



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the
Inspector General

June 4, 2014

TO: Acting Chairman Mark P. Wetjen
Commissioner Scott D. O'Malia

FROM: A. Roy Lavik, Inspector General *ARL*

SUBJECT: Review of Leasing and Occupancy Levels in Kansas City at the Commodity
Futures Trading Commission

The CFTC presently utilizes approximately one-third of its Kansas City Regional office space; it has 25 staff working in office space that accommodates 78. Rental payments average approximately \$44,000/month, meaning the CFTC will pay \$5.3 million over the life of the 10 year lease. At current utilization rates, two-thirds of that amount – approximately \$3.6 million – will be paid for vacant office space.

Our primary recommendation is that the CFTC take immediate steps to dispose of the excess space. Our secondary recommendation is for the CFTC to review its underutilized space in other regional offices and headquarters. Though not the focus of this review, we note that the problem of underutilization is not limited to Kansas City. Over the life of its leases the CFTC will spend over \$200 million; assuming a goal of 95% occupancy¹ and absent remediation, approximately 32% – or \$64,000,000 – will be spent to lease vacant offices.

On March 31, 2014, our Office issued a draft report to CFTC Management for comment; we received their response on May 14, 2014.² We disagreed with CFTC Management's views, but CFTC Management subsequently informed our Office that it had approached the landlord in Kansas City in an effort to return space. We view this as a positive step. We also thank CFTC Management for its efforts in its May 14 response to correct what it perceived as factual errors and omissions, and we have addressed many of the comments in our final review.

CFTC Management acknowledged in its May 14 response that there is excess vacant space in the Kansas City Office; however, it stated that the lease of so many vacant offices had been and remained a justifiable expense on the basis that CFTC's *requested* budgets since 2011 – if only they were appropriated – would be sufficient to fill the vacant space. CFTC Management intended to maintain the vacant space for the "foreseeable future" so long as future funding

¹ While there are apparently no occupancy requirements for federal leased space, we believe the goal of 95% occupancy will result in the greatest efficiency.

² Attached as Appendix 2.

increases are not “eliminate[d] ... from the realm of possibility.”

We believe this is an instance of hope trumping experience. Over each of the last three fiscal years, Congress has given the CFTC approximately 66% of its budget requests, which represents, for example, a FY 2014 budget of \$215 mil where CFTC requested \$315 mil, and FY 2013 and 2012 budgets of \$205 mil where CFTC requested \$308 mil.³ Given the shortfall between CFTC budget requests and Congress-approved budgets since FY 2012, we do not believe that the “realm of possibility” is the appropriate metric by which CFTC Management should base its decision to spend taxpayer dollars on vacant offices. As we express in our review:

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 that 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.

CFTC Management also suggested that “if it appears no additional funding will be forthcoming in our FY 2015 Budget request, we will pursue alternatives as suggested in the OIG Study.” This seemed positive, but CFTC Management maintained throughout our fieldwork that the “next” appropriation would influence its strategy with regard to the maintenance of this lease.⁴

We appreciate CFTC Management’s subsequent decision to approach the Kansas City landlord in an effort to reduce excess space and approve of this apparent shift in management response to our review, but we have no further details at this time. We intend to monitor the situation moving forward.

Attachment: Review of Leasing and Occupancy Levels in Kansas City at the Commodity Futures Trading Commission

cc (w/att.): Tony Thompson, Executive Director

³ CFTC’s budget requests are available at http://www.cftc.gov/About/CFTCReports/cftcreports_historical. CFTC appropriations are at: 113 P.L. 76, 128 STAT. 5 (FY 2014), 113 P.L. 6, 127 STAT. 198 (FY 2013), 112 P.L. 55, 125 STAT. 552 (FY 2012).

⁴ Prior to appropriation of the FY 2014 CFTC budget, and during our fieldwork for this review, CFTC Management stated, “[i]f CFTC receives the requested amount in the FY2014 President’s Budget there will be no excess space,” and stated, “[i]f it appears the CFTC will not achieve the anticipated staff levels in the near future, we will reconsider all options.” CFTC Space Acquisition and Utilization Plan, December 30, 2013 (Appendix 1).

**A Review of Leasing and Occupancy Levels of the Kansas City
Regional Office of the Commodity Futures Trading Commission**

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

June 4, 2014

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

Executive Summary

In September of 2010, the CFTC signed a new lease in Kansas City, relocating to offices adjacent to the Kansas City Board of Trade and expanding the CFTC's Kansas City office space by 300%. As of the date of this review, the Kansas City office has 25 staff in a space that comprises 78 offices and cubicles, six large rooms dedicated to other uses such as conferences, and 15 rooms labeled as "non-occupiable," which include various support rooms such as storage and filing. This level of utilization has been broadly steady since the lease commenced. With rental payments averaging approximately \$44,000/month, the CFTC will pay \$5.3 million over the life of the ten-year lease. At current utilization rates, 68% of the total lease cost – approximately \$3.6 million – will be paid for vacant office space.

Planning for this expansion began in 2009, and the decision to move forward was predicated on the expectation of additional appropriations from Congress.¹ That same expectation apparently underlies the CFTC's decision each year to decline to take steps to minimize its expenditures on empty offices. Beginning in 2012, about a year after the lease commenced, we expressed our concerns to the Chairman's office and relevant staff and raised the issue in a report, urging "the Agency to monitor staffing levels in the Kansas City field office in the future and to address space issues on its own initiative."² We reiterated our concerns in early 2013, when the Kansas City Board of Trade was scheduled to be closed.³ In March of 2013, seeing no progress, we formally noted our concerns in our semi-annual report to Congress.⁴ In September 2013, we conducted an on-site inspection of the Kansas City office and observed that the underutilization of office space remained unchanged. Accordingly, we initiated this review.

This review concludes that underutilized space in Kansas City is an expense that should not be maintained. We make two recommendations. We recommend that the CFTC take immediate steps to dispose of underutilized property in Kansas City. We also recommend that the CFTC initiate a review of underutilized space in the other regional offices and at headquarters, to determine if similar actions are warranted.

¹ This expectation was based at least in part on the anticipation of financial regulatory reform. Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act" or "Dodd-Frank") (<http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>). All internet addresses cited in this report were last visited on June 3, 2014.

² A Review of 75 Purchases by the Commodity Futures Trading Commission: March 2011-March 2012, page 9, fn.24 (http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig_finalreview122112.pdf).

³ See *CME Will Put Kansas City Board of Trade Building Up for Sale*, March 21, 2013, Kansas City Business Journal. Available at: <http://www.bizjournals.com/kansascity/news/2013/03/21/cme-will-put-kansas-city-board-of.html>.

⁴ CFTC Semiannual Report of the Office of the Inspector General for the Period Ending March 31, 2013, at page 9 (<http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oigsar033113.pdf>).

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Introduction, Scope, and Methodology

This review focuses on occupancy rates in the CFTC's western-most office of Kansas City. Our objectives were: (1) to review the current occupancy rates in the Kansas City Regional Office; and (2) to review the efforts the CFTC has made to minimize the cost to taxpayers of lease payments for vacant offices. We chose to focus on Kansas City because its occupancy rates are the lowest of any CFTC office by a substantial margin, and because the potential remedies there appear to be the clearest. However, we may consider a more expansive review over the coming months that includes the other offices.

To complete our review, we interviewed 17 individuals in Enforcement, the Division of Swap Dealer and Intermediary Oversight, the Office of Data and Technology, and the Office of the Executive Director, including individuals within the sub-offices of Financial Management, Logistics and Operations, and Procurement. Some witnesses were interviewed on multiple occasions. We requested and reviewed the relevant leasing documents, procurement documents, and architectural drawings, as well as other documents and CFTC communications concerning the Kansas City expansion. We researched pertinent legal principals including federal leasing rules and standards, independent leasing authority, Government Accountability Office ("GAO") reports and testimony, and government-wide efforts to increase agency efficiency with respect to real estate. Finally, we reviewed the recent history of CFTC leasing.

We note that Gary Gensler, former chairman of the CFTC and perhaps the most important witness⁵ with respect to leasing and staffing decisions over this period, did not respond to our requests for an interview made to him directly by email, and indirectly through his former Chief Operating Officer (Eric Juzenas) and current Executive Director (Tony Thompson).⁶ We note that [REDACTED], former [REDACTED] of the Office of the Executive Director, and a key witness⁷ with respect to leasing and staffing decisions in this period, declined to be interviewed.⁸ Lacking subpoena authority, we cannot compel a statement; consequently, this and possible supplemental reviews of CFTC leasing will be incomplete. We note that Madge Bolinger-Gazzola, the CFTC's former Executive Director who presided during the period when the Kansas City lease was negotiated, cooperated fully. OED has fully cooperated with our review.

⁵ Numerous witnesses informed that Chairman Gensler was involved in the leasing process and was the ultimate decision maker with respect to the entry and maintenance of the Kansas City lease.

⁶ Former Chairman Gary Gensler's last day with the CFTC was January 4, 2014. Our Office emailed a request for an interview on Jan 30, 2014, to Mr. Gensler's personal email address. Mr. Gensler did not respond. Mr. Gensler's former chief of staff stated in February that he had spoken with Mr. Gensler by phone, but opined that he did not think he was the right point of contact for releasing personal contact information, and we continued to receive no response. On March 8, 2014, the current Executive Director conveyed that to date, he had received no reply from the Chairman per his attempts to communicate with him on this matter.

⁷ Numerous witnesses informed that [REDACTED] was heavily involved in the leasing process, helping to coordinate the teams of employees who gathered and presented information to the Chairman.

⁸ [REDACTED] retired while fieldwork for this review was ongoing. We emailed [REDACTED] requests for an interview on January 30, 2014, and again on March 8, 2014. On each occasion, she declined.

We therefore address, but do not make findings on, the decision-making process that led the CFTC to enter into the Kansas City lease.⁹ We decline to address, for now, the occupancy rates in other CFTC offices. However, we note that over the ten-year life of the CFTC's four current leases, we estimate that CFTC will spend over 200 million dollars, and that the nationwide occupancy rate at the CFTC appears to be just 63%.¹⁰

Background

Legal Background

The problem of empty and underutilized office space is by no means limited to the CFTC.¹¹ Congressional inquiries, committee hearings, as well as numerous articles in the press have discussed this issue; indeed, some agencies are apparently not aware of all of the real estate they own or lease.¹²

In January 2003, the GAO designated federal real property as a high-risk area, citing the government's overreliance on costly, long-term leasing as one of the major reasons.¹³ More recently, GAO declared that, "[t]he federal government faces long-standing problems in managing real property, including an overreliance on leasing, and excess and underutilized property."¹⁴ With regard to excess and underutilized space, GAO 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."¹⁵ GAO noted that the agencies it reviewed "have taken some actions to dispose of and better manage these properties, including using excess and underutilized property to meet space needs,

⁹ However, we will consider examining this issue in a supplemental review.

¹⁰ Assuming current staffing levels and no remedial action, over \$74,000,000 will be spent to lease vacant offices. Occupancy percentages throughout this review come directly from the electronic database used by the CFTC to manage its space. Our visual inspection of the Kansas City office space was in line with the CFTC database.

¹¹ See GAO report, *Federal Real Property: Excess and Underutilized Property Is an Ongoing Challenge* (<http://www.gao.gov/products/GAO-13-573T>).

¹² E.g., U.S. House Committee on Oversight and Government Reform, Subcommittee on Government Operations, *Government Operations Oversight: Addressing Unused and Vacant Federal Property*, Hearing (<http://oversight.house.gov/hearing/government-operations-oversight-addressing-unused-and-vacant-federal-property/>) Article: <http://www.whitehouse.gov/blog/2011/10/20/sale-cutting-waste-getting-rid-excess-real-estate>, Article: <http://cagw.org/media/wastewatcher/time-get-real-federal-property>,

¹³ *Federal Real Property: Strategy Needed to Address Agencies' Long-standing Reliance on Costly Leasing*, GAO-08-197 (January 2008) (<http://www.gao.gov/assets/280/271449.pdf>).

¹⁴ *Federal Real Property: High-Risk Designation Remains due to Persistent Management Challenges*, GAO-13-422T (February 2013) (<http://www.gao.gov/products/GAO-13-422T>).

¹⁵ *Id.*

consolidating offices to use space efficiently, and reducing employee workspace to use space more efficiently.”¹⁶

The General Services Administration (“GSA”) is responsible for creating rules and standards governing federal leasing, and it assists agencies by negotiating leases on their behalf.¹⁷ Some agencies, like the CFTC, have independent leasing authority and negotiate their own leases without reference to GSA.¹⁸ But independent leasing authority is more than the ability to separately negotiate leases; it also includes independence from GSA rules and regulations designed to, for instance, minimize government waste. Exercising that independence, the CFTC declined until February of 2011 to develop any written leasing standards or procedures of its own. Consequently, there appear to have been no CFTC or other written rules that directly governed the CFTC’s leasing process.¹⁹

Over the years, however, Presidents of the United States have issued executive orders to reform and improve federal leasing standards. In general, these require government agencies to efficiently utilize space.²⁰ Some are more specific, requiring agencies to reduce the amount of work space to that which is essential for known agency missions, and ensuring that the amount

¹⁶ *Id.*

¹⁷ The Comptroller General has described the process by which the government leases real property as follows:

Congress has centralized in GSA the authority to lease real property and facilities for the use of federal agencies. The Federal Property and Administrative Services Act of 1949 (FPASA) transferred to GSA the authority to lease real property and facilities on behalf of the federal government, subject to several exceptions not relevant here. FPASA, ch. 288, § 3, 63 Stat. 377, 378 (June 30, 1949), as amended, codified in 40 U.S.C. § 585. As presently written, this authority allows GSA, on behalf of all federal agencies, to enter into leases of real property and facilities to meet the government’s needs for periods of up to 20 years and to obligate fiscal year funds without violating the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(B). 40 U.S.C. § 585. *See* B-309181, Aug. 17, 2007.

Matter of: National Transportation Safety Board--Application of Section 1072 of the Federal Acquisition Streamlining Act (41 U.S.C. § 254c) to Real Property Leases, B-316860, 2009 U.S. Comp. Gen. LEXIS 89, April 29, 2009 (<http://www.gao.gov/decisions/appro/316860.htm>).

¹⁸ Without specific statutory authority and absent a delegation of authority from GSA, a federal agency may not lease real property or facilities for its own use or on behalf of any other government entity. Matter of: Interagency Agreements -- Use of an Interagency Agreement between the Counterintelligence Field Activity, Department of Defense, and GovWorks to Obtain Office Space, B-309181, 2007 U.S. Comp. Gen. LEXIS 143, Aug. 17, 2007, (<http://www.gao.gov/decisions/appro/309181.htm>).

¹⁹ The lease in Kansas City was negotiated prior to February of 2011. CFTC Management states that it followed the same standards prior to 2011, but had not reduced them to writing. We note that the written standards focus on the initial leasing process, and do not address any circumstances under which the CFTC should reassess its space needs – due, for instance, to underutilization or changed budgetary circumstances.

²⁰ Executive Order 13576--Delivering an Efficient, Effective, and Accountable Government, June 13, 2011, (*requiring* “frequent data driven reviews” of, among other things, “improving the management of Federal real estate”). Available at: <http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov>; Executive Order 13589 -- Promoting Efficient Spending, November 9, 2011, (*requiring* agencies to “act in a fiscally responsible manner, including by minimizing their costs...”). Available at: <http://www.whitehouse.gov/the-press-office/2011/11/09/executive-order-13589-promoting-efficient-spending>.

of office space per person is the minimum necessary to accomplish the task.²¹ For instance, in February of 2004, the President signed Executive Order 13327 (EO 13327) which, among other things, established a Federal Real Property Council to address issues in property acquisition and management, including adding as a performance measure for covered Agencies “changes in the amounts of vacant Federal space.”²² Similar in purpose to the Executive Orders, President Obama issued a Presidential Memorandum on June 10, 2010, requiring agencies to dispose of unneeded federal real estate.²³ This included a specific directive to “take immediate steps to make better use of remaining property assets as measured by utilization and occupancy rates....”²⁴

Finally, we have the OIG’s own regulatory mandate to detect and prevent waste and abuse, and to recommend policies designed to promote economy, efficiency, and effectiveness in connection with programs and operations of the Agency.²⁵ In sum, despite the absence of written rules requiring minimum levels of utilization or reassessment of leases in light of changed budgetary assumptions, the CFTC must still strive to limit waste in this area.

Factual Background

CFTC staffing levels reached a relative peak of 560 full-time employee equivalents in 1998. At that time, the CFTC had regional offices in Los Angeles, Minneapolis, Kansas City, Chicago, and New York, along with its headquarters in Washington D.C. By 2008, the CFTC looked markedly different. The Los Angeles office closed in June of 2003,²⁶ while the Minneapolis office closed just a few years later in 2007. Of the remaining four offices, the farthest West was in Kansas City, Missouri, leaving the CFTC without an office in the westerly two time-zones in the continental United States. Also during this period, staffing levels decreased by more than 20%, to a low of 437 in 2007. By 2008, staffing levels had recovered to 449.

Beginning in 2008, a number of events occurred in U.S. markets that increased attention on the CFTC and other financial regulatory agencies by Congress and the public.²⁷ In 2009, the Dodd-

²¹ Executive Order 12411 -- Government work space management reforms, March 28, 1983, (*requiring* agencies “to institute fundamental changes in the manner in which Federal work space is managed to ensure its efficient utilization.”) Available at: <http://www.archives.gov/federal-register/codification/executive-order/12411.html>.

²² EO 13327 is available here: <http://www.gpo.gov/fdsys/pkg/FR-2004-02-06/pdf/04-2773.pdf>. EO 13327 did not apply to CFTC. The other Executive Orders cited in this paper did apply to CFTC.

²³ Presidential Memorandum--Disposing of Unneeded Federal Real Estate, June 10, 2010, available at: <http://www.whitehouse.gov/the-press-office/presidential-memorandum-disposing-unneeded-federal-real-estate>. This memorandum applied to CFTC.

²⁴ *Id.*

²⁵ 5 USC App. 3, § 2(1).

²⁶ *See* Review of the Need for Western Regional Office in Los Angeles, CFTC OIG, June 19, 2006.

²⁷ Among others, oil prices reached an all-time high of \$147.27 per barrel, Bear Stearns and Lehman Brothers collapsed, numerous bailouts totaling hundreds of billions of dollars occurred due to the failure of mortgage-backed securities, and the U.S. economy entered into the so-called Great Recession.

Frank Wall Street Reform and Consumer Protection Act was first introduced; it proposed an expansion of the CFTC's jurisdiction into swaps and derivatives markets. At the same time, the CFTC began to experience budget increases. For instance, in FY 2009, the CFTC budget increased from \$112 million to \$146 million²⁸ and increased again to \$168.8 million in FY 2010.²⁹

It was in this setting that the CFTC first discussed an expansion to accommodate the new and anticipated hires. The Office of the Executive Director, led by Madge Bolinger-Gazzola and [REDACTED] determined that there would be inadequate office space across the CFTC by the end of FY 2009, and substantial shortfalls if the CFTC's hiring goals were met for FY 2010. Accordingly, in March of 2009, CFTC Management began a planning, acquisition and construction project to increase available space.³⁰

The CFTC's Expansion In Kansas City

In 2009, the CFTC Kansas City office had approximately 27 staff in a space measuring 8066 SF.³¹ All interviewed agreed that that the space had been overcrowded. The CFTC initially planned to expand by approximately 8,000 SF, to a total of 16,000 SF.³² Sometime later, this changed to a range between 17,000 – 22,000 SF.³³ The CFTC eventually signed a lease for approximately 24,000 SF; included in the lease were a right of first refusal on an additional estimated 7,500 SF and an option on an additional estimated 16,000 SF.³⁴

As of the date of this review, the CFTC employs 25 staff in Kansas City. The space comprises one and one half floors, with 78 offices and cubicles, six large rooms dedicated to other uses,³⁵ and 15 rooms labeled as "non-occupiable," which include various support rooms such as storage

²⁸ Public Law 111-8 [H.R. 1105] MAR. 11, 2009, Omnibus Appropriations Act, 2009.

²⁹ Public Law 111-80 [H.R. 2997] OCT. 21, 2009, Agriculture Rural Development Food And Drug Administration And Related Agencies Appropriations Act, 2010.

³⁰ CFTC Management Memorandum dated March 5, 2009, signed by [REDACTED] of OMO.

³¹ CFTC Kansas City Lease from Board of Trade Building, Inc., dated September 2010.

³² CFTC Management Memorandum dated January 27, 2009, signed by Madge Bolinger-Gazzola, titled "Extension of CFTC's DC Office Space Lease," at 6.

³³ CFTC Solicitation Number: CFFM-1—SO-0144, posted April 26, 2010, at 1.

³⁴ CFTC Kansas City Lease from Board of Trade Building, Inc., dated September 2010. While beyond the scope of this review, we note that no witness who agreed to be interviewed was able to explain the origin of the initial estimate of 16,000 SF, the change to 17,000 – 22,000 SF, or why the CFTC ended up with a property of more than 24,000 SF, plus a right of first refusal and an option totaling an additional estimated 24,000 SF.

³⁵ On the floor maps, there are six large rooms that are not offices, in which groups of people may meet to discuss CFTC issues. Two are labeled as conference rooms; the others are labeled as follows: a training room, a VTC (video teleconferencing) room, a "war room" and a "break room." CFTC Management recently informed our Office that the conference rooms are heavily utilized. We thank CFTC management for this information, but did not verify the assertion due to time limitations.

and filing.³⁶ The half floor comprises 17 window offices, eight inner offices, four cubicles, and two conference rooms, as well as a copy room, a pantry/kitchen, a storage room, and a filing room.

Findings

CFTC Management Believes Its Leasing Decisions Are Justified

In the second half of 2013, we notified the Executive Director, Tony Thompson,³⁷ that we had initiated a review. On December 30, Tony Thompson sent to our office a memorandum titled "Space Acquisition and Utilization Plan."³⁸ This memorandum provided CFTC Management's reasons for (1) initially entering into the lease for expanded space in Kansas City, (2) retaining the excess space in Kansas City over the last three years, and (3) not opening an office West of Kansas City, specifically in Los Angeles.

The December 30 Memorandum addressed topics that go beyond the scope of this review. Our focus remains on the current excess space in Kansas City. However, CFTC Management's discussion of the three points listed above are to some extent intertwined; consequently, we will to the extent necessary address all three topics.

We note that the December 30 Memorandum contains a number of assumptions that we do not share. It bases its calculations, conclusions and recommendations on these assumptions, limiting its value for purposes of this review. Nevertheless, this memorandum was apparently CFTC Management's only official work-product that addressed these issues at the time; accordingly, we have chosen to focus on it by addressing the points that we can. Where CFTC Management's assumptions differ enough so as to prevent reasonable analysis, we simply note the fact and move on.

CFTC Management States That Its Leases Are Justified By Its Requests For Higher Budgets

CFTC Management explains that in every year since 2008, it has requested progressively higher budgets, which correspond to progressively higher requests for staff.³⁹ For instance, in January 2010, there were "planned increases to 799 staff by January 2011, and 982 in January 2012."⁴⁰

³⁶ We thank CFTC Management for pointing out an error. We had written that there were 15 storage and filing rooms, when in fact there are 15 rooms labeled as "non-occupiable" which include storage, filing, and other rooms.

³⁷ Tony Thompson became Executive Director in July of 2011, replacing Madge Bolinger-Gazzola. The leasing process in Kansas City was complete prior to Tony Thompson's arrival.

³⁸ Memorandum from Tony Thompson, Executive Director, to Roy Lavik, Inspector General, entitled "Space Acquisition and Utilization Plan" (with attachments), dated December 30, 2013 (the "December 30 Memorandum"). We have attached this memorandum as Appendix 1.

³⁹ Appendix 1, at page 3-4.

⁴⁰ *Id.* at 4.

CFTC Management then notes that its budget requests increased still further: “FY2013 and FY 2014 President’s Budgets requested 1,015 staff,” including 73 in Kansas City, and that this total did not include between 400-450 contractors.⁴¹ CFTC Management concludes that “when estimated FTEs and contractors are considered, this creates a [nationwide] deficit of about 116 seats,” and that the “CFTC would not be able to house this level of staff and contractors with current leased space.”⁴²

CFTC Management’s justification is unchanged since the CFTC’s initial expansion in 2009, and we do not understand the continued focus on comparing hypothetical staffing levels to actual expenditures on real empty offices.⁴³ We agree that if the CFTC’s budget increased, more staff would be hired, and that there would be fewer empty offices. But we do not agree that a hypothetical budget increase justifies current, actual expenditures on empty offices, or that years of progressively higher hypothetical budgets justify years of actual expenditures on empty offices.

CFTC Management States That There Are No Circumstances Under Which The CFTC Would Benefit From Subleasing Or Returning Space To The Landlord

The December 30 Memorandum states that CFTC Management considered subleasing as well as a return of space to the landlord. It alleges that these would not be cost effective, and that they would not result in financial or other benefits to the CFTC.⁴⁴ The memorandum provides support for these arguments in an attachment titled “Considerations Associated with Sub-Leasing Kansas City Office Space.”⁴⁵

The CFTC Could Not Keep The Proceeds From A Sublease

CFTC Management’s first consideration is that “...proceeds from the sub-lease likely cannot be used by CFTC to offset its rental obligations, but instead will need to be deposited with Treasury as a miscellaneous receipt.”⁴⁶ It goes on to say that “[this] could offset any benefits to the Commission associated with subleasing the space.”⁴⁷ In an interview, we asked for clarification

⁴¹ *Id.* at 5. The contractors were anticipated “mostly in support of information technology.”

⁴² *Id.*

⁴³ *Id.* at 3-5. CFTC Management does not address actual staffing levels over the last three years, the number of vacant offices, or the expense of those empty offices in its justification for maintaining its current leases. We are uncertain why.

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 12.

⁴⁶ *Id.*

⁴⁷ *Id.* CFTC Management reiterates this point in its response to our Review. (See Appendix 2, page 3.) We believe that CFTC Management should attempt to save taxpayer dollars regardless of whether the resulting savings are deposited to the General Treasury.

whether it was arguing that saving taxpayer dollars was not worthwhile in situations where the money reverted to Treasury. CFTC Management emphasized that this was not its purpose, and that the return of funds to Treasury was simply a fact to be considered. It agreed that savings should be sought regardless of whether the CFTC or another part of government received the money.

The CFTC's Up-Front Costs To Sublease Would Be \$1.3 Million

CFTC Management's remaining considerations regard the up-front costs that it estimates a sublease would incur.⁴⁸ CFTC Management calculated an up-front cost of \$1.3 million by assuming that it would sublease the entire Kansas City office, leaving no space in Kansas City for its staff.⁴⁹ We do not understand this assumption⁵⁰ – or others.⁵¹ Since this analysis is predicated on fundamental assumptions that we do not share, we decline to further address the methodology by which CFTC Management calculated this number. We note, however, that at the current level of utilization – 32% – the cost of vacant offices in Kansas City over the term of the lease will be an estimated 3.6 million. Consequently, even an up-front cost of 1.3 million would result in a sublease that would achieve substantial savings; and under more reasonable assumptions,⁵² we believe the true cost would be only a fraction of that figure.

It Would Not Be Cost Effective To Return Space To The Landlord

The CFTC states that “based on prevailing markets and the anticipated costs, staff does not expect that [a return of space] would be cost effective.”⁵³ We are puzzled by this conclusion, since as recently as November of 2013, CFTC Management negotiated a return of its option for approximately 16,000 SF to the landlord in exchange for a three-month rental abatement valued at approximately \$130,000.⁵⁴

⁴⁸ Appendix 1, page 12.

⁴⁹ *Id.* CFTC Management estimates \$570,000 in costs as an estimate for “12 months of vacancy prior to collecting the sublease rent.” \$570,000 is the lease cost for one year for the entire office. Similarly, CFTC Management discusses the increased costs of subletting the space given that the average leasehold in Kansas City is much smaller than the CFTC's 24,000 SF. Accordingly, we concluded that the calculation of \$1.3 million was reached by assuming the abandonment of the Kansas City office.

⁵⁰ Most of the assumptions with which we disagree flow from the initial erroneous assumption that the CFTC would abandon the Kansas City office. For instance, CFTC Management estimates a “tenant improvement allowance” and a commission to a realtor based on the total lease size of 24,000 SF. CFTC Management also assumes a cost for “down-time” during which the CFTC would pay rent but be unable to collect proceeds from a sublease. We believe this cost should be offset by the current cost of unoccupied space; in other words, CFTC Management should only count the 32% of the space that is being utilized when estimating the cost of downtime for the overall space.

⁵¹ CFTC Management comments that security concerns would have to be taken into account if we were to rent a half floor. This assertion puzzles us. The CFTC already rents a half floor. If the CFTC gives up the full floor, it would be left with the half floor that it already has, and we do not understand why new security concerns would arise.

⁵² For instance, the CFTC could sublease either the half floor or full floor. As a result, the commission and tenant improvement allowance would be substantially lower.

⁵³ Appendix 1, page 2.

⁵⁴ Below, we further discuss the return of the option. *See infra*, p 11, n.67-69.

CFTC Management supports its conclusion that a return of space would not be cost effective with another reference to its “Considerations Associated with Sub-Leasing Kansas City Office Space.” However, the stated considerations do not appear to consider the costs of returning space to the landlord.⁵⁵ In an interview, CFTC Management stated that it focused on the costs of subleasing, and not on the option of returning space to the landlord.

CFTC Management supplemented its December 30 Memorandum with a second memorandum dated January 17, 2014, which analyses the commercial real estate market in Kansas City. The January 17 Memorandum states that “the likely sublease rent would be in the range of \$22.00-\$22.50 [/SF].”⁵⁶ On March 12, 2014, Tony Thompson responded by email to some questions that had been raised during an interview.⁵⁷ Among them, he explained that the leasing market in Kansas City “had not improved.” He went on to say that the CFTC was currently paying \$22/SF, and that rates for a potential sublease were \$20-\$22.5/SF.⁵⁸ The fact that the Kansas City commercial real estate market had not improved was also raised during the interview; CFTC Management reasoned that the lack of improvement meant that a return of space to the landlord would not be cost effective.

We believe that CFTC Management should reconsider its stance. Since the CFTC is currently paying to lease vacant offices, *any* rental abatement would be cost effective. However, the market price is apparently equivalent to the price the CFTC currently pays for its empty office space – approximately \$22/SF. Accordingly, a negotiated return of space to the landlord would appear to be possible that fully realizes the costs of that unused space – estimated to be some 3.6 million over the 10-year life of the lease. At worst, one would expect any landlord to strongly consider an offer to return space in exchange for a rental abatement *below* the market price – at, for instance, \$19/SF.⁵⁹ And a negotiated return of approximately 16,000 SF, valued at \$19/SF, for the approximately seven years remaining on the lease, would net the CFTC savings of \$2,128,000 over that period – minus any up-front costs.⁶⁰

⁵⁵ CFTC Management does discuss the concept of a “termination for convenience clause” in a lease. Appendix 1, page 12. It concludes that the CFTC’s lease does not contain such a clause, and that such clauses are inappropriate for the lease of real property. However, CFTC Management does not address cost effectiveness, and in any event the lack of a termination for convenience clause does not prevent a *negotiated* return of space to a landlord.

⁵⁶ CFTC Management Supplemental Memorandum, dated January 17, 2014, (“January 17 Memorandum”) at 5.

⁵⁷ Email from Tony Thompson, dated March 12, 2014.

⁵⁸ *Id.* The estimate of \$20-22.5/SF on March 12 differs from the original \$22-22.5/SF provided on January 17, but the difference is immaterial for purposes of this review.

⁵⁹ This discounts up-front costs. But up-front costs are a small percentage of the total lease value. For instance, when the CFTC initially negotiated the Kansas City lease, the up-front costs were only a fraction of the cost of the lease itself over ten years. Furthermore, returning space to the landlord would likely result in markedly lower up-front costs than a sublease, because it would not include negotiations with a third party.

⁶⁰ CFTC Management states that “OIG offers no facts or logic to support [its] conclusion” that the landlord would be expected to consider an offer for a return of space in exchange for a below-market rental abatement. We find this assertion puzzling, since a hypothetical demands no facts by definition, and the logic is straightforward. In very brief, let us suppose the CFTC offers to return the space in exchange for a \$19/SF rental abatement. Since the current market rate is, according to the CFTC, \$22.00-\$22.50/SF, then the landlord is incentivized by potential

CFTC Management States That It Is Inadvisable To Open An Office On The West Coast

Though not the focus of this review, CFTC Management asserts in its memorandum that opening a West Coast office would be prohibitively expensive. This appears to be a response to our Office's repeated recommendations in our semi-annual reports to Congress that the CFTC reopen an office on the West Coast.⁶¹ A large portion of the United States lies West of Kansas City, substantial futures trading occurs West of Kansas City, and we have reasoned that the CFTC, like other financial regulatory agencies, should accordingly have a presence there.⁶²

The December 30 Memorandum and a supplemental spreadsheet emailed to our office on January 9, 2014, examine the prospect of reestablishing an office in Los Angeles. CFTC Management concludes therein that reestablishing an office in Los Angeles would cost approximately \$20,000,000 more than the current Kansas City office over a period of 5 years.⁶³ However, like CFTC Management's calculations with respect to subleasing, this figure appears to be the product of a series of unusual assumptions. Once again, the supplemental spreadsheet assumes the closure of the entire Kansas City office, and adds assumptions to (1) pay full-value for the remaining seven years of the lease,⁶⁴ (2) pay to relocate all 25 employees permanently to Los Angeles, and (3) once there, pay to construct and lease enough office space for 78 employees, even though the present need is for only 25.⁶⁵

We have never recommended closing the Kansas City office. We have never recommended requiring Kansas City staff to relocate to Los Angeles. Rather, we have consistently recommended appropriately-sized offices in Kansas City and the West Coast. In the same vein, we also do not recommend entering into a lease in Los Angeles for 300% more space than the

profits of \$3.00-\$3.50/SF (for each of the remaining seven years of the lease) to search for a new tenant willing to pay the current market rate. Meanwhile, as explained above, the CFTC realizes savings of approximately \$2,128,000 over the same period (minus any upfront costs). Indeed, we would be astonished if any two parties could not mutually benefit by renegotiating a lease in which one party pays millions of dollars for vacant offices.

⁶¹ We first recommended this action in our September 2006 Semi-Annual Report to Congress.

⁶² CFTC Management comments that it "has analyzed relevant data a number of times to determine the most effective site for a western regional office (cost and productivity). Kansas City was the best choice." Appendix 2, page 16. We can only reiterate our view that Kansas City, Missouri, is not in the "West," and has not been since the mid-1800s. Compare "Census Regions and Divisions of the United States," U.S. Census Bureau map, available at: http://www.census.gov/geo/maps-data/maps/pdfs/reference/us_regdiv.pdf, with "Admission of States and Territorial Acquisition," U.S. Census Bureau map, available at: http://www.lib.utexas.edu/maps/united_states/territory.jpg. See Appendix 3.

⁶³ CFTC Management's Supplemental Spreadsheet "Study – Kansas City to Los Angeles Costs" produced to OIG via email dated January 9, 2014.

⁶⁴ We note that the CFTC paid a penalty of only one year's rent when exiting its prior lease in Kansas City in 2011.

⁶⁵ This assumption was particularly puzzling, given our concerns about underutilized office space.

CFTC presently has the staff to fill. There are additional assumptions that we do not share,⁶⁶ but the assumptions listed above limit the usefulness of further analysis. Accordingly, we decline to further examine the methodology by which CFTC Management reached its figure of \$20,000,000.

The CFTC's Recent Actions With Respect To The Kansas City Lease

In November 2013, the CFTC sold its option for 16,000 SF back to the landlord.⁶⁷ In exchange, the landlord agreed to three months of immediate rental abatement, valued at approximately \$130,000. However, according to our interviews, this decision was not made as the start of an effort to reduce the size of CFTC's lease or the CFTC's lease costs on empty office space. Rather, it was initiated during the sequester as an attempt to eliminate some of the Agency-wide budget constraints faced at that time.⁶⁸ But regardless of the CFTC Management's intent,⁶⁹ the effect was to reduce the cost of the lease.⁷⁰

We view this as evidence that the landlord places substantial value on the space and is willing to negotiate with respect to returns of space. It also demonstrates to our satisfaction that the CFTC has the ability to reduce its space in a manner that CFTC Management views both as legal and not requiring proceeds to be turned over to Treasury.⁷¹

⁶⁶ All of the additional assumptions have the effect of raising the estimated costs or lowering the estimated benefits of establishing an office in Los Angeles. For some, we simply do not understand the basis for the assumption, such as CFTC Management's estimate of \$2,500,000 for "construction" costs; however, it was beyond the scope of this report to search for independent estimates.

When the basis for an assumption was clear, we often did not share the assumption. For instance, CFTC Management assumed the CFTC would receive all of its requested funding in 2014, enabling it to increase staff to full occupancy. This would raise costs because federal employees in Los Angeles are paid more than in Kansas City. We did not share this assumption when it was made, and the CFTC did not in fact receive its requested funding for 2014. In another example, CFTC Management calculated travel savings only with respect to Kansas City staff. That is, it compared the prices of flights actually taken by Kansas City staff with the price of a hypothetical flight from L.A. to the same destination. This assumption appears faulty for two reasons. First, it excludes travel savings from the other 95% of CFTC staff who do not work out of the Kansas City office, who may no longer need to fly to the West Coast. Second, it assumes that staff in L.A. would continue to handle cases in the regions previously handled by staff in Kansas City. We believe a more reasonable assumption would be for the Chicago Regional Office to handle cases in the middle of the country in the unlikely – and not recommended – event that the CFTC closes the Kansas City office.

⁶⁷ The option's value was included in the price of the overall lease; the CFTC was not paying for it separately.

⁶⁸ The three months of rental abatement occurred in November, December, and January, effectively lowering the CFTC's leasing costs during the remainder of the sequester.

⁶⁹ CFTC Management states that this is incorrect, and that it did not initiate the sale of the option to save taxpayer dollars. Rather, the landlord initiated the transaction and the savings were merely a "side-effect." See Appendix 2, page 10.

⁷⁰ We note that the CFTC appears to retain its right of first refusal on approximately 7500 additional SF.

⁷¹ See Matter of: Securities and Exchange Commission – Reduction of Obligation of Appropriated Funds Due to a Sublease, B-265727, 1996 U.S. Comp. Gen. LEXIS 374, *6 (July 19, 1996) ("An exception to the general rule against augmenting an agency's appropriation includes receipts that qualify as refunds to an appropriation. Refunds

In any event, the documents prepared by CFTC Management during our fieldwork for this review appear to be its first attempt to examine the issue of underutilized office space in Kansas City.⁷² Though CFTC Management makes some assumptions that we do not understand or share, we view CFTC Management's willingness to engage on the issue a positive sign.

For instance, on March 12, 2014, two days after an interview with Tony Thompson and other senior management personnel, the Executive Director responded to some of the questions that had been raised therein. In pertinent part:

Q 4: You requested CFTC investigate options to reduce its square footage in its Kansas City office – specifically, the ability to sublease or return space to the building owner.

A 4: We have previously provided material to you on this subject regarding the expected cost effectiveness of both options. A more in-depth review of this matter will require several critical steps to fully address your inquiry. In the very near term, I will request that OGC officially review and provide an opinion on CFTC's legal ability to sublease or, return to the building owner part of our leased space in Kansas City. This review will hopefully determine within the confines of the current lease and applicable appropriation law and other federal regulations, our ability to pursue these options.

Next, based on a favorable OGC review supporting the feasibility of pursuing one, or both of these options, I would, with the Chairman and subsequent Commission level concurrence, direct OED staff to engage with the current property owner of the CFTC leased space in Kansas City. The goal would be to ascertain interest, and more importantly attempt to gain the Lessor's agreement and ability to execute a revised lease arrangement that would allow us to relinquish the unused space in question in a manner advantageous to the CFTC.⁷³

We believe these were the most positive steps to date showing that CFTC Management would be taking a serious look at the under-occupancy in Kansas City, and we were pleased with the efforts in this regard. Unfortunately, the May 14, 2014, response to our discussion draft did not expand on the language quoted above, and focused instead on impediments to eliminating the excess space. However, we were recently informed that CFTC Management has inquired with the Kansas City landlord regarding a possible return of space. We believe this shows that CFTC Management is now more focused on this issue, and in a way we consider favorable.

may be retained to the credit of the appropriation and are not required to be deposited into the general fund of the Treasury") (<http://www.gao.gov/assets/330/326345.pdf>).

⁷² CFTC Management did briefly consider limiting new hires to Kansas City, which may have helped to fix the problem of underutilization. However, general budgetary limitations and events like the sequester apparently distracted or otherwise prevented pursuit of this goal.

⁷³ Email from Tony Thompson to OIG in response to questions during an interview, dated March 12, 2014.

Conclusion

In September of 2010, the CFTC signed a new lease in Kansas City for approximately 24,000 SF with options/rights of first refusal for an additional 24,000 SF. At present, it has 25 staff in a space sufficient for 78. CFTC Management justified entry into the lease with its expectation of increased funding and increased staff necessary to implement the Dodd-Frank Act. Over the last three years, the extra space has remained, while the extra funding has remained hypothetical. Even if the initial decision to expand were justifiable – prior to receipt of the funding necessary to fill the additional space – at some point, management must reassess the situation in light of current budget realities.

We believe that 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 that 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.

Recommendations

We recommend that the CFTC take immediate steps to dispose of underutilized property in Kansas City. We also recommend that the CFTC initiate a review of underutilized space in the other regional offices and at headquarters to determine if similar actions are warranted. We leave it to CFTC Management to determine the most expedient method to carry out the recommendations.

APPENDIX 1

CFTC Space Acquisition and Utilization Plan December 30, 2013



U.S. COMMODITY FUTURES TRADING COMMISSION

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MEMORANDUM

TO: Roy Lavik, Inspector General

FROM: Anthony C. Thompson, Executive Director *Anthony C. Thompson*

DATE: December 30, 2013

SUBJECT: CFTC Space Acquisition and Utilization Plan

Mr. Lavik, over the past few years several questions have been raised concerning the CFTC leases and office locations. CFTC has responded to those questions as they arose. Here I want to provide you with a comprehensive look as to why the Commission made certain decisions and recent actions and assumptions. Therefore, as promised, attached is a synopsis report (Attachment 1) on the CFTC leases and space utilization. I also understand that you are preparing a report on CFTC leasing and space. I would appreciate the opportunity to review that report and offer comment before it is finalized.

This Report addresses the recent CFTC mission expansion and the related budget and staffing environment in which the CFTC has been operating. Existing and near-term internal and external factors necessitated CFTC make a number of leasing decisions over the past 4 years. As you recognized in the "Inspector General's Assessment of The Most Serious Management Challenges Facing the Commodity Futures Trading Commission" in the FY2010 Performance and Accountability report, the implementation of the Dodd-Frank Act and the related Human Resource expansion and management issues posed significant challenges (see Attachment 2). CFTC management has made every effort to anticipate and address these challenges in a proactive and efficient manner.

In order to best present this information to you, I asked staff to prepare the attached Report to collectively look at leasing actions taken over the past 4 - 5 years, the rationale for those actions, and our assumptions going forward.

The following Report shows that:

- Pre Dodd-Frank Act workload was such that on-board staff exceeded the available space under lease;
- CFTC leases were expiring between 2012 and 2015 for DC headquarters, New York City, Chicago, and Kansas City;
- During the time we expanded our leased space there were very favorable leasing rates and terms in all CFTC office locations;
- The Dodd-Frank Act (July 2010) created workload that far exceeded the capacity of existing staff and, for the past 3 years, the President's Budget has requested Federal staff of around 1,000 and approximately 300 contractors for the CFTC and increased reliance on automation has further increased the number of IT contractors (see Attachment 3);
- To ensure transparency with OMB and Congress, the FY2009 and FY2010 CFTC Spend Plans reflected plans for expanding leased space; and
- If CFTC receives the requested amount in the FY2014 President's Budget there will be no excess space.

Additionally, we recently looked at the possibility of reestablishing a west coast (Los Angeles) office and found that lease and staff costs would be far more expensive than in Kansas City, with very little offsetting savings (travel) and no direct benefits to justify that change (internal staff study).

OED staff considered temporarily subleasing currently under-utilized space, and found that there are serious appropriations law and other concerns with this strategy and found no circumstances under which CFTC would reap financial or other benefits. Staff also considered the ability to negotiate a return of space to the landlord in the event of long-term excess capacity. Based on prevailing markets and the anticipated costs staff does not expect this would be cost effective. (See Attachment 4)

Based on these factors, I strongly believe that the CFTC has made reasoned, cost effective, and well justified leasing decisions. I also strongly believe that the current leasing/space situation is appropriate for CFTC looking forward – at least in the near-term. If it appears the CFTC will not achieve the anticipated staff levels in the near future, we will reconsider all options.

cc: Mark Wetjen, Commissioner
Eric Juzenas, COO
Jonathan Marcus, General Counsel

Attachments

Attachment 1

Report On

CFTC Staffing and Leasing Facts, Assumptions, and Strategy

OVERVIEW

Over the past few years the Commodity Futures Trading Commission (CFTC) has made a number of management decisions related to space requirements, including the implementation of the Dodd-Frank Act. Given the growing requirements associated with pre-Dodd-Frank workload, and the scope of new Dodd-Frank Act responsibilities, management hired and prepared to hire additional staff. To accommodate these staff CFTC needed to provide adequate resources, including office space, for them to work effectively. CFTC reworked its leases in Washington DC, Chicago, Kansas City, and New York to expand the size of its space, extend the terms of the leases, and renegotiate pricing in its favor in order to accommodate actual and anticipated staff increases. Additionally, CFTC sought to leverage its space configuration to enhance its operational capabilities (e.g. market watch rooms, productivity and technology hub, hearing room with webcasting capability, and video conferencing). The remainder of this report provides additional background and a detailed explanation of the leased space related decisions.

BACKGROUND

The CFTC was established as an independent agency by the Commodity Futures Trading Act of 1974. The CFTC mission consisted of Commodity Exchange Authority (CEA) responsibilities, previously housed in the Department of Agriculture, and additional jurisdictional responsibilities provided through the Commodity Futures Trading Commission Act.

Initial CFTC staffing consisted of 240 CEA employees and a few additional recruits. The transferred CEA staff was located in Department of Agriculture space in the District of Columbia, New York City, Chicago, Kansas City, Minneapolis, and Los Angeles. These locations were maintained and permanent separate space was achieved by 1976. The Los Angeles Office was closed in 2003 to improve the effectiveness of the Division of Enforcement and the Division of Clearing and Intermediary Oversight through the increased use of cross-functional teams and by co-locating larger numbers of staff. The Minneapolis Office was closed in 2006 due to high cost and a lack of staff effectiveness as it only had two staff for the prior 10 years and one of the staff retired.

CFTC staff grew to 560 in 1998 and fell over time to 448 in 2008. During this same period, contract trading volume grew from 625 million to 3.446 trillion – more than a 5-fold increase. Based on the burgeoning workload, the FY 2009 appropriation provided for 572 staff – a sizeable increase over prior years.

In May 2009, CFTC submitted a FY2010 President's Budget based on the appropriation providing for 572 staff. In this Budget, CFTC requested 38 additional staff, including 3 auditors – 1 each for New York City, Chicago, and Kansas City. This overall increase in staff was

requested due to many factors including: industry growth, growth in traded futures and option contracts, increase in number of registrants, and increase in derivative clearing organizations.

In addition, in July 2009, a year before Dodd-Frank Wall Street Reform and Customer Protection Act of 2010 (Dodd-Frank Act), the Commission developed a long-term Program of Requirements (POR) for staff and space to meet its regulatory mission. The driving forces behind this POR were the recent staff gains resulting in very tight space problems and that most leases were terminating in the near-term (District of Columbia – 2015; Kansas City – 2014; Chicago – 2012; and New York 2012). A POR considers all space regardless of lease expiration date and it is a reasonable practice to begin leasing activities 2 years prior to expiration. A side benefit were slow leasing markets in the regional cities, enabling the CFTC to have a prime opportunity to expand its space and meet its projected need at much lower leasing rates.

The Program of Requirements projected space requirements as follows:

- District of Columbia – 226 additional seats
- Chicago – 79 additional seats
- New York City – 6 additional seats
- Kansas City – 35 additional seats

The final “Work Space” requirements reflected a growth from 652 to 942 seats. This is based on 746 staff, and while this addressed needed growth in staff, it did not include estimates for contractor growth.

It should be noted that CFTC included details of its expansion plans in its FY2009 and FY2010 Spend Plans, which were submitted to both OMB and Congress.

DODD-FRANK ACT EXPANSION

In February 2010, the FY2011 President’s Budget requested 864 FTE, which was 214 FTE above the projected FY2010 usage. The request included an increase of 95 FTE for existing authorities and 119 FTE for proposed new authorities related to financial regulatory reform. Part of the increase was termed a “strategic plan to double the number of Enforcement staff in the Kansas City Office.”

In anticipation of passage of the Dodd-Frank Act, detailed staffing and space plans were developed to enable CFTC to complete its mission. On-board staff was 588 in January 2010 with planned increases to 799 by January 2011 and 982 in January 2012. On-site contractor staff, mostly IT professionals, was to concomitantly increase from 138 to 248. Detailed renovation plans and leasing requirements were also laid out. Regional Office increases in staff were to be: Chicago – from 106 to 162; New York City – from 75 to 106; and Kansas City – from 22 to 50. These numbers do not reflect contractors. (See attached Spreadsheets)

Passage of the Dodd-Frank Act increased the CFTC’s span of authority many fold as it integrated the \$400T swaps market into its arena of responsibility. After careful review of the enacted law, it became clear that the Dodd-Frank Act added responsibilities far greater than originally anticipated.

In the first budget written after passage of the Dodd-Frank Act, the FY2012 President's Budget requested 983 FTE, which was 119 FTE above the FY2011 request. With further projected reliance on automation to meet the workload demands, it is currently estimated that there would be 400 to 450 contractors, again mostly in support of information technology. The CFTC would not be able to house this level of staff and contractors with current leased space.

Both the FY2013 and FY2014 President's Budgets requested 1,015 staff based on mission requirements. At this staffing level, on-going discussions with the Divisions and Offices indicate the following headquarters and regional distributions would occur:

	FY14 PB FTEs	DC	CH	KC	NY
Market Oversight	177	107	27	7	36
Enforcement	215	112	34	26	43
General Counsel	69	68	1	0	0
Clearing and Risk Swap Dealer & Intermediary Oversight	115	41	43	24	7
Data & Technology	122	97	14	2	9
Chief Economist	25	25	0	0	0
International Affairs	17	17	0	0	0
Inspector General	6	5	1	0	0
Agency Direction	29	29	0	0	0
Executive Director	86	79	3	1	3
Total	1015	657	146	73	139

When estimated FTEs and contractors are considered, this creates a deficit of about 116 seats. This data comes from the charts and analysis of the FY2014 budget request, automation requirements, and CFTC's available seating capacity contained on the following page.

It is also important to note that CFTC's leases reflect the requested staffing requirements that were supported and reproduced in the FY2013 and FY2014 President's Budgets to Congress.

CONCLUSION

Based on this Report, CFTC strongly believes that the leasing decisions were well reasoned, cost effective, and justified.

Fiscal Year 2014 CFTC Real Estate Estimate

Location	Lease Expiration	Rentable Square Footage	Seats Occupied ¹	Rent and Operating ²	Utilities	FY14 Estimated ²
Washington, DC	9/30/25	288,395	667	\$15,037,779	Included in Rent	\$15,037,779
Kansas City, MO	3/31/21	24,362	24	\$560,591	Included in Rent	\$560,591
Chicago, IL	6/30/22	60,412	142	\$2,245,702	\$30,375	\$2,276,077
New York, NY	4/30/22	61,510	89	\$2,232,820	Included in Rent	\$2,232,820
		434,679	922	\$20,076,892	\$30,375	\$20,107,267

¹ As of November 14, 2013

² May adjust in FY2014 based on local taxing authority and operating billings.

Seats					
	Total	Occupied	Available	FY14 Program Budget Request	Net
DC	966	667	299	1,082	-116 **
KCRO	78	24	54	78	0
CHRO	173	142	31	173	0
NYRO	135	89	46	135	0
Totals	1,352	922	430	1,468 *	-116

*This 1,468 represents 1,015 FTEs, 388 IT contractors, and 65 non-IT contractors.

**This (-116) means we are 116 seats short of full operational status at the FY14 President's Budget. These needed seats represent contractors, and almost all are IT contractors. Some or all of these can be housed off-site but that will raise their hourly rate over providing in-house space and may affect effectiveness.

CFTC's current portfolio of real estate includes four commercial leased locations. The CFTC has authority to enter into leases independently based on CEA section 12(b)(3) and language in CFTC appropriation acts since FY1981 authorizing expenditures for "the rental of space (to include multiple year leases)..." The CFTC also negotiates a Tenant Improvement Allowance (TIA) from its landlords. These allowances are used to cover the costs of space renovations or rent abatement.

All currently available space will be fully occupied if the CFTC receives its FY2014 President's Budget request. The estimates for taxes are constantly changing due to various local taxing authorities; as well as the necessary utilities that may be used in a specific location.



Office of the
Inspector General

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MEMORANDUM

TO: Gary Gensler
Chairman

FROM: A. Roy Lavik *arl*
Inspector General

DATE: November 10, 2011

SUBJECT: Inspector General's Assessment of The Most Serious Management Challenges Facing the Commodity Futures Trading Commission (CFTC)

Introduction

The Reports Consolidation Act of 2000 (RCA) authorizes the CFTC to provide financial and performance information in a more meaningful and useful format for Congress, the President, and the public. The RCA requires the Inspector General to summarize the "most serious" management and performance challenges facing the Agency and to assess the Agency's progress in addressing those challenges. This memorandum fulfills our duties under the RCA.

In order to identify and describe the most serious management challenges, as well as the Agency's progress in addressing them, we have relied on data contained in the CFTC financial statement audit and Annual Financial Report, representations by agency management, as well as our knowledge of industry trends and CFTC operations. Since Congress left the determination and threshold of what constitutes a most serious challenge to the discretion of the Inspector General, we applied the following definition in preparing this statement:

Serious management challenges are mission critical areas or programs that have the potential for a perennial weakness or vulnerability that, without substantial management attention, would seriously impact Agency operations or strategic goals.

This memorandum summarizes the results of the CFTC's current financial statement audit, describes the Agency's progress on last year's management challenges, and finally discusses the most serious management challenges that we have identified:

- Implementation of the Dodd-Frank Act
- Human Resource Expansion and Management

- Efficient Deployment of Information Technology Resources
- Expanding Delivery of Customer Protection Resources and Consumer Education

CFTC Financial Statement Audit Results

In accordance with the *Accountability of Tax Dollars Act*, CFTC, along with numerous other federal entities, is required to submit to an annual independent financial statement audit by the Inspector General, or by an independent external auditor as determined by the Inspector General. The results of the Fiscal Year 2011 financial statement audit will be discussed in the Annual Financial Report, and the financial statement audit is expected to result in an unqualified audit opinion.

CFTC's Progress on Last Year's Challenges

Last year, we identified two of the most serious management challenges:

- Implementation of the Dodd-Frank Act; and,
- Human Resource Expansion and Management.

CFTC made progress on both challenges, but due to ongoing implementation of the Dodd-Frank Act these challenges remain significant. Following is our statement made last year followed by an update.

OIG Statement 2010

Implementation of the Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Dodd-Frank"), Pub. L. 111-203, 124 Stat. 1376 (2010). Title VII of the Dodd-Frank Act amended the Commodity Exchange Act to establish a comprehensive new regulatory framework for swaps and security-based swaps. In order to implement the Dodd-Frank Act, the Commission has identified 30 areas where rules will be necessary. Many of these rules will require or result in cooperative efforts with the Securities and Exchange Commission or other federal agencies. In addition, the Dodd-Frank Act calls for numerous studies and other undertakings by the Commission, some also with cooperation from other agencies. The Commission recognizes that many of the new rules required under Dodd-Frank must be adopted within 180 days. The magnitude of this undertaking under a compressed timeline during FY 2011 presents a serious management challenge.

Update

During the past year CFTC staff and Commissioners have met more than 1,000 times with members of the public to discuss rules proposed under Dodd-Frank, and have conducted 14 public roundtables. Additionally, the Commission has received more than 25,000 comment letters pertaining to Dodd-Frank. The Commission has held 20 public meetings to vote on various Dodd-Frank matters, and more meetings are scheduled this year and into next year. The Commission has issued nearly 60 proposed rules, notices, or other requests seeking public comment, as well as 22 final rules, interim final rules, and exemptions, but implementation is not yet complete.

In order to address the new regulatory mandates stated in the Dodd-Frank Act, the Agency has reorganized into 4 Divisions and 7 operating offices. Operational challenges associated with Dodd-Frank implementation remain, in our view, a serious management challenge.

OIG Statement 2010

Human Resource Expansion and Management

The Commission's new responsibilities under Dodd-Frank significantly increased its workload. By the end of Fiscal Year 2010, the Commission had on-board 687 employees, which is 58 below the 745 FTE CFTC requested to carry out our pre-Dodd-Frank authorities. To fully implement the Dodd-Frank reforms, the Commission states it requires an additional 398 FTEs. Rather than 398, the President's FY 2011 Budget provided for hiring only 238 additional positions. CFTC is requesting an additional 160 FTEs for FY 2012 to staff areas of critical need. However, the current budgetary limits imposed by the government-wide continuing resolution will significantly impact the CFTC's ability to hire any additional employees during FY2011. Should Congress lift the continuing resolution, the CFTC will need to dramatically expand its Human Resource function to meet and manage the CFTC's need for additional staff and training to address the requirements of Dodd-Frank Act. We view the possibility of a rapid and dramatic increase (35% staff increase in FY11) in new employees to address new rules over newly regulated markets, such as swaps, a significant management challenge during Fiscal Year 2011.

Update

During Fiscal Year 2011 the agency secured additional appropriations and staff. The CFTC's 2011 spending plan accommodated 717 FTEs. It is our understanding, based on the President's Budget Submission, that CFTC may increase to 983 staff years – an increase of over 200 staff years – for FY 2012 and, accordingly, we restate *Human Resource Expansion and Management* as a serious and continuing management challenge in the coming fiscal year.

Most Serious Management Challenges for the coming year

Two new issues that are likely to challenge CFTC management in the coming year are:

Efficient Deployment of Information Technology Resources

According to current data, over eighty percent of futures and options trading on the Chicago Mercantile Exchange are transacted electronically. We believe that expanded jurisdiction over swaps will increase the volume of electronic trading the Agency will monitor. As a result of this structural shift in futures trading (from floor based open outcry to electronic platforms), the CFTC has requested from Congress and received additional resources to facilitate electronic surveillance.

Congress in FY 2011 authorized a minimum of \$37.2 million for “the highest priority information technology activities of the Commission.” In response to this congressional directive as well as the Agency’s added responsibility over the swaps marketplace, the Agency in FY 2011 allocated over \$42 million dollars towards technological modernization (21% of FY 2011 appropriations). Approximately two thirds of this budgeted commitment was targeted towards automated data processing systems to modernize the Agency’s systems for capturing and processing market related data. We identify efficient deployment of information technology resources as a serious management challenge for the coming year.

Expanding Delivery of Customer Protection Resources and Consumer Education

Section of 748(g) of the Dodd-Frank Act added section 23(g) to the Commodity Exchange Act to establish within the Treasury of the United States a revolving fund that will be available to the Agency for the payment of whistleblower awards and education initiatives. The new Customer Protection Fund may be funded – up to \$100 million – by civil monetary penalties collected through the Commission’s enforcement program that are not otherwise distributed to victims. At the end of FY2011 the Customer Protection Fund totaled over \$23 million dollars. On October 24, 2011, an initial Office of the Inspector General financial statement audit of the Customer Protection Fund resulted in an unqualified opinion on the financial statements, which is encouraging.

Increasingly, the Customer Protection Fund’s resources and commitments will demand significant management attention. This new commitment to whistleblower protection and education will challenge the Agency to effectively manage decisions regarding additions to and awards from the CPF, develop its organizational structure, and prudently manage significant additional resources. We are encouraged that the agency will soon select management for the startup Customer Protection Fund and Consumer Education initiatives, but nevertheless we count the creation of this new program among the most serious management challenges facing the Commission in the coming year.

FY 2012 President's Budget & Performance Plan

APPENDIX 5

Acquisition of Additional Office Space

Over the last two years the CFTC has worked diligently to increase its seating capacity and redesign its work space to accommodate new technology. Over 230 more employees are on the payroll than at the end of FY 2007. A significant uptick in contract staff in the information technology area, visiting academics, interns, and student volunteers also need to be housed.

The CFTC has reworked its leases in Washington, DC, Chicago, Kansas City, and New York to expand the size of its space, extend the terms of the leases, and renegotiate pricing in its favor. Additionally, CFTC has sought to leverage its space configuration to enhance its operational capabilities. e.g., market watch rooms, productivity and technology hub, hearing room with webcasting capability, and video conferencing.

The result of this work has been to bring down leasing costs as a percentage of the annual budget, while increasing the total space footprint from 249,964 to 406,771 square feet. For example, in FY 2007 leasing costs were 12 percent of the budget while in FY 2010 they consumed 7 percent of the budget.

How Much Does Space Cost and How Much Space is CFTC Leasing?

The display below depicts the CFTC Budget for space lease costs. The FY 2012 budget request is for \$308 million and supports an FTE level of 983 and approximately 289 contractors, the majority of which would support information technology.

Space Lease Cost (Including Pass-Through and Utilities Where Applicable)

	<u>FY 2010 Actual</u> \$ (000)	<u>FY 2011</u> \$ (000)	<u>FY 2012 Request</u> \$ (000)
Washington DC	\$8,370	\$11,571	\$14,718
Chicago	\$1,660	\$1,155	\$2,372
New York	\$2,331	\$1,293	\$2,605
Kansas City	\$188	\$188	\$721
Coop Site	\$83	\$20	\$91
Total	\$12,632	\$14,297	\$20,507

Rentable Square Feet Data

	<u>FY 2010 Actual</u>	<u>FY 2011</u>	<u>FY 2012 Request</u>
Washington DC	161,785	274,568	288,995
Chicago	40,750	60,412	60,412
New York	39,353	39,353	60,000
Kansas City	8,066	32,428	32,428
Total	249,964	406,771	441,835

Attachment 4

Considerations Associated with Sub-Leasing Kansas City Office Space

CFTC currently leases 24,362 rentable square feet (rsf) of space on the fifth and sixth floors of 4900 Main Street in Kansas City, MO. There are a number of considerations affecting the viability of any plans to sublease this space, as follows:

- Prevailing fiscal guidance informs that several appropriations law principles come into play. First, proceeds from the sublease likely cannot be used by CFTC to offset its rental obligations, but instead will need to be deposited with Treasury as a miscellaneous receipt. Second, the use of amounts paid by a lessee under a sublease, even if paid directly to the landlord, could be interpreted as an augmentation of CFTC's appropriations. These restrictions and prohibitions could offset any benefits to the Commission associated with subleasing the space.
- If CFTC does sublease its space, its up-front out of pocket costs prior to receipt of rent from a sublessee are significant, and include: (1) real estate commissions payable to both parties' brokers; (2) tenant allowance payable to the sublessee; and (3) legal fees associated with documenting the transaction. These costs could easily total \$700,000 or more, which amounts to almost 16 months of base rent under CFTC's current lease.
- Additionally, CFTC could expect somewhere in the neighborhood of 12 months of vacancy prior to collecting sublease rent. This is the period for marketing, space construction and rental abatements. Total cost to the Commission in base rent and estimated pass-throughs payable is about \$570,000, bringing the total cost of executing a transaction to approximately \$1.3 million or more.
- CFTC's space is considered a large tenancy in the Kansas City market—the typical leasehold is more in the range of 8,000 to 10,000. Consequently, CFTC could be required to subdivide its space, thereby incurring additional costs, or secure lower rent in exchange for convincing a subtenant to take more space than it requires.
- Although CFTC's lease does not restrict its rights to sublease space, CFTC will remain liable to the landlord for payment of rent and its other lease-related obligations through lease expiration in April of 2021.

The question of CFTC terminating all or a portion of its lease for the convenience of the government in lieu of subleasing the space has been raised. However, CFTC leases (and for that matter GSA's leases) do not contain Termination for Convenience ("T for C") clauses permitting the Government to do so. The GSA Board of Contract Appeals has held the T for C clause inappropriate for the lease of real property.

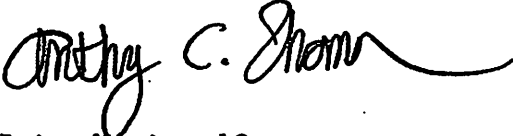
APPENDIX 2

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*
May 14, 2014



U.S. COMMODITY FUTURES TRADING COMMISSION

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To: Roy Lavik, Inspector General
From: Anthony C. Thompson, Executive Director 
Date: May 14, 2014
Subject: 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*.

OED appreciates the opportunity to review and comment on the OIG study titled *Review of Leasing and Occupancy Levels of the Kansas City Regional Office of the CFTC – Discussion Draft*. We certainly agree that CFTC should strive to efficiently use government space and maximize taxpayer resources, and strongly believe we have pursued this objective.

We suggest several changes to the *Discussion Draft* for which we would appreciate your consideration (see attached). The majority of our suggestions refer to what we believe to be factual errors in the Review and we explain those errors in the inserted comments in sufficient detail. We also want to emphasize an important omission, contained in several prior OIG's reports, highlighting the need to consider the need for CFTC expansion as a part of our planning processes; we believe is germane to this Review, which I will discuss further in this document.

Based on CFTC's current situation, we acknowledge there is excess vacant space in the Kansas City Office. As OED has previously shared with OIG more than a year ago, and in the December 30, 2013, report that you attached, we have, and will continue to monitor the vacancy situation as well as review potential options to address this issue. We are doing this, but we must also continue to plan, at some level, for the possibility that CFTC will receive all, or a significant part of its budget request. If we subleased or renegotiated our lease down to zero excess capacity in Kansas City and elsewhere, only to find out that we received our full budget request (or a substantial portion thereof), we would have to reacquire space that most likely would; (1) not be contiguous or even in the same building, (2) would take more than a year to lease and prepare for occupancy, (3) potentially be more expensive, (4) ultimately reduce the effectiveness of staff in terms of continuity of operations, and (5) be an increase to our current "sunk" costs.

A number of our Directors that reviewed your Discussion Draft also reiterated that they are very interested in increasing the staff in Kansas City, but have not had the capacity to hire due to budget constraints. Moreover, the Kansas City Regional Administrator (RA) stated that since the Fall of 2010, of those vacancies which have occurred, the current RA has reviewed hundreds of applications, many with outstanding capability to support the primary missions of examinations and audits as performed by the Kansas City staff. The potential pool is substantial. Many of these individuals ultimately were not hired when CFTC's ability to increase staff was put on hold last fall. Specifically, the Regional Administrator and Division Directors went on to state

that there is an abundance of highly qualified CPAs, auditors, economists, lawyers, etc. interested and highly qualified to perform the work of the CFTC at the Kansas City Regional Office.

The President's Budgets, since FY 2011, support a level of staff and contractors that would fully occupy all leased space. The CFTC was transparent about the space it planned to lease and what was leased. CFTC received Congressional inquiry into CFTC's ability to house staff if it were given its requested budget. CFTC believes that it should "prudently" plan for a resource and staffing level as suggested by the administration and contained in the President's Budget. This is one of the reasons CFTC discussed its leasing plans and accomplishments in its prior year, and current FY 2015 budgets, submitted to the Administration, Congress, and the public.

OIG shared the same concern with CFTC and others through its annual *Inspector General's Assessment of The Most Serious Management Challenges Facing the CFTC*. In November 2009, the OIG raised questions about CFTC's ability to address a "40% increase over existing staffing levels—a considerable challenge for any organization." In November 2010, OIG specifically discussed that: "the Commission requested in the President's FY 2011 Budget, 745 FTE for Pre-Dodd-Frank Authorities and 119 FTE to implement Dodd-Frank authorities, for a total of 864 FTE." This was called a "serious management challenge." In November 2011, OIG stated: "The Commission's new responsibilities under Dodd-Frank significantly increased its workload. By the end of FY 2010, the Commission had on board 687 employees, which is 58 below the 745 FTE CFTC requested to carry out our pre-Dodd-Frank authorities. To fully implement the Dodd-Frank reforms, the Commission states it requires an additional 398 FTEs." OIG went on to state: "We (OIG) view the possibility of a rapid and dramatic increase (35% staff increase in FY11) in new employees to address new rules over newly regulated markets, such as swaps, a significant management challenge during FY 2011." The update from the prior year further stated: "During FY 2011 the agency secured additional appropriations and staff. The CFTC's 2011 spending plan accommodated 717 FTEs. It is our (OIG) understanding, based on the President's Budget Submission that CFTC may increase to 983 staff years – an increase of over 200 staff years – for 2012 and, accordingly, we restate Human Resource Expansion and Management as a serious and continuing management challenge in the coming fiscal year."

Over time, the clear expectation by both the CFTC and the OIG was that CFTC may expand rapidly and significantly in the near-term. When one considers the potential for growth, albeit the prospect may have diminished recently from your perspective, since wholesale funding increases have not occurred to date—I think we mutually agree at some level, the potential for growth continues to create a serious management challenge in regard to the capacity to hire, make productive, and house a large influx of staff over a very short period. Our four budget requests since FY2011 have not materialized in full funding as advocated, but there have been incremental increases in CFTC funding over this period, to include the most recent increase of \$20M received in the FY14 Budget. Due to this most recent experience, the potential for additional funding in-line with our FY15 Budget request does not eliminate future funding increases from the realm of possibility. Therefore, we have to plan and remain postured for the possibility of fully utilizing some, if not all of the excess capacity in which we are contractually obligated into the foreseeable future.

Again, we acknowledge CFTC has excess leased space that is unoccupied for current staff needs. Yet, CFTC does not believe that calendar year 2014 is the time to permanently alter the amount of leased space resulting in an overnight reduction in the agency's structural foot print. This is due in large part to the need for additional staff to fulfill the CFTC's mission and the unwavering Administration's support of the CFTC expansion efforts through the FY 2015 President's Budget. It is also important to note that the FY 2015 Budget request is the first budget that is based on nearly all of the Dodd-Frank rules being final. This places the CFTC in a better position for requesting and justifying resources as we are no longer speculating about rule requirements.

You inquired about our ability to give back space, or sublease as an immediate solution to reduce space and costs. In answer, this would not be a timely or optimal solution due to several factors. The most important being that if CFTC subleased part of the KC leased space, or returned space to the building owner, it would be very difficult if not impossible to get this or other contiguous space back. CFTC still adamantly believes it needs additional staff to fulfill its mandated mission. It is anticipated that all leased space will be fully occupied if the CFTC receives the FY 2015 President's Budget Request. On the subleasing issue, CFTC has received a legal opinion indicating that it has extremely limited ability to sublease space and that any return of space to the landlord would have to be done by mutual agreement. If CFTC were able to sublease space, it would not be able to retain lease payments and would be required to deposit them to the Treasury as miscellaneous receipts, thereby providing no financial relief to the agency. The CFTC has now largely completed the rule writing effort and is making its best case for more staff on known as opposed to anticipated requirements.

In the interim, and especially if it appears no additional funding will be forth coming in our FY15 Budget request, we will pursue alternatives as suggested in the OIG Study, with full Commission support, to restructure the Kansas City Office space to "right size" to fit the current staff needs at that location.

If something remains unclear, or you would like further explanations, please contact me or [REDACTED], my [REDACTED] of Business Management and Planning.

Again, thank you for your Review and the opportunity to comment.

cc: Acting Chairman Wetjen
Commissioner O'Malia

APPENDIX 3

Maps

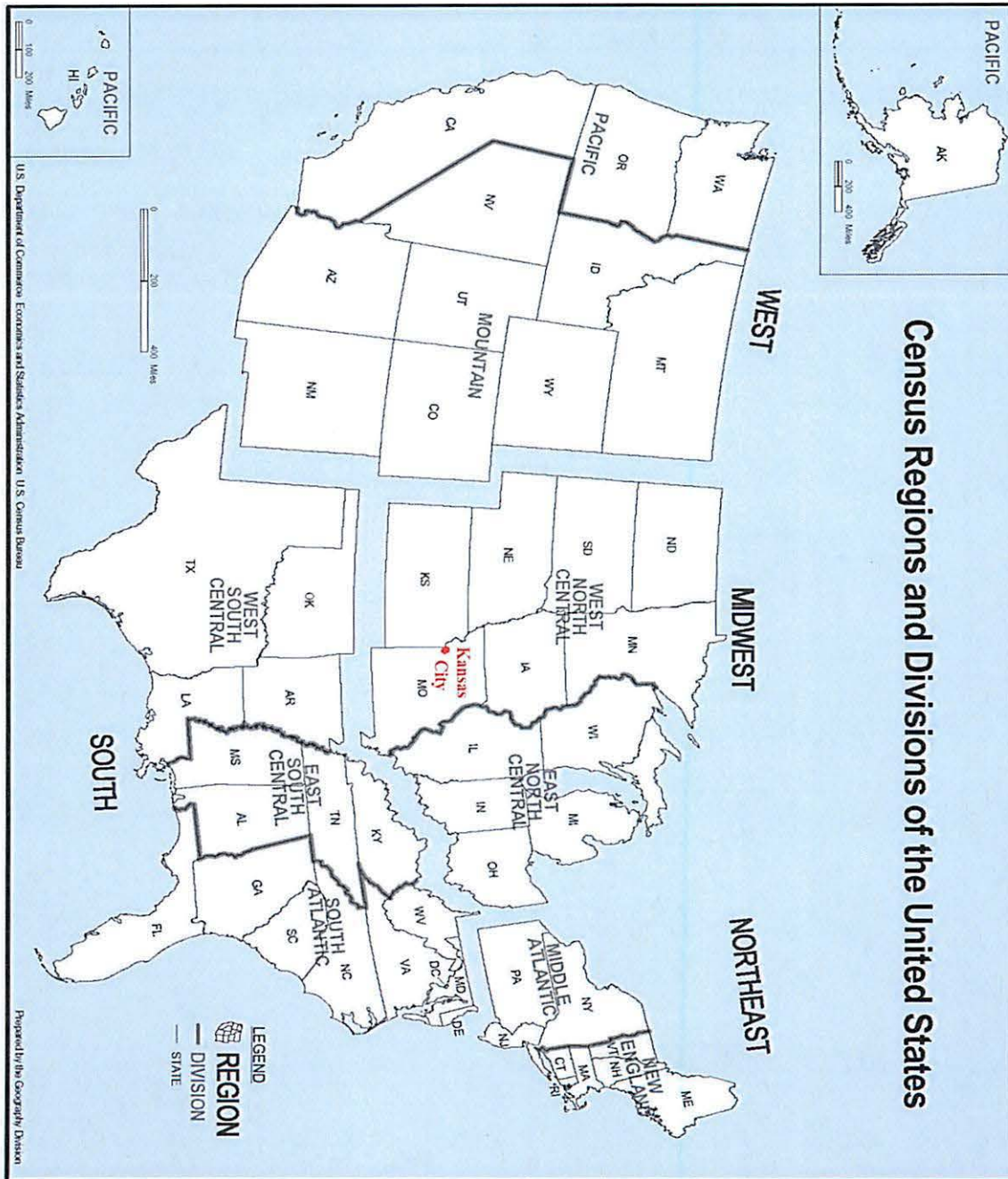
“Census Regions and Divisions of the United States,” U.S. Census Bureau Map
(available at: http://www.census.gov/geo/maps-data/maps/pdfs/reference/us_regdiv.pdf).

“Admission of States and Territorial Acquisition,” U.S. Census Bureau Map
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