework periodically to practice their assigned mission-essential and primary mission-essential functions.

Recommendation 24:

The Office of FOIA, Records Management, and Security should update the continuity communications section of the Securities and Exchange Commission's Continuity of Operations Plan and expand it to expressly address conducting essential functions by telework consistent with governing Federal Emergency Management Agency and Office of Personnel Management directives, and the SEC Collective Bargaining Agreement. It should include subsections addressing telework capability, training staff to telework effectively, and exercising agency telework competence as detailed in the Commission's Pandemic Influenza Preparedness Plan.

Recommendation 25:

The Office of FOIA, Records Management, and Security should instruct regional office directors to revise their regional office continuity of operations plan to address all the essential elements of viable continuity capability specified by the Federal Emergency Management Agency. To ensure that the plans are reviewed and modified timely and presented in a standard format, the Office of Security Services should establish timelines and submission criteria for the revised plans.

Recommendation 26:

The Office of FOIA, Records Management, and Security should instruct the directors of the appropriate regional offices to include in their continuity of operations plans strategies for supporting headquarters essential functions during devolution of control.

Recommendation 27:

The Office of Information Technology should perform server stress tests. Testing should incorporate a variety of applications used with remote access.

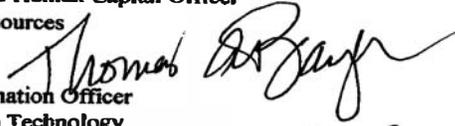
Management's Comments

MEMORANDUM

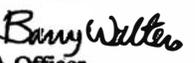
September 26, 2011

TO: H. David Kotz
Inspector General

FROM: Cristine Fair 
Acting Director/Chief Human Capital Officer
Office of Human Resources

Thomas A. Bayer 
Director/Chief Information Officer
Office of Information Technology

Jayne Seidman 
Acting Director
Office of Administrative Services

Barry Walters 
Director/Chief FOIA Officer
Office of FOIA, Records Management, and Security

SUBJECT: OHR Management Response to Draft Report No. 491, *Review of Alternative Work Arrangements, Overtime Compensation, and COOP-Related Activities at the SEC*

This memorandum is in response to the Office of Inspector General's Draft Report No. 491, *Review of Alternative Work Arrangements, Overtime Compensation, and COOP-Related Activities at the SEC*. Thank you for the opportunity to review and respond to this report. Efforts to enhance these program areas were already underway and continued during this audit process to the extent possible given our current union negotiations. In particular, significant improvements have been made within our Telework program in accordance with the Telework Enhancement Act of 2010. We concur with the twenty-eight recommendations presented in the report and have begun taking appropriate steps to implement them.

Recommendation 1:

OHR concurs. OHR will continue to stay abreast of the current collective bargaining agreement (CBA) negotiations. Once the revised article on alternative work schedules is finalized in the negotiations, OHR will inform managers and staff of the options available.

Recommendation 2a:

OHR concurs. OHR will ensure that the new Human Capital Directive addresses all alternative work schedules available to Securities and Exchange Commission (SEC) employees.

Recommendation 2b:

OHR concurs. OHR will ensure that the new Human Capital Directive identified in Recommendation 2b is consistent with the alternative work schedule components of the collective bargaining agreement.

Recommendation 3:

OHR concurs. OHR will ensure that the new Human Capital Directive addresses all SEC employees and contains up-to-date information on all alternative work schedule programs authorized by the Commission.

Recommendation 4a:

OHR concurs. OHR will provide comprehensive training to all employees and managers on all available alternative work schedule programs. This will be included in new employee orientation and as necessary when major changes occur to policy or CBA articles. OHR will deliver this training once this article is agreed upon in the current CBA negotiations.

Recommendation 4b:

OHR concurs. OHR will provide up-to-date information on alternative work schedules and policies in an electronic format to all SEC employees on the SEC intranet. OHR will periodically notify employees of its availability and location. This will occur once this article is agreed upon in the current CBA negotiations.

Recommendation 5:

OHR concurs. OHR will develop an alternative work schedule request form to include the items outlined by the OIG in this report's recommendation and in compliance with the final CBA article once complete. Once a more robust IT solution is in place, OHR will store this information electronically.

Recommendation 6:

OHR concurs. OHR, in collaboration with NTEU and CBA negotiations, will determine whether additional alternative work schedules as outlined in this report should be adopted as options for the Securities and Exchange Commission.

Recommendation 7:

OHR concurs. OHR will develop a new Human Capital Directive which includes clear, up-to-date information on the laws, policies, guidelines, and procedures related to credit hours, compensatory time off, payment for overtime worked, and voluntary and uncompensated services. This will be completed at the completion of the CBA article negotiation.

Recommendation 8:

OHR concurs. OHR will continue to collaborate with the SEC management negotiation team to address the use of credit hours by employees working conforming schedules. OHR will work with the team to negotiate and ensure that the revised language conforms with applicable law.

Recommendation 9:

OHR concurs. OHR will review and identify measures to ensure that Senior Officers do not receive compensatory time off.

Recommendation 10:

OHR concurs. OHR, in collaboration with the Office of General Counsel and the Office of Personnel Management, will determine whether the SEC should adopt an official policy that addresses whether Senior Officers are permitted to earn credit hours.

Recommendation 11:

OHR concurs. OHR continues to consider and implement the recommendations set forth by the Telework Advisory Group. These were incorporated into the OHR's draft telework policy. This policy has been provided to the SEC management team responsible for current Collective Bargaining Unit negotiations underway. We will continue to communicate with the SEC negotiation team to stress the importance of union adoption of the policy.

Recommendation 12:

OHR concurs. OHR will revise the telework information provided to new SEC employees to include the information recommended.

Recommendation 13:

OHR concurs. OHR will develop and deliver comprehensive telework training for employees in FY12, to include the recommended items outlined in the recommendation. Training will be offered through SEC University at the completion of union/management negotiations on the telework policy and CBA article.

Recommendation 14:

OHR concurs. OHR will develop and deliver comprehensive telework training specifically geared towards managers in FY12, to include the recommended items outlined in the recommendation. Training will be offered through SEC University at the completion of union/management negotiations on the telework policy and CBA article.

Recommendation 15:

OHR concurs. OHR will offer the comprehensive telework training for employees and supervisors at least biannually and will provide customized telework training to individual offices and divisions as requested. OHR's draft telework policy includes the annual recertification of telework arrangements. This training will commence after completion of the CBA negotiations.

Recommendation 16:

OHR concurs. OHR will increase awareness of the SEC Telework Program, including telework options and the benefits of teleworking. Information will be distributed via administrative notices at least once a year and more frequently as appropriate/necessary.

Recommendation 17:

OAS concurs. OAS will establish and enforce procedures to ensure that employees who telework three or more days a week do not maintain private offices, but rather share office space. OAS will coordinate with the union as required.

Recommendation 18:

OHR concurs. OHR will collaborate with OIT in FY12 to identify options and an IT solution for developing an improved telework database, within budgetary constraints. This database will address the processing and storage of telework agreements to ensure reliable and valid data is reported to the Office of Personnel Management. OHR will continue to impress and monitor time and attendance tracking for telework in accordance with the August 2011 SEC Administrative Notice.

Recommendation 19:

OHR concurs. OHR will establish this requirement. OHR will notify Division Heads and administrative office contacts of the requirement to provide a copy of denied or terminated telework agreements.

Recommendation 20:

OHR concurs. OHR will develop goals and objectives for accomplishing those items on the telework program work plan. Many items were completed in FY 11 and OHR will continue to set goals and objectives to accomplish the remaining work in FY12.

Recommendation 21:

OHR concurs. OHR will establish telework-related goals and objectives in FY12. OHR will monitor progress to achieve goals and objectives and work with pertinent parties to improve IT solutions to monitor progress of the telework program.

Recommendations 22 and 23:

OHR and OFRMS concur with both recommendations. OHR, in collaboration with OFRMS, will amend the current SEC Form 1011, SEC *Telework Request and Agreement Form*. The language will address COOP responsibilities, bargaining unit status, and eligibility criteria. Additionally, in the next COOP Plan revision, OFRMS intends to include language that reinforces this recommendation.

Recommendation 24:

OFRMS concurs. OFRMS will amend the SEC Continuity of Operations (COOP) Plan by expanding the section on telework as recommended.

Recommendations 25 and 26:

OFRMS concurs with both recommendations. OFRMS will establish timelines and submission criteria, and will work with staff members in the Regional Offices to insure that their COOP Plan updates include the FEMA essential elements:

- Essential Functions
- Orders of Succession
- Delegations of Authority
- Continuity Facilities
- Continuity Communication
- Vital Records Management
- Human Capital
- Test, Training and Exercise (TT&E)
- Devolution of Control and Direction
- Reconstitution

OFRMS will also work with staff in the Headquarters and appropriate Regional Offices to identify essential functions, then insure that processes to assume those functions are incorporated into the appropriate COOP plans.

Recommendation 27:

OIT concurs. OIT will acquire the tools required and coordinate testing of some key applications used with remote access.

OIG Response to Management's Comments

The Office of Inspector General is pleased that the Office of Human Resources, the Office of FOIA, Records Management, and Security, the Office of Administrative Services, and the Office of Information Technology have concurred with all 27 recommendations addressed to their respective offices. We are also encouraged that these offices have indicated that efforts to enhance these program areas are already underway.

We believe that swift implementation of all of these important recommendations will significantly enhance SEC employees' work arrangements as well as improve the agency's telework and COOP-related programs. These improvements will result in a more productive and efficient work environment for all SEC employees.

Audit Requests and Ideas

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

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

Telephone: 202-551-6061

Fax: 202-772-9265

E-mail: oig@sec.gov

Hotline

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

Telephone: 877.442.0854

Web-Based Hotline Complaint Form:
www.reportlineweb.com/sec_oig