



Highlights of [GAO-09-613T](#), a testimony before the Subcommittee on Securities, Insurance, and Investment, Senate Committee on Banking, Housing, and Urban Affairs

Why GAO Did This Study

In recent years, questions have been raised about the capacity of the Securities and Exchange Commission's (SEC) Division of Enforcement (Enforcement) to manage its resources and fulfill its law enforcement and investor protection responsibilities. This testimony focuses on (1) the extent to which Enforcement has an appropriate mix of resources; (2) considerations affecting penalty determinations, and recent trends in penalties and disgorgements ordered; and (3) the adoption, implementation, and effects of recent penalty policies. The testimony is based on the GAO report, *Securities and Exchange Commission: Greater Attention Needed to Enhance Communication and Utilization of Resources in the Division of Enforcement* ([GAO-09-358](#), March 31, 2009). For this work, GAO analyzed information on resources, enforcement actions, and penalties; and interviewed current and former SEC officials and staff, and others.

What GAO Recommends

GAO made several recommendations, including that the SEC Chairman (1) further review the level and mix of Enforcement resources, and assess the impact of the division's internal case review process; (2) examine whether the 2006 corporate penalty policy is achieving its intended goals; and (3) take steps to ensure appropriate staff participation in policy development and review. SEC agreed with the recommendations.

To view the full product, including the scope and methodology, click on [GAO-09-613T](#). For more information, contact Orice Williams at 202-512-8678 or williams@ga.gov.

SECURITIES AND EXCHANGE COMMISSION

Greater Attention Needed to Enhance Communication and Utilization of Resources in the Division of Enforcement

What GAO Found

Recent overall Enforcement resources and activities have been relatively level, but the number of investigative attorneys decreased 11.5 percent over fiscal years 2004 and 2008. Enforcement management said resource levels have allowed them to continue to bring cases across a range of violations, but both management and staff said resource challenges have delayed cases, reduced the number of cases that can be brought, and potentially undermined the quality of some cases. Specifically, investigative attorneys cited the low level of administrative, paralegal, and information technology support, and unavailability of specialized services and expertise, as challenges to bringing actions. Also, Enforcement staff said a burdensome system for internal case review has slowed cases and created a risk-averse culture. SEC's strategic plan calls for targeting resources strategically, examining whether positions are deployed effectively, and improving program design and organizational structure. Enforcement management has begun examining ways to streamline case review, but the focus is process-oriented and does not give consideration to assessing organizational culture issues.

A number of factors can affect the amount of a penalty or disgorgement that Enforcement staff seek in any individual enforcement action, such as nature of the violation, egregiousness of conduct, cooperation by the defendant, remedial actions taken, and ability to pay. In 2006, the Commission adopted a policy that focuses on two factors for determining corporate penalties: the economic benefit derived from wrongdoing and the effect a penalty might have on shareholders. In 2007, the Commission adopted a policy, now discontinued, that required Commission approval of penalty ranges before settlement discussions. Setting aside the effect of any policies, total penalty and disgorgement amounts can vary on an annual basis based on the mix of cases concluded in a particular period. Overall, penalties and disgorgements ordered have declined significantly since the 2005-2006 period. Total annual penalties fell 84 percent, from a peak of \$1.59 billion in fiscal year 2005 to \$256 million in fiscal year 2008. Disgorgements fell 68 percent, from a peak of \$2.4 billion in fiscal year 2006 to \$774.2 million in fiscal year 2008.

Enforcement management, investigative attorneys, and others agreed that the two recent corporate penalty policies—on factors for imposing penalties, and Commission pre-approval of a settlement range—have delayed cases and produced fewer, smaller penalties. GAO also identified other concerns, including the perception that SEC had “retreated” on penalties, and made it more difficult for investigative staff to obtain “formal orders of investigation,” which allow issuance of subpoenas for testimony and records. Our review also showed that in adopting and implementing the penalty policies, the Commission did not act in concert with agency strategic goals calling for broad communication with, and involvement of, the staff. In particular, Enforcement had limited input into the policies the division would be responsible for implementing. As a result, Enforcement attorneys reported frustration and uncertainty in application of the penalty policies.