



U.S. COMMODITY FUTURES TRADING COMMISSION

Office of Inspector General

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April 25, 2016

TO: Timothy G. Massad, Chairman
Commissioner Sharon Y. Bowen
Commissioner J. Christopher Giancarlo

FROM: A. Roy Lavik *ARL*
Inspector General

SUBJECT: A Review of Space Utilization of the Washington D.C. Office of the Commodity Futures Trading Commission

Attached is my Office's review of space utilization in the Washington D.C. Office.

We find that the CFTC currently spends approximately \$2.0–\$2.8 million per year on empty office space in the D.C. Office. At the end of the D.C. lease in 2025, we estimate the agency will have spent approximately \$36.4–\$48.3 million dollars on empty office space, unless the vacancy rate decreases.

We also include updates on the use of space in the Kansas City, Chicago, and New York Offices. Including all offices, the agency has an agency-wide occupancy rate of 78%–81%. We estimate the agency will spend approximately \$44.7–\$56.8 million dollars on empty office space over the lives of its current leases.

Management's comments, attached at the end of the Review, state that "The Commission bases its decisions regarding resource utilization on its ability to fulfill its statutory mission." We believe the Commission should base its decisions regarding resource utilization on the resources Congress appropriates. Doing otherwise leads to waste of taxpayer money.

I am quite pleased with the level of cooperation my Office has received from Management and staff in the Office of the Executive Director during our fieldwork for this review. As always, I appreciate your continuing support of my Office.

If you have any questions or wish to discuss anything further, please call me at x5107.

Attachment: Review of Leasing and Occupancy Levels in the Washington D.C. Office at the Commodity Futures Trading Commission

Cc (with attachment): Anthony C. Thompson, Executive Director

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A Review of Space Utilization of the Washington, D.C., Office of the Commodity Futures Trading Commission

Prepared by
The Office of the Inspector General
Commodity Futures Trading
Commission

April 25, 2016

This CFTC OIG Report is subject to the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, and has been redacted as determined by the Commodity Futures Trading Commission. The redactions are not determined by the CFTC OIG.

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INTRODUCTION AND EXECUTIVE SUMMARY

The Commodity Futures Trading Commission (“CFTC”) currently has offices located in Washington, D.C., New York, NY, Chicago, IL, and Kansas City, MO. The D.C. office is the Commission’s headquarters and the largest of its four offices, occupying ten floors in downtown D.C. and housing 762 staff members and contractors.¹

In June 2014, our office, the CFTC’s Office of the Inspector General (“OIG”), released a review of the CFTC’s Kansas City office. We found that the CFTC used only one-third of its rented space and would pay approximately \$3.6 million for vacant office space over the course of its ten-year lease. We recommended the Commission seek to return space to the Kansas City landlord in order to reduce monthly rental costs.²

In February 2015, we released a review of the CFTC’s Chicago office. We reported an occupancy rate of over 80% and offered recommendations to increase efficiency in the premium downtown office space and to reconfigure open conference rooms to maintain confidentiality of Enforcement and other deliberations.³

In June 2015, we released a review of the CFTC’s New York office. We reported an occupancy rate of 62%⁴ and recommended the Commission seek to return space to the New York landlord in order to reduce monthly rental costs.⁵

In this review, we find that the CFTC spends approximately \$2.0–2.8 million per year on empty office space in D.C., and that the D.C. office has an occupancy rate between 79% and 84%. We estimate that the CFTC will spend, throughout all four of its offices, over the terms of its current leases, between \$44.7 and \$56.6 million on empty office space.

¹ Occupancy numbers in this report are from the CFTC’s space-management system (described below) as of February 12, 2016.

² A Review of Space Utilization of the Kansas City Regional Office of the Commodity Futures Trading Commission (2014) [hereinafter *Kansas City Review*], http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/oig_rkcr061014.pdf. All links last visited April 25, 2016.

³ A Review of Space Utilization of the Chicago Regional Office of the Commodity Futures Trading Commission (2015) [hereinafter *Chicago Review*], http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/oig_rkcr042715.pdf.

⁴ As we noted at the time of releasing our New York review, the 62% occupancy rate we reported comes from the agency’s space-management system. However, prior to the publication of our report, changes to the information recorded in the system resulted in a significantly higher system-reported occupancy rate. We discuss at length in this report various changes to the space-management system that affect system-reported occupancy rates.

⁵ A Review of Space Utilization of the New York Regional Office of the Commodity Futures Trading Commission (2015) [hereinafter *New York Review*], available at http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/oig_rny061815.pdf.

Although we note several concerns and issues regarding D.C. office space utilization, we choose to focus on a single, but fundamentally important, recommendation:

- **We recommend the Commission base all future leasing decisions and all decisions impacting the use of existing space on realistic expectations of budgetary resources. This would lessen unused space.**

We also note in an addendum some recent legal issues related to the agency's leases but outside the scope of this review. In a second addendum, we provide updates regarding the CFTC's occupancy rates in the Kansas City, Chicago, and New York offices, and the Commission's progress in implementing our recommendations with respect to those offices.

SCOPE AND METHODOLOGY

We conducted our review of the D.C. office in a fashion similar to our recent reviews of the Kansas City, Chicago, and New York offices. To complete our review, we interviewed 28 CFTC employees in various divisions. We requested and reviewed procurement, leasing, architectural, and related documents (including email), and examined the CFTC's space-management system. We also reviewed federal leasing rules and standards, Government Accountability Office ("GAO") reports, and other materials from government-wide efforts to increase efficient use of office space. We focused once again on occupancy rates and the efficient use of space.

In 2015, as a result of concerns raised by our previous reviews of wasted/vacant CFTC office space, members of Congress asked the GAO to study the CFTC's leases. GAO began an audit and legal review as we were turning our attention to the CFTC's D.C. headquarters. In order not to duplicate GAO's efforts, we coordinated with the GAO audit team.⁶ We issued a discussion draft to CFTC management on March 1, 2016, requesting their comments within 30 days. CFTC management requested two extensions, which were granted, and submitted an unsigned version of their comment on April 15 and the final, signed version on April 18, 2016. The management response prompted two minor changes to this final report;⁷ however, our conclusions and recommendations are not altered.

⁶ Section 4(c) of the Inspector General Act of 1978, as amended (IG Act), 5 U.S.C. app. 3 § 4(c) (2015), requires the Inspectors General to "give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation." Section 4(c) is made applicable to the Designated Federal Entity Inspectors General at section 8G(g)(1) of the IG Act. *Id.* app. 3 § 8G(g)(1).

⁷ We clarified that CFTC does not lease a few vacant retail spaces on the Lobby and Mall levels of its headquarters building, and changed the name of the CFTC "hearing room" to the CFTC "Conference Center."

BACKGROUND

Legal Background

OIG has a regulatory mandate to detect and prevent waste and abuse, and to recommend policies designed to promote the economy, efficiency, and effectiveness of the CFTC.⁸

The problem of excess and underutilized office space exists throughout the federal government.⁹ In 2003, GAO designated real property a high-risk area, citing the government's overreliance on costly, long-term leasing.¹⁰ In 2013, GAO declared that "the federal government faces long-standing problems in managing real property, including an overreliance on leasing, and excess and underutilized property."¹¹ GAO also stated that "agencies often do not have a strong understanding of the real property held by other agencies and may lack the authority or expertise to lease their own underutilized property to other federal agencies."¹²

Efficient use of office space is sufficiently important to warrant not only GAO's attention but also Presidential Memoranda,¹³ Executive Orders,¹⁴ Congressional hearings,¹⁵ speeches,¹⁶ and other legislative activity.¹⁷

⁸ *Id.* app. 3 § 2(2).

⁹ See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-573T, FEDERAL REAL PROPERTY: EXCESS AND UNDERUTILIZED PROPERTY IS AN ONGOING CHALLENGE (2013), <http://www.gao.gov/products/GAO-13-573T>; Jeff Zients, *For Sale: Cutting Waste by Getting Rid of Excess Real Estate*, WHITE HOUSE BLOG (Oct. 20, 2011, 9:51 AM), <http://www.whitehouse.gov/blog/2011/10/20/sale-cutting-waste-getting-rid-excess-real-estate>; Luke Gelber Waste Watcher, *Time to Get Real with Federal Property*, CITIZENS AGAINST GOV'T WASTE (Apr. 2013), <http://cagw.org/media/wastewatcher/time-get-real-federal-property>.

¹⁰ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-197, FEDERAL REAL PROPERTY: STRATEGY NEEDED TO ADDRESS AGENCIES' LONG-STANDING RELIANCE ON COSTLY LEASING (2008), <http://www.gao.gov/assets/280/271449.pdf>.

¹¹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-422T, FEDERAL REAL PROPERTY: HIGH-RISK DESIGNATION REMAINS DUE TO PERSISTENT MANAGEMENT CHALLENGES (2013), <http://www.gao.gov/products/GAO-13-422T>.

¹² *Id.*

¹³ See, e.g., Presidential Memorandum, *Disposing of Unneeded Federal Real Estate*, 2010 Daily Comp. Pres. Doc. 483 (June 10, 2010), <http://www.whitehouse.gov/the-press-office/presidential-memorandum-disposing-unneeded-federal-real-estate> (requiring agencies to dispose of unneeded federal real estate and directing agencies to "take immediate steps to make better use of remaining property assets as measured by utilization and occupancy rates").

¹⁴ See, Exec. Order No. 12,411, 3 C.F.R. § 155 (1983), <http://www.archives.gov/federal-register/codification/executive-order/12411.html> (requiring agencies to reduce the amount of work space to that which is essential for known agency missions and "to institute fundamental changes in the manner in which Federal work space is managed to ensure its efficient utilization."); Exec. Order No. 13,327, 69 Fed. Reg. 5,897 (Feb. 4, 2004), <http://www.gpo.gov/fdsys/pkg/FR-2004-02-06/pdf/04-2773.pdf> (establishing a Federal Real Property Council to address issues in property acquisition and management and adding "changes in the amounts of vacant Federal space" as a performance measure for covered Agencies, though it did not apply to the CFTC); Exec. Order No. 13,576, 76 Fed. Reg. 35,297 (June 13, 2011), <http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov> (directing agencies to conduct "frequent data driven reviews of agency progress toward . . . reducing high risk contracting practices, improving the management of Federal real estate"); Exec. Order No. 13,589, 76 Fed. Reg. 70,863 (Nov. 9, 2011),

A Brief History of the D.C. Lease

In 1994, the CFTC entered into a ten-year lease to occupy several floors of Three Lafayette Centre, 1155 21st Street, NW.¹⁸ Since then, through amendments to the original lease and exercise of various contractual rights, the CFTC has expanded its presence to occupy practically the entire building, with the exception of a few vacant retail spaces on the Lobby and Mall levels, and has extended the term of the lease through 2025.¹⁹

The most notable changes relating to the CFTC's D.C. office space began in 2009. In the wake of financial-market turmoil, the CFTC anticipated passage of consequential legislation expanding the Commission's authority, and it began planning for large increases in budget and staffing.²⁰

The CFTC retained the broker Savills Studley, one of GSA's regional brokers, to conduct a market survey to determine the most cost-effective option for expansion. The CFTC provided Savills Studley with a plan detailing the number of current and projected personnel, as well as other requirements for the new space. Savills Studley's market survey included buildings that were competitive in price with the CFTC's current lease and equipped with a large rentable hearing room.²¹ The market survey focused on buildings within an approximately three-mile radius around the CFTC's existing location and determined, under CFTC's assumptions, that the combined leasing and build-out costs of the other surveyed buildings would be higher than renewal of the CFTC's current lease.

Federal space" as a performance measure for covered Agencies, though it did not apply to the CFTC); Exec. Order No. 13,576, 76 Fed. Reg. 35,297 (June 13, 2011), <http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov> (directing agencies to conduct "frequent data driven reviews of agency progress toward . . . reducing high risk contracting practices, improving the management of Federal real estate"); Exec. Order No. 13,589, 76 Fed. Reg. 70,863 (Nov. 9, 2011), <http://www.whitehouse.gov/the-press-office/2011/11/09/executive-order-13589-promoting-efficient-spending> (requiring agencies to "act in a fiscally responsible manner, including by minimizing their costs").

¹⁵ See, U.S. House Committee on Oversight and Government Reform, Subcommittee on Government Operations, Hearing, *Government Operations Oversight: Addressing Unused and Vacant Federal Property* (April 25, 2013), <http://oversight.house.gov/hearing/government-operations-oversight-addressing-unused-and-vacant-federal-property/>; U.S. House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, Hearing, *The Securities and Exchange Commission's \$500 Million Fleecing of America: Part Two* (July 6, 2011), <https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg67285/html/CHRG-112hhrg67285.htm>.

¹⁶ E.g., CONG. REC. H5635-36 (daily ed. June 23, 2014) (statement of Rep. Fincher), <http://thomas.loc.gov/cgi-bin/query/F?r113:2.:/temp/~r1138InTie:e243078>: (quoting CFTC OIG's Kansas City Review).

¹⁷ See *id.* at H5636 (adopting an amendment to H.R. 4413 directing the Comptroller General of the United States to conduct a study of the efficiencies in leasing and rental costs at the CFTC).

¹⁸ Lease Agreement between 1155 21st Street Associates and the United States of America, Dec. 30, 1994 [hereinafter *1994 D.C. Lease*].

¹⁹ Fifth Amendment to the D.C. Lease, Aug. 14, 2009.

²⁰ Internal CFTC document, "Justification for Other than Full and Open Competition," undated.

²¹ Internal CFTC document, "Survey of 200,000+ Square Foot sites available now – 12/2010," Feb. 12, 2009.

The CFTC chose to remain in its present building and entered into discussions with the landlord to extend its lease. The resulting Fifth Amendment to the D.C. Lease extended the lease term through 2025 and created new rights of expansion that, through subsequent exercises and further amendments, has resulted in the agency's occupancy of effectively all of Three Lafayette Centre.

Changes to CFTC's Space Management System

For approximately five years, the CFTC has been using a service called FoxFMS to manage its office space. FoxFMS includes a web-based "computer-aided facility management" ("CAFM") application that presents interactive floorplans enabling agency management to keep track of, and make changes to, employee office assignments. FoxFMS also provides various types of space-usage information, including summary data regarding occupied and unoccupied offices throughout the CFTC.

The information reported by FoxFMS, however, is only as reliable as the data entered into it. According to interviews toward the end of 2015 with current CFTC administrators of FoxFMS, an on-site Fox contractor administered the application for the agency prior to mid-2014. Due to the limited nature of the CFTC's needs for the system, information entered at the time lacked standardization, consistency, and detail. In effect, this means that the information on which we relied for our three prior reviews contained errors. CFTC staff did not raise this issue in prior interviews, and Management did not raise this issue in its formal response to the prior reviews.

In mid-2014, around the time we released our first review of CFTC office space, the CFTC decided to bring FoxFMS administration in-house. Since then, three CFTC employees have had system administrator access and responsibility for administering FoxFMS. The CFTC's FoxFMS administrators state that in mid-2015, they began an effort to clean up the information in FoxFMS to make it more consistent, useful, and reliable for the agency's space-planning purposes.²² On December 9, 2015, the CFTC's FoxFMS administrators sent an email to our

²² Among other changes, the administrators have a new methodology for classifying a given space as occupiable or un-occupiable and in representing its intended maximum occupancy. Previously, a room's maximum occupancy, as listed in FoxFMS, could vary if more personnel were assigned to the room than the room was originally built for. For example, if there were two occupants in an office and another occupant moved in, the maximum capacity of that office would change from two to three. If the number of occupants went back from three to two, the maximum capacity would change again. Moreover, usable spaces like file rooms or other storage spaces, despite being classified as unoccupiable because they were not intended for occupation as offices or workstations, had in some cases been given a non-zero maximum occupancy value. Conference rooms, on the other hand, were characterized as being occupiable, but with a maximum occupancy of zero, unless being used temporarily as workspace by contractors or other personnel. Those methodological quirks have been purged. A room's maximum occupancy now, we are told, reflects its intended capacity as a workspace, based on its layout, furnishings, and intended use. Only workstations and offices will be classified as occupiable and given a non-zero maximum occupancy. And very-

office and to GAO stating that, due to the updates and corrections being implemented, the occupied and available seat counts reported in the system would not be reliable until approximately the second week in January 2016. We received notice on February 8, 2016, that the effort was finally completed.

We note this effort because the revisions included changes that affect the occupancy numbers reported by FoxFMS. Spaces no longer intended to be occupied as workspace for agency personnel are no longer counted toward the occupancy rate. Some of these changes have the effect of increasing the *apparent* occupancy rate (i.e., the rate reported by FoxFMS) without improving the *actual* occupancy rate. That is, some changes increase the occupancy rate reported by FoxFMS despite no material changes to square footage leased, or rent paid, or the number of agency personnel occupying the space being leased.²³

Due to the above issues, and the inconsistency in FoxFMS numbers between prior reviews and this one, we present both the current occupancy rate listed in FoxFMS and an alternative occupancy rate calculated from prior FoxFMS maximum capacity values. Doing so provides a more complete understanding of space usage and allows for comparison with our previous reports.

FINDINGS

D.C. Office Occupancy Rate

In our Kansas City Review of June 2014, we noted that the D.C. office had 667 occupants of 966 available work spaces, for an occupancy rate of 69%.

As of February 12, 2016, FoxFMS reports that the D.C. office has 762 occupants of 912 available work spaces, for a reported occupancy rate of 84%.

The increase in the reported occupancy rate results from an increase of 95 more occupants (i.e. the difference between 762 and 667 occupants) and a decrease of 54 fewer

short-term on-site service-providers—e.g., KPMG auditors who briefly worked in the OIG conference room on the FY 2015 Financial Statement Audit—will no longer be listed as occupants, so as not to temporarily distort reported agency occupancy rates. After completion of this revision process, the capacity and occupancy numbers listed in FoxFMS should be, according to the FoxFMS administrators, less variable, more reliable, and more meaningful.

Most of the changes affecting occupancy data were not documented and are not available in FoxFMS archives. We therefore rely on the administrators' explanation of what motivated the change in methodology and why the maximum capacity of the D.C. office has fallen by 54 work spaces since June 2014.

²³ Some changes, such as no longer counting very-short-term service-providers as occupants, can decrease, rather than increase, the apparent/reported occupancy rate. However, such changes are mostly temporary and dominated by changes that increase the apparent/reported occupancy rate.

occupiable work spaces (i.e. the difference between 966 and 912).²⁴ According to the CFTC administrators of FoxFMS, the substantial decrease in D.C. work spaces primarily reflects the methodological changes described above. Because we are unable to verify the reliability of these changes, and because some of the changes obfuscate the existence of empty offices,²⁵ we also present the occupancy rate using the reported maximum capacity from June 2014. Doing so yields an occupancy rate of 79%—762 occupants of 966 available work spaces.

Based on these calculations, approximately 16%–21% of DC office space consists of vacant offices or work stations. Because some swing space is desirable for visitors, or to accommodate minor staffing changes, we have used a 95% target for occupancy in the past and continue to use 95% for this review. Using this metric, and current FoxFMS reports we estimate the CFTC is spending approximately \$2.0–2.8 million per year on empty offices in Washington, D.C.²⁶

We estimate that the CFTC’s spending on empty space in all four of its offices will total between \$44.7 and \$56.8 million over the life of the leases. Our estimate varies by \$12.1 million (mostly in D.C.) due to the reclassification of space in FoxFMS. Tables 1 and 2 below break down our estimates by office and between past and future spending, taking into account a 95% target for occupancy.²⁷ Table 1 uses maximum-capacity numbers listed in FoxFMS from mid-2014. Table 2 uses maximum-capacity numbers as of February 12, 2016.

²⁴ *Supra*, note 22.

²⁵ As of February 21, 2016, FoxFMS reports that the fourth floor is over-capacity—99 occupants but a maximum capacity of 98—even though there are several empty offices on that floor. The discrepancy arises because half a dozen offices on the fourth floor are listed in FoxFMS as having maximum capacity of one person but house multiple people—a total of 15 people in six offices. There are five offices and three workstations listed as and confirmed to be vacant; a sixth office is physically vacant but still listed as occupied. FoxFMS therefore lists the fourth floor as one person over maximum capacity despite the 8-9 empty work spaces.

²⁶ Based on current information in FoxFMS regarding number of personnel and available seating on each floor, the CFTC’s D.C. office would still have an occupancy rate at or below 95% if it had one fewer floor, with additional room for growth to be gained from remodeling certain underused areas.

²⁷ For a more detailed update on occupancy rates in Kansas City, Chicago, and New York, *see* addendum 2 at 20.

Table 1: Estimated expenditures, past and future, on empty office space (using mid-2014 maximum-capacity numbers).

	Kansas City	Chicago	New York	D.C.	ALL OFFICES
Current # Occ. / #Seats	33 / 78	153 / 173	101 / 135	762 / 966	1049 / 1352
Current Occupancy Rate	42%	88%	75%	79%	78%
Estimated <i>past</i> rent payments for empty office space	\$1.2 million	\$0.9 million	\$1.4 million	\$21.8 million	\$25.3 million
Estimated <i>future</i> rent payments for empty office space	\$1.6 million	\$0.3 million	\$3.1 million	\$26.5 million	\$31.5 million
TOTAL rent payments for empty office space over life of current lease/extension	\$2.8 million	\$1.2 million	\$4.5 million	\$48.3 million	\$56.8 million

Table 2: Estimated expenditures, past and future, on empty office space (using current maximum-capacity numbers).

	Kansas City	Chicago	New York	D.C.	ALL OFFICES
Current # Occ. / #Seats	33 / 72	153 / 171	101 / 134	762 / 912	1049 / 1289
Current Occupancy Rate	46%	89%	75%	84%	81%
Estimated <i>past</i> rent payments for empty office space	\$1.2 million	\$0.9 million	\$1.4 million	\$17.6 million	\$21.1 million
Estimated <i>future</i> rent payments for empty office space	\$1.5 million	\$0.3 million	\$3.0 million	\$18.8 million	\$23.6 million
TOTAL rent payments for empty office space over life of current lease/extension	\$2.7 million	\$1.2 million	\$4.4 million	\$36.4 million	\$44.7 million

Potential Waste and Poorly Planned/Used Spaces in the D.C. Office

Conference Center

Although the CFTC already had a hearing room located on the first floor of the building, the agency negotiated with the landlord to acquire a much larger space on the first floor to create a new, much larger hearing room.²⁸ The CFTC hired a contractor to build out what is now called the Conference Center and other adjacent amenities and began paying rent for the entire space in

²⁸ According to a longtime agency employee, then-Chairman Gary Gensler decided the CFTC needed something larger after seeing the SEC's very large hearing room.

2011.²⁹ The buildout required destruction of a multi-story, vaulted, glass-enclosed, marble atrium that previously hosted tenant functions and catered events. The buildout also included additions or modifications to a lunch room, restrooms, kitchen, mailroom, corridors, and reception area.

The aggregate cost of the first-floor buildout was just over \$3.1 million.³⁰ The Conference Center, as well as the adjoining anteroom, A/V control booth, and conference center storage room (all used in conjunction with the Conference Center), comprise roughly 43% percent of the total built-out space.³¹ A simple pro-rated estimate of the cost of the Conference Center construction would therefore be 43% of \$3.1 million, or approximately \$1.3 million.³² However, the construction costs for much, if not all, of the space adjacent to the Conference Center likely would not have been incurred had the Conference Center itself not been created. Therefore, it is reasonable to conclude that the cost of creating the Conference Center is much closer to, if not the entirety of, the full \$3.1 million.³³

The CFTC pays rent on a monthly basis for three separate sections of the Plaza Level of the D.C. office. The section containing the Conference Center also includes the adjoining anteroom and A/V control booth.³⁴ The current cost associated with renting the Conference Center section is approximately \$38,000 per month, or approximately \$456,000 per year.³⁵ The monthly rental costs grow at about 2% per year through the end of the lease in 2025.

We received Conference Center reservation data for the period January 1, 2015, to November 9, 2015. During that period, there were 209 work days. The Conference Center was reserved on 127 of those 209 days. There were 175 reservations in all (some days had more than one reservation); 42 of the reservations were for set-up time (some for the entire day preceding an event) and 16 of the reservations were for maintenance. The Conference Center was not reserved on 82 (39%) of the 209 work days. We are unable to report on attendance at Conference Center events because the CFTC does not ordinarily keep track of it.³⁶

²⁹ Fifth Amendment to the D.C. Lease at 9.

³⁰ Base costs were just over \$2.9 million and change orders were just under \$200,000.

³¹ The entire Plaza Level space leased in association with the creation of the Conference Center was 14,854 square feet. The Conference Center, including its anteroom, vestibules, and A/V control room, occupies 6,375 square feet of that. The old hearing room occupied a section of the first floor totaling just over 3,200 square feet; that space was redeveloped into offices.

³² The costs of the Plaza Level buildout were not itemized by section.

³³ The costs presented here do not include the cost of demolishing the old hearing room, which was remodeled into a suite of offices.

³⁴ Internal CFTC document, "CFTC Construction Costs as of 6/30/2014," Jun. 30, 2014.

³⁵ The monthly rent for the Conference Center space in December 2015 was comprised of \$36,593.87 in rent, \$670.00 for operating expenses, and \$715.00 in real estate taxes.

³⁶ Reservation requests usually list anticipated attendance; these values ranged from 19 to 250 for the reservations we reviewed. We also received data from the CFTC showing that trainings held in the Conference Center during 2015 ranged from 14 to 113 course registrants, though not all registrants were in the D.C. office. Some Conference Center events have sign-in sheets, but those events are the exception.

All non-maintenance Conference Center reservations (including all set-up times, tentative/hold/canceled reservations, social events, etc.) totaled approximately 730 hours, for a per-hour rental cost of \$534/hr.³⁷ If the Conference Center were reserved for 8 hours every work day throughout the year, the Conference Center would effectively cost \$227/hr. to rent.³⁸

The CFTC informed us that it has not received any fees for renting out the Conference Center. After our Kansas City Report recommended subleasing office space or returning space to the landlord, the Office of General Counsel (“OGC”) researched the law and concluded that the agency has limited authority to sublease and does not have the authority to keep funds earned from subleasing office space—the collected fees would go into the U.S. Treasury.³⁹ As a result, we were told the agency has no incentive to rent the Conference Center out to third parties and therefore does not do so.⁴⁰ However, we note with approval that the Chairman indicated in recent testimony before Congress that even if funds obtained through subleasing unused leased space went back to the U.S. Treasury, “that’s better for the taxpayer.”⁴¹

Market Surveillance Room and the Dance Floor

In designing the third floor, the Office of the Executive Director (“OED”) hired an architectural firm. The design was to include a Market Surveillance Room for the Division of Market Oversight (“DMO”)—a room with numerous computer systems and displays where a large number of DMO staff would be able to review real-time market data and information, and events germane to its mission.

CFTC staff believe the architectural firm assumed the agency had clients coming in to observe the division, and it designed the room to be similar to a Wall Street trading room, with floor-to-ceiling glass walls through which people outside the room can observe the activity within. But one of the primary purposes of the Market Surveillance Room is to review confidential “Section 8” data, making glass walls an obviously inappropriate design choice.⁴²

³⁷ Maintenance periods comprised 124 hours of the total 854 hours reserved. $\$38,000/\text{month} * 10.25 \text{ months} / 730 \text{ hours} = \$533.56/\text{hr.}$

³⁸ There were a total of 251 work days in 2015, which translates to 2,008 hours. $\$38,000/\text{month} * 12 \text{ months} / 2008 \text{ hours} = \$227.09/\text{hr.}$

³⁹ Internal CFTC Memorandum, “Legal Opinion on Kansas City Office Leasing Questions,” Apr. 11, 2014.

⁴⁰ One CFTC employee did point out that the agency occasionally receives discounts on trainings when it hosts them in the Conference Center and invites other agencies’ employees to participate.

⁴¹ House Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, Hearing, *Commodity Futures Trading Commission Budget*, Feb. 10, 2016 (testimony of Timothy Massad, Chairman, CFTC), <https://www.youtube.com/watch?v=vuqFzxAUiOM> at 1:40:47.

⁴² Section 8(a)(1) prohibits the Commission from “publish[ing] data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” 7 U.S.C. § 12(a)(1) (2015).

The architectural firm’s design also included a 720 sq. ft. open area some refer to as the “Dance Floor”—a reference to its size and lack of usefulness. The Dance Floor was apparently designed to be a reception area, where clients could observe activity in the Market Surveillance Room while waiting for the DMO director or staff. But DMO doesn’t generally have clients or visitors, and, as mentioned previously, surveillance involves review of confidential Section 8 data, making observers problematic.⁴³ The Dance Floor is mostly an empty space—a lounge for the occasional newspaper reader or small office celebration.

According to our interviews with staff, the then-Acting Director of DMO objected to the design of the entire area—the Market Surveillance Room and the Dance Floor. In addition to wanting the Market Surveillance Room more secure, DMO also asked to locate staff offices nearby, because such a layout would better contribute to the physical workflow of the division. DMO was told by the Executive Director at the time that a redesign was not an option,⁴⁴ though work had not been started on the Market Surveillance Room when the redesign was requested, according to our interviews. DMO then requested and received installation of adjustable shades to provide the necessary security—when DMO staff meet to look at Section 8 data, they draw the shades for the duration of the meeting.⁴⁵

Conference Rooms

There are 36 conference rooms located throughout the D.C. office. Generally, conference rooms are not assigned to, or reserved for, particular divisions within the agency.⁴⁶ Although some employees indicated that securing a conference room on their own floor can be difficult, especially on short notice, conference rooms on other floors can usually be found. This is consistent with our review of conference room reservation data, as well as with employees on other floors having no issues with scheduling conference rooms.⁴⁷

One unnecessary source of conference room unavailability—and a common complaint among agency staff—is a 30-minute setup time automatically required by the agency’s conference room reservation system.⁴⁸ According to our interviews, most meetings require no

⁴³ There is also a conference room located next to the Market Surveillance Room, requiring DMO staff to take extra precaution to make sure Section 8 data is not observable when the adjacent conference room is in use.

⁴⁴ One DMO staff member regrettably described the entire market surveillance and Dance Room concoction as a “total failure of understanding the mission of surveillance.” Please see our Chicago Review for more examples of miscommunication between management and CFTC’s operating Divisions.

⁴⁵ We have not heard any complaints about the Market Surveillance Room’s size or interior furnishings.

⁴⁶ Exceptions to this general rule include the conference room within the OIG suite.

⁴⁷ One division expressed an interest in converting a relatively unused conference room into multiple offices; another suggested that conference rooms should generally be located in interior spaces to maximize the number of offices having windows.

⁴⁸ The program, called Resource Scheduler, allows an employee to use Outlook’s directory information to book conference rooms and send meeting invitations to other employees. Preparatory time can be needed for setting up audio-visual feeds with the Chicago, Kansas City or New York office.

set-up, meaning that conference rooms are tied up unnecessarily.⁴⁹ And despite the mandatory setup time, multiple interviewees noted frequent problems with audio-visual feeds between offices.⁵⁰

The Logistics and Operations branch of OED has discussed decreasing setup time between meetings to fifteen minutes or less. However, ODT has expressed reservations about eliminating the thirty-minute blocks, noting that there are situations where ODT needs the full thirty-minute prep time to satisfy certain technological requirements of the meeting. Most interviewees believe the setup time should be optional, depending on the needs of the meeting.

File Rooms

On the fourth floor of the D.C. office, the CFTC has an 839 sq. ft. file room with movable shelves, most of which are empty. The shelves are being used, we are told, to hold a collection of documents not commonly accessed in hardcopy,⁵¹ and some overflow volumes from the agency's 2,099 sq. ft. library and reading room. Also on the fourth floor is a 536 sq. ft. records room that is sparsely filled with boxes of documents, other materials, tables, and a printer/copier. The combined contents of these two file rooms would likely fit into a single room. We were also told by staff that Management does not want to dismantle the moving shelves because they were expensive to install and because removal would cost money. We note further that the CFTC has hallways lined with lockable 3-foot-wide filing cabinets, many of which are unused—we counted 48 empty 3-foot-wide drawers on the tenth floor.

Cubicle Space

Some members of division management and staff voiced various complaints about cubicles on certain floors and suggested they were erected without consultation with the divisions. One complaint about cubicles is that they interfere with the flow of the office, making impromptu and informal meetings less likely than when the spaces were more open and furnished differently.⁵² Another complaint is that cubicles near offices result in closed office doors, due to the noise and foot traffic, and fewer open doors creates a less congenial atmosphere and, again, fewer impromptu work conversations.

⁴⁹ Staff occasionally can work around the reservation system to make meetings fit consecutively—for example, if a conference room is booked until noon, a staff member desiring an hour-long noon meeting might schedule a reservation for thirty minutes beginning at 12:30.

⁵⁰ We experienced such problems in two interviews we conducted via conference room A/V links to other offices.

⁵¹ The documents have been scanned in and made available electronically via the agency's internal network.

⁵² Multiple interviewees expressed a desire for more informal meeting areas.

Critical Space Needs

The Office of Data & Technology (“ODT”) currently has staff on the second, fifth, sixth, and mall-level floors of the D.C. office. On the fifth and sixth floors, ODT maintains the “Computer Room” and the “Forensics Room.”

The Computer Room, located on the fifth floor of the D.C. office, houses the servers and other equipment that provide for the agency’s day-to-day computing needs. These systems are outgrowing their existing space. The agency intends to move these systems to an off-site data center, which will make the existing space available for other uses. We will continue to monitor this situation.

The Forensics Lab, located on the sixth floor, houses computer systems run by ODT’s forensics team to store and analyze digital materials collected in the course of investigations by the Division of Enforcement. The demands on the Forensics Lab have increased over time, and it too has outgrown its existing space—ODT staff have reported problems with overloaded circuits.⁵³ ODT is currently working with Logistics and Operations to find a suitable space with sufficient power and ventilation to house the Forensics Lab.

We expect these information technology needs will be met swiftly by Management, especially in light of appropriations earmarking \$50 million for the agency’s IT systems in FY 2015 and FY 2016.⁵⁴

Tenant Improvement Allowances

The CFTC has negotiated its leases to include “tenant improvement allowances,” which are lump-sum amounts of money made available to the CFTC by the landlord to cover costs of construction and other improvements to the rented office space. Absent the need for such improvements, the allowances can be put toward rent payments.

We reviewed the language and structure of the termination clause in the D.C. lease, the contents of a memo from the CFTC’s broker to the CFTC’s contracting officer describing the rationale of the termination clause, and documents from OED detailing the accounting for the allowances. The cash allowances are not free money or gifts from the landlord. The allowances are repaid to the landlord over the life of the lease via higher monthly rent payments than would

⁵³ Electrical needs stem not only from the computing systems themselves but from the cooling systems required to keep the computing systems from overheating.

⁵⁴ See “Consolidated and Further Continuing Appropriations Act, 2015,” Pub. L. 113–235, 128 Stat. 2357 (Dec. 16, 2014) (appropriating \$250,000,000 to the CFTC, “of which not less than \$50,000,000, to remain available until September 30, 2016, shall be for the purchase of information technology”); “Consolidated Appropriations Act, 2016,” Pub. L. 114-113 (Dec. 18, 2015) (appropriating \$250,000,000 to the CFTC, “of which not less than \$50,000,000, to remain available until September 30, 2017, shall be for the purchase of information technology”).

otherwise be made absent the cash allowances.⁵⁵ This is clear not just as a matter of economic logic, but also from the documents we reviewed.

The tenant improvement allowances are substantial, totaling over \$16 million for the four offices under the current leases/extensions. The allowance in D.C. was approximately \$10.28 million. Table 3 below details the amounts received as tenant improvement allowances and how they have been distributed between space improvements (construction, fixtures, etc.) and rent payments.⁵⁶

Table 3: Tenant Improvement Allowances (TIA)

	Kansas City	Chicago	New York	D.C.	TOTAL
TIA Received	\$852,670.00	\$2,194,905.00	\$2,868,320.34	\$10,283,499.00	\$16,199,394.34
Spent on Improvements	(774,448.13)	(1,659,561.20)	(2,868,320.34)	(9,089,306.27)	(14,391,635.94)
Spent on Rent Payments	(78,221.87)	(535,343.80)	0.00	(1,165,705.79)	(1,779,271.46)
TOTAL Spent	(852,670.00)	(2,194,905.00)	(2,868,320.34)	(10,255,012.06)	(16,170,907.40)
Balance (as of 12/31/15)	0.00	0.00	0.00	28,486.94	28,486.94

Other Issues

In the process of reviewing the D.C. office space and lease, several related issues came to our attention. Because these issues fall outside the intended scope of this review, we discuss them briefly in Addendum 1 at page 17. We may choose to revisit these issues in greater detail at a future date.

RECOMMENDATION

- **We recommend the Commission base all future leasing decisions and all decisions impacting the use of existing space on realistic expectations of budgetary resources. This would lessen unused space.**

The evidence we have examined over the past two years on space utilization at each of the CFTC's four offices demonstrates a continued triumph of hope over experience.⁵⁷ Beginning in 2009, and in each and every year since, the Commission has justified its lease payments for vacant offices not on the basis of its budget, but on the basis of the "next" year's hoped-for

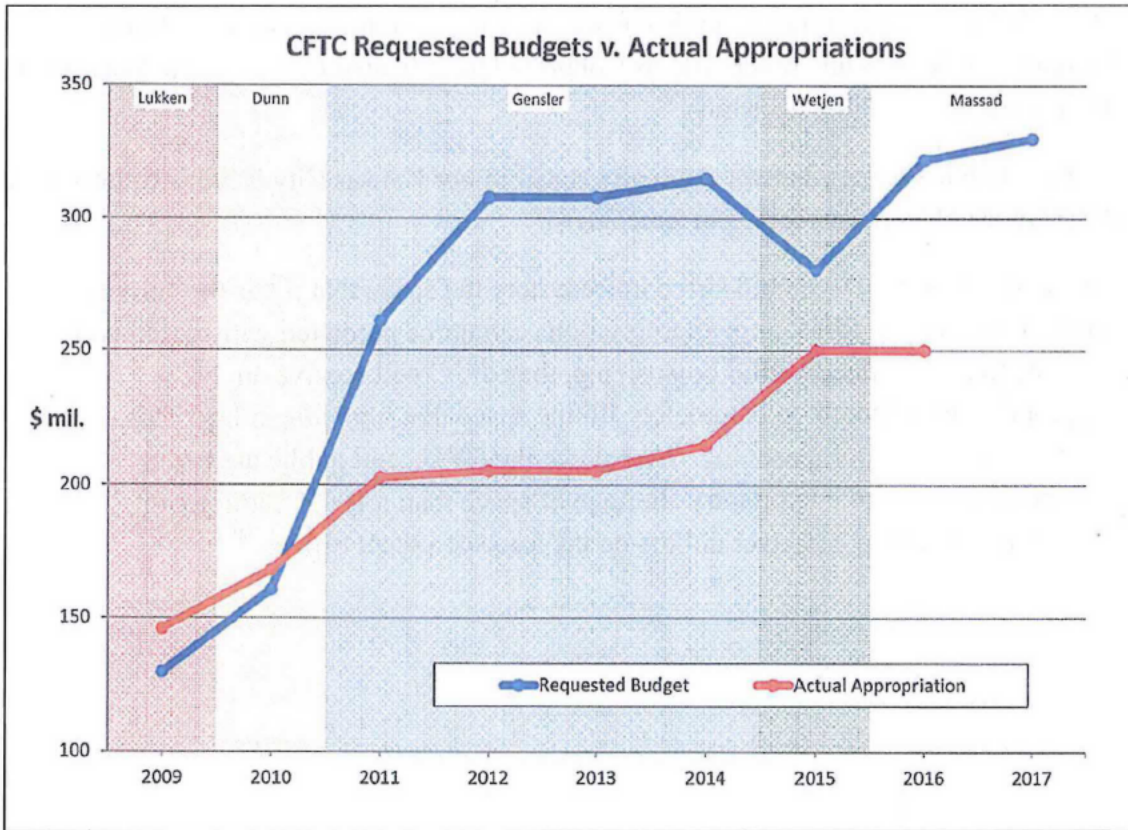
⁵⁵ For a discussion of the possibility that the Tenant Improvement Allowances may run afoul of the Rule Against Augmentation, see Addendum 1 at page 15 below.

⁵⁶ Numbers provided by the Office of Financial Management.

⁵⁷ Workforce and space planning documents, budget requests, staff comments in interviews, and management's formal responses to our reviews all establish that the Commission assumed in 2009, and continued to assume thereafter, that it would receive substantially more funding than Congress ultimately provided.

appropriation. In each year, Congress declined to appropriate CFTC’s full request, and in each year the CFTC made no adjustment to its lease expenditures. As a result, the Commission entered into, expanded, and maintained leases well beyond what is needed for staffing levels supported by appropriated funds.⁵⁸

Figure 1: CFTC Requested Budgets v. Actual Appropriations



As Figure 1 above shows, the Commission has, in five of the last six years, asked Congress for between \$70m and \$109m (29% to 55%) more than Congress appropriated in those years. Even as Congress increased CFTC’s funding, the Commission increased its request.

⁵⁸ In its June 2009 Program of Requirements, the CFTC anticipated needing an additional 346 seats to accommodate staff growth just through 2010—226 seats in DC, 79 in Chicago, 6 in New York, and 35 in Kansas City. In its Presidential Budget Request for FY 2011, the Commission requested an increase in appropriations from \$168m to \$261m, a 55% increase, in order to increase its staff from 650 to 864 employees. Congress, however, kept its funding flat at \$168m—only 27 employees were added. The Commission then requested \$308m for FY 2012, an 83% increase over its then-current appropriation, in order to expand its staff to 983 employees. Its FY 2013 and FY 2014 requests sought funding for 1,015 employees. Its request for FY 2016 was \$322m, and though Congress kept the Commission’s funding flat at \$250m, the CFTC is now requesting \$330m for FY 2017. It has, however, reduced its staffing goals to 896 employees.

While there is not, in principle, anything wrong with *requesting* an amount far greater than Congress is likely to appropriate (so long as the Commission determines it necessary), there is a problem with obligating the expenditure of millions in taxpayer dollars on empty office space based on anticipated rather than actual staffing levels, particularly when the gap between anticipated and actual funding is that large. It wastes taxpayer money.

We will therefore continue to update occupancy levels at headquarters and in the regions in our Semiannual Reports and otherwise, as Congress has indicated that wasteful spending on empty offices impacts funding decisions.⁵⁹

We again emphasize what we originally stated in our Kansas City Review (quoted on the floor of the House of Representatives in June 2014):

We believe the CFTC should strive to lease only the space that it has the current budget and staff to fill. Future appropriations cannot be predicted with certainty. It may be that immediately after downsizing, the CFTC will receive an appropriation sufficient to completely fill the space that it no longer has. This would not change our reasoning. We believe the CFTC and public are better served by the risk of a temporary shortage of space than a 100% certainty of spending substantial taxpayer dollars on the lease of vacant offices.⁶⁰

⁵⁹ “The agreement directs the Commission, in accordance with the President’s ‘Reduce the Federal Footprint’ initiative, to find ways to decrease space and renegotiate leasing agreements. The agreement directs the CFTC to report to the Committee within 90 days of enactment of this act on steps the agency is taking to dispose of excess space and reduce rental costs in each building currently leased by the Commission.” Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding House Amendment #1 to the Senate Amendment on H.R. 2029, 114th Cong., 1st Sess. Division A, 31 (2015), <http://docs.house.gov/meetings/RU/RU00/20151216/104298/HMTG-114-RU00-20151216-SD002.pdf>.

⁶⁰ Representative Fincher of Tennessee read this portion of our review on the House floor in June 2014. CONG. REC.H5635-36 (daily ed. June 23, 2014) (statement of Rep. Fincher), <http://thomas.loc.gov/cgi-bin/query/F?r113:2:./temp/~r1138InTic:e243078:>

ADDENDUM 1: LEASE-RELATED LEGAL, REGULATORY, AND ACCOUNTING ISSUES

The Recent GAO Opinion addressing Multi-Year Leases, the Recording Statute, and the Antideficiency Act

Since its creation in the mid-1970s, the CFTC has had independent authority to enter into lease agreements for office space in D.C. and elsewhere.⁶¹ In 1980, Congress began including language in its appropriations granting the agency authority to enter into *multi-year* leases. That language persists to this day.⁶²

On February 4, 2016, GAO issued an opinion concluding that the CFTC violated the recording statute, 31 U.S.C. § 1501(a)(1), by failing to obligate the entire cost of the lease in the year it was executed.⁶³ Although the CFTC has independent authority to enter into multi-year leases, the recording statute requires, absent a clear statutory exception, that contractual obligations be recorded in full in the year the contract is executed. The CFTC failed to do so, instead obligating each year only the annual portion of the lease payments for that year.

The GAO instructed CFTC to determine whether the failure to properly record these obligations resulted in the obligation of funds in excess of appropriations in violation of the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A). We note that the SEC reported an Antideficiency Act violation of approximately \$810,200,000 after its failure to record leases in accord with 31 U.S.C. § 1501(a)(1) was brought to light in 2011.⁶⁴ The SEC failed to record lease obligations in the year of entry into one of its leases, leading to a GAO legal opinion concluding it had violated the recording statute.⁶⁵

In addition to finding that CFTC violated the recording statute, the GAO also held that CFTC should determine whether it properly provided written notice to its contractors to begin performance before accepting services. If it failed to do so, GAO urged CFTC to report a violation of the voluntary services prohibition of the Antideficiency Act, 31 U.S.C. § 1351.

⁶¹ Section 101 of the Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, 88 Stat. 1389, 1391 (Oct. 23, 1974), codified at 7 U.S.C. § 16(b)(3).

⁶² See An Act Making Appropriations for Agriculture, Rural Development, and Related Agencies Program for the Fiscal Year Ending September 30, 1981, and for Other Purposes, Pub. L. No. 96-528, 94 Stat. 3095 (1980); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 (2014); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015).

⁶³ U.S. Gov't Accountability Office, B-327242, "Commodity Futures Trading Commission—Recording of Obligations for Multiple-Year Leases (February 4, 2016), available at <http://www.gao.gov/assets/680/674984.pdf>.

⁶⁴ U.S. Gov't Accountability Office, Antideficiency Act Reports – Fiscal Year 2012, page 2, available at <http://www.gao.gov/assets/660/650531.pdf>.

⁶⁵ U.S. Gov't Accountability Office, B-322160, Securities and Exchange Commission—Recording of Obligation for Multiple-Year Contract (October 3, 2011), available at <http://www.gao.gov/assets/590/585620.pdf>. OIG staff forwarded this opinion to OGC staff the day after its release.

Tenant Improvement Allowances and the Rule Against Augmentation

A Tenant Improvement Allowance is a set amount of money a landlord makes available at the outset of the lease for space improvements. The TIA is paid back over the life of the lease through higher rent payments. Tenant Improvement Allowances have been substantial, totaling over \$16 million for the four offices under the current leases/extensions. The allowance in D.C. was approximately \$10.28 million. It is our understanding that the GAO is reviewing whether these allowances run afoul of the Rule Against Augmentation and 31 U.S.C. § 3302(b).⁶⁶

Legal Review of Procurement Contracts

OED's Office of Financial Management, headed by the Chief Financial Officer, oversees the Procurement section ("Procurement"), which handles the agency's acquisition of goods and services, including office space. Procurement consists of a Senior Procurement Executive and five Contract Specialists. None of the current members of Procurement were with the agency when the original D.C. lease was signed in 1994.

In 2009, when the D.C. lease was extended through 2025, the CFTC had no written standards or policies governing the acquisition of office space. Procurement believed that neither the Federal Acquisition Regulation nor the General Services Administration Manual applied to CFTC's leasing activity. In February 2011, the CFTC created a four-page document describing its process for procuring leases.⁶⁷

According to our interviews, historically there was no formal process or consistent practice ensuring adequate legal review of procurement contracts, whether for the acquisition of goods, services, or office space. With regard to the 2009 lease of the DC office space, Procurement obtained legal review (but not a detailed legal opinion) from a staff-level attorney in OGC referred to informally as the "go-to" person for such reviews. It also received a memo from its broker regarding a proposed termination clause; the memo was written by an attorney but specifically noted in a disclaimer that "Studley has acted as your broker and not your attorney. For the legal interpretation of lease language and CFTC's statutory authority, you

⁶⁶ The Rule Against Augmentation, a "concept [that] can be derived from several separate enactments," including 31 U.S.C. § 3302(b), holds that "an agency may not augment its appropriations with outside funding without specific statutory authority." William G. Arnold, *THE ANTIDEFICIENCY ACT ANSWER BOOK* 85-86 (2009). 31 U.S.C. §3302(b) states: "Except as provided in section 3718(b) of this title, an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim."

⁶⁷ Internal CFTC document, "Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC's Office Space Leases," Feb. 11, 2011.

should rely upon the advice of your general counsel's office or other designated attorney."⁶⁸
None of the attorney reviewers discussed the recording statute issue.

As for current practices, staff in OGC relayed that they are occasionally included in the review process for procurements, but by all accounts, this is still an *ad hoc* process. Management in Procurement expressed the opinion that consultation with OGC generally was not necessary given their extensive experience (although Procurement consulted OGC and outside counsel in connection with the DC lease), and asserted that OGC generally is privy to what Procurement is doing and can communicate any legal concerns. Procurement has no attorneys on staff. The Senior Procurement Executive responsible for leases or lease extensions beginning in 2001 retired from the CFTC at the end of 2015.

Two OGC attorneys we interviewed confirmed that Procurement does not regularly or typically ask for legal review of contracts, and opined that OGC has no attorneys who specialize in federal leasing. An OGC manager stated that multiple attempts have been made—without success—to incorporate legal review early in the procurement process, and also suggested that multiple procurement contracts have been found to contain provisions that may be problematic for a federal agency.

⁶⁸ Memorandum from Redacted to CFTC Supervisor, "Re: Termination and Appropriations," Jul. 27, 2009.

ADDENDUM 2: UPDATES TO KANSAS CITY, CHICAGO, AND NEW YORK REVIEWS

Kansas City Update

In June 2014, we found that Kansas City had 24 occupants of 78 total work spaces, for an occupancy rate of 31%. As a result of that finding, we calculated that the CFTC would spend approximately \$3.6 million on unused space there, and we recommended giving unused space back to the Kansas City landlord to save taxpayer money.

In its response to our Kansas City Review, Management initially took the position that the expenditures on empty office space were defensible because the planned-for staff increases were within the “realm of possibility.”⁶⁹ Since then, however, the CFTC has removed personnel and office furnishings from the sixth floor and has reached out to the landlord to place the 6th floor space back on the market.⁷⁰ The landlord has shown the space to a few prospective tenants, but without success.⁷¹ The Procurement office reports that the agency has not offered any incentives to the Kansas City landlord in order to expedite the re-leasing process. Nor has the agency made its own efforts to find a new tenant. The CFTC is currently paying the full cost of leasing the empty sixth floor in Kansas City and will continue to do so for the foreseeable future.

As of February 12, 2016, FoxFMS shows 33 occupants of 72 work spaces, for a reported occupancy rate of 46%. The increase in personnel from 24 to 33 is due to the addition of two Enforcement teams. The reduction of six work spaces is due to the conversion of two offices into conference rooms and the removal of four workstations. If these changes had not been made, there would be 33 occupants of 78 work spaces, for an occupancy rate of 42%.

Even if the CFTC is successful in returning the sixth floor to the Kansas City landlord, there will still be only 33 occupants of 46 work spaces, for an occupancy rate of 72%.

Chicago Update

In our Chicago Review from February 2015, we found there were 140 occupants of 175 work spaces, for an occupancy rate of 80%. We recommended the CFTC take steps to ensure confidential data are not disclosed due to open conference space used by the Department of Enforcement.⁷²

⁶⁹ See Kansas City Review, Appendix 2, “OED response to the March 31, 2014, OIG Review of Leasing and Occupancy Levels of the Kansas City Regional Office of the CFTC-Discussion Draft” at 2.

⁷⁰ See Email from Financial Management to Senior Officer, Redacted for Van Trust Real Estate (Aug. 5, 2015). The email states the first request to return space was made in July 2014.

⁷¹ See Email from Redacted, representative for Kansas City Office Services Group to Senior Officer, Redacted (Oct. 9, 2015); Email from Senior Officer to CFTC Supervisor (Aug. 24, 2015).

⁷² Chicago Review, at 11.

Since then, Chicago's staff has increased to 153, while the number of occupiable seats in Chicago has gone down to 171. The current occupancy rate reported by FoxFMS is therefore $153 / 171 = 89\%$. The occupancy rate based on the current number of agency personnel and the number of available workspaces in mid-2014 is $153 / 175 = 87\%$.

According to OED, our recommendation regarding open conference space has not been implemented. One of OED's managers told us that OED has not, since the February 2015 release of our Chicago Review, wanted to spend money on reconfiguring space, and that there is appropriations language requiring the Agency to consult with GSA before spending money on improvements in office space. According to the OED manager, for the past year, OED has been working, with help from OGC, on understanding the GSA process and requirements. Until this process is completely understood by the Agency, we are told, OED does not expect to spend any additional money on changes to office space, including in response to our recommendations.

It has been a full year since our Chicago Review was issued. We believe ample time has passed for necessary review, planning, coordination, and consultation to take place to implement our recommendation regarding confidentiality.

New York Update

In our New York Review from June 2015, we found there were 89 occupants of 135 work spaces, for an occupancy rate of 66%. We recommended giving unused space back to the New York landlord to save taxpayer money.

After our New York Review, the CFTC reached out to the landlord regarding return of space.⁷³ However, no tenants have yet been found. The Procurement office reports that no incentives have been offered to the New York landlord in order to expedite the re-leasing process. Nor has the agency made its own efforts to find a new tenant. The CFTC is currently paying the full cost of leasing space in New York and will continue to do so for the foreseeable future.

As of February 12, 2016, New York staff has increased to 101, while the number of occupiable seats has fallen by one to 134, for an occupancy rate of 75%, which is unchanged when using the number of seats in mid-2014.

⁷³ See Email from CFTC Supervisor, Redacted, to Senior Officer, Redacted (June 23, 2015); Email from CFTC Supervisor to Senior Officer (June 26, 2015); Email from Senior Officer to Senior Officer, Redacted and Redacted (June 29, 2015); Letter from CFTC Supervisor to Senior Officer (Aug. 5, 2015). To be clear, we are not aware of any communications (via brokers or otherwise) prior to our 2015 New York Review between the CFTC and the landlord on the topic of returning space.

ADDENDUM 3: MANAGEMENT RESPONSE



Office of the
Executive Director

U.S. COMMODITY FUTURES TRADING COMMISSION

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TO: A. Roy Lavik, Inspector General

FROM: Anthony C. Thompson, Executive Director

DATE: April 15, 2016

SUBJECT: Management's Comments on *A Review of Space Utilization of the Washington D.C. Office of the Commodity Futures Trading Commission*

Thank you for the opportunity to review and comment on *A Review of Space Utilization of the Washington, D.C. Office of the Commodity Futures Trading Commission (Review)*, prepared by the Commodity Futures Trading Commission's (CFTC or Commission) Office of the Inspector General (OIG). The following comments are intended to clarify and provide additional context to the issues discussed in the *Review*.

General Comments

The Commission has taken steps to address issues related to its leasing and will continue to do so, with the goal of improving the use of leased space, decreasing rental costs and fulfilling our statutory mandate. The Commission bases its decisions regarding resource utilization on its ability to fulfill its statutory mission.

The Commission submits budget requests in amounts necessary to fulfill its statutory obligations, which were greatly expanded by the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank). As noted in the *Review*, the most recent extension of the D.C. Lease was executed in FY 2009. The lease extension increased the Commission's space, at a time when the Commission expected significant increases in agency staff and funding, relating to the expansion of the Commission's statutory obligations. The extension also provided additional space for existing staff, some of whom were utilizing break rooms, hallways and closets as offices, or who were sharing offices. In addition, space was utilized for increased information technology needs, the offices of the Inspector General, and staff from the Whistleblower Office and the Office of Customer Outreach. Although the President's budget requests were not fulfilled, and thus staff was not increased as much as

anticipated, the Commission has increased its federal staffing and on-site contractor support by approximately 42% since 2009.

Steps Taken Since June 2014

Under the current Chairman, the Commission has taken steps to reduce the costs associated with its leased space generally. For example, the Commission consolidated its use of space in Kansas City to one floor and notified its respective landlords in both Kansas City and New York that the Commission wishes to return unused space. The Commission does not have express statutory authority to sublease its space, and the leases themselves cannot be terminated at the discretion of the Commission.

Going forward, the Commission plans to continue aligning the amount of rented space with programmatic needs in order to improve space utilization, and decrease rental costs in line with the Commission's budget. The Commission will also develop a timeline and plans for evaluating, initiating and implementing, and documenting space-related actions, especially as the various lease expiration dates approach.

Correction Regarding the Review's Discussion of the History of the D.C. Lease

The Commission would like to correct a factual error on page 4 of the *Review*, which states, "the CFTC expanded its presence to occupy the entire building . . ." Please note that the Commission does not occupy the entire building, as there are vacant retail/office spaces on the Lobby and Mall levels that are not leased by the Commission.

Management Comments on Statements Made in the Review

The *Review* claims that "the CFTC's spending on empty space in all four of its offices will total between \$44.7 and \$56.8 million over the life of the leases." Although the Commission appreciates that this estimate is a reduction from the estimate of "as much as \$74 million" that was provided in the OIG's Review of Leasing and Occupancy Levels in Kansas City dated June 4, 2014, the Commission believes that both estimates reflect an inaccurate assumption that the Commission's occupancy rate remains flat for the life of its leases. For example, in FY 2015 alone, the year after the OIG's prior estimate, the number of occupants in the Commission's leased space increased by 18%, from 855 to 1,006.

The *Review* notes that some employees raised questions about the design of the D.C. office. While there are likely differing views on the space, the Commission did consult with all CFTC Divisions during the space planning process for the D.C. Office. That process, including notes from the meetings with Divisions, and resulting requirements, are documented in the Program of

Requirements, dated July 24, 2009. Specifically, the *Review* discusses three areas of concern with space design and use: the Conference Center, conference rooms, and the Market Watch Room.¹ We address each below.

Conference Center

The Commission's previous Hearing Room was inadequate for the agency's needs, and so the Commission constructed a Conference Center (referred to as the "Hearing Room" in the *Review*) to accommodate the size of public meetings, provide adequate audio-visual capabilities, and avoid the large pillars that obstructed the view of attendees throughout the previous Hearing Room. The Conference Center now provides more functionality than a traditional "Hearing Room" and, as noted in the *Review*, is regularly reserved and used by the Commission and its staff.

Conference Rooms

The Commission agrees that decreasing the amount of time required for setup will maximize the availability of the conference rooms. The Commission is currently exploring possibilities to reduce the impact of setup time in the scheduling of conference rooms, including considering process and software modifications that would provide optional meeting room setup and usage based on user requirements.

Market Surveillance Room and the "Dance Floor"

The Commission agrees with the OIG that maintaining confidentiality of Section 8 data is a priority. We appreciate the OIG's recognition that any concerns with the Market Watch Room (referred to in the *Review* as the Market Surveillance Room) design were quickly alleviated when the Commission installed adjustable shades to provide the necessary security. With respect to the "dance floor," which references the area outside of the Market Watch Room, the Divisions were consulted in all phases of space planning and design. This space was incorporated into the design at the request of one of the Divisions; however, we will review the space to determine if it can be put to greater use.

Critical Space Needs

The *Review* notes a critical space need in the Office of Data & Technology ("ODT"), specifically the need to expand the Forensics Lab. The *Review* states that, "[w]e expect these information technology needs will be met swiftly by Management, especially in light of appropriations

¹ The report also mentions complaints about using open space for cubicles; however, the OIG makes no recommendations with respect to this issue. We note that the cubicles maximize working space for staff and ensure that leased space is more fully utilized.

earmarking \$50 million for the agency's IT systems in FY 2015 and FY 2016." Although the Commission agrees that relocating the Forensics Lab is a high priority project, the IT earmark is not available for facility alterations. We are, therefore, considering how to appropriately fund the project consistent with the Commission's appropriation.

Addendum 1

Legal Review of Procurement Contracts

The *Review* also alleges that there is no consistent process for legal review of procurements and that OGC is "occasionally included in the review process for procurements", but that the process is on an "*ad hoc*" basis. As noted in the *Review*, the Procurement Office consists of five staff level Contracting Officers and the Senior Procurement Executive ("SPE"). All of the Commission's Contracting Officers and the SPE carry contracting officer warrants, which authorize them to bind the Commission into contracts. In addition, each member of the Procurement Office has the highest level possible in the Federal Acquisition Certification in Contracting Program. The current SPE assumed the responsibilities effective November 15, 2015.

The SPE and contracting officers recognize the value of a collaborative partnering relationship with OGC. The Offices are working together to foster a collaborative approach to ensure the best work product for the Commission.

In closing, the CFTC sincerely appreciates the opportunity to comment on this *Review* and looks forward to working with the OIG in increasing CFTC's space utilization in a cost effective manner. Please let me know if you have any questions about these comments.