United States Government Accountability Office

Report to Congressional Committees

April 2016

# FEDERAL REAL PROPERTY

# Commodity Futures Trading Commission Needs Better Leasing Guidance to Improve Cost-effectiveness

GAO-16-434

# GAO Highlights

Highlights of GAO-16-434, a report to congressional committees

April 2016

# FEDERAL REAL PROPERTY

## Commodity Futures Trading Commission Needs Better Leasing Guidance to Improve Cost-effectiveness

## Why GAO Did This Study

The CFTC regulates certain financial markets, and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) expanded its regulatory responsibilities. Prior to enactment of the Dodd-Frank Act, in anticipation of these increased responsibilities, the agency began planning for more space to accommodate additional staff in each of four office locations.

GAO was asked to review CFTC's staffing, leasing practices, and costs. This report examines: (1) the extent to which CFTC made cost-effective decisions and used leading government guidance in planning for additional space in fiscal years 2008 through 2015 and (2) potential options to improve the cost-effectiveness of CFTC's future leasing. GAO (1) reviewed applicable federal laws, regulations, and guidance that apply to real property leasing and CFTC's space-planning documents and leases for the fiscal years 2008 through 2015; (2) analyzed data and conducted interviews with key officials from CFTC and GSA; and (3) visited all four CFTC offices.

## What GAO Recommends

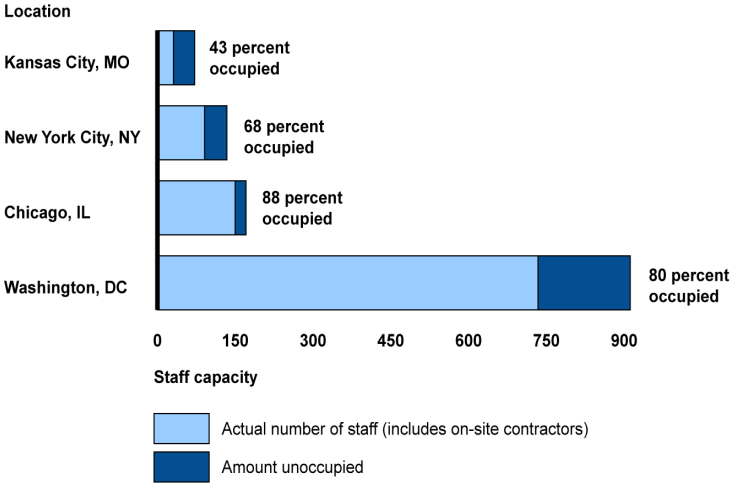
To help ensure cost-effective leasing decisions, GAO recommends that CFTC (1) ensure that its revised leasing policies and procedures incorporate leading government guidance and (2) establish a timeline for evaluating and documenting options to potentially improve space utilization and reduce leasing costs. CFTC generally concurred with GAO's recommendations but noted that it would not be able to take actions to reduce lease costs in the near term.

View GAO-16-434. For more information, contact Dave Wise at (202) 512-5731 or wised@gao.gov.

## What GAO Found

The Commodity Futures Trading Commission (CFTC) did not make cost-effective decisions consistent with leading government guidance for lease procurement and internal controls when planning for additional space in fiscal years 2008–2015. CFTC began planning for expansion in the fiscal year 2009 time frame—more than a year before the enactment of the Dodd-Frank Act in July 2010. CFTC renewed leases and expanded space in its Washington, D.C., headquarters and three regional offices in anticipation of receiving funding to hire additional staff but did not receive the amounts requested. As a result, CFTC has lease obligations for currently unused space some of which extends through 2025. Overall, the total occupancy level for all four offices combined was about 78 percent as of the end of fiscal year 2015, and each office has different occupancy levels, as shown in the figure below. CFTC has independent authority to lease real property, including office space. The two documents CFTC uses to guide the lease procurement process provide some high-level guidance on this process, but the documents do not establish specific policies and procedures to help ensure cost-effective decisions. By comparison, leading government guidance, from the General Services Administration (GSA) includes comprehensive details on lease procurement. The lack of this type of detail may have contributed to CFTC's making decisions that were not cost-effective.

**Commodity Futures Trading Commission's Space Utilization by Office Location, Fiscal Year 2015**




Source: GAO analysis of Commodity Futures Trading Commission space allocation data. | GAO-16-434

GAO identified several potential options that CFTC may pursue now and in the future to increase space utilization and improve the cost-effectiveness of its leasing arrangements: (1) relocating offices to less costly locations, (2) reducing office space requirements through enhanced telework, and (3) consolidating two regional offices—Kansas City and Chicago. CFTC officials told GAO that these options may not be feasible; however, the officials have not fully assessed these options or their potential for improving cost-effectiveness and do not have a timeline for doing so.

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## Abbreviations

| | |
|---|---|
| BOMA | Building Owners and Managers Association International |
| CFTC | Commodity Futures Trading Commission |
| EER | Experience Exchange Report |
| FAR | Federal Acquisition Regulation |
| FY | fiscal year |
| GSA | General Services Administration |
| *GSAM* | *General Services Acquisition Manual* |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| rsf | rentable square feet |
| TEC | Technical Evaluation Committee |
| TIA | Tenant Improvement Allowances |
| usf | usable square feet |

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

April 18, 2016

The Honorable John Boozman
Chairman
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States Senate

The Honorable Robert B. Aderholt
Chairman
Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
Committee on Appropriations
House of Representatives

The Commodity Futures Trading Commission (CFTC)—an independent regulatory agency with authority to lease real property, including office space—is responsible for regulating the commodity futures market.[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) expanded CFTC's role by adding the previously unregulated swaps market[2] to its regulatory responsibilities[3]—a market nearly dozen times the size of the futures market. The Dodd-Frank Act requires or authorizes various federal agencies, including CFTC, to issue hundreds of regulations to implement its reforms.[4] To address these new responsibilities, the agency began planning to expand its existing space or lease new space in fiscal year 2009 in each of its four office locations

[1] Commodity futures, also known as futures contracts, is an agreement to purchase or sell a commodity for delivery in the future: (1) at a price that is determined at initiation of the contract; (2) that obligates each party to the contract to fulfill the contract at the specified price; (3) that is used to assume or shift price risk; and (4) that may be satisfied by delivery or offset.

[2] A swap is a type of financial product that involves an ongoing exchange of one or more assets, liabilities, or payments for a specified period. Financial and nonfinancial firms use swaps to hedge risk or speculate, or for other purposes.

[3] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] For more information, see GAO, *Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination*, GAO-12-151 (Washington, D.C.: Nov. 07, 2011).

and implemented this expansion in fiscal years 2010 through 2012. According to CFTC officials, this expansion was based in part on the additional staff the agency determined it would need to meet the requirements of the Dodd-Frank Act once it became enacted. We have designated federal real property management, as a high risk area in part due to the government's overreliance on costly, long-term leasing.[5]

You asked us to review CFTC leasing practices, staffing, and costs.[6] This report examines: (1) the extent to which CFTC made cost-effective decisions and followed leading government guidance in planning for additional space and staff for fiscal years 2008 through 2015 and (2) what potential options exist to improve the cost-effectiveness of CFTC's leasing.

To address the extent to which CFTC made cost-effective decisions and followed leading government guidance to plan for additional space, we reviewed GSA leasing guidance,[7] *Standards for Internal Control in the Federal Government*,[8] and our prior work on federal real property. We also reviewed and analyzed CFTC's strategic plans, lease procurement policies, and space planning documents covering fiscal years 2008 through 2015. Further, we reviewed applicable federal laws and regulations. Moreover, we obtained and analyzed CFTC data on lease payments, rentable square feet (rsf) and lease expansions, and its staffing history. We determined how CFTC lease costs compare to those of other federal agencies and the private sector in commercial buildings in markets where CFTC offices are located by analyzing data from the General Services Administration's (GSA) inventory of federal agency

[5] GAO, *High Risk Series: An Update,* GAO-15-290 (Washington, D.C.: February 2015).

[6]Additionally, you requested that we examine use of its authority to lease real property. As part of this examination, you asked us whether CFTC properly recorded obligations for four leases. On February 4, 2016, we issued a legal opinion in response to this request. See *Commodity Futures Trading Commission—Recording of Obligations for Multiple-Year Leases*, *B*-327242.

[7] For the purposes of this review, because GSA has issued extensive guidance on leasing and management of federal real property, we are considering this to be leading government guidance.

[8]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999). GAO issued updated *Standards for Internal Control in the Federal Government* which took effect beginning with fiscal year 2016. See GAO-14-704G.

leases for fiscal years 2013 through 2015—the years for which these data were available—and data collected by the Building Owners and Managers Association International (BOMA).[9] To assess the reliability of these data, GSA, and BOMA officials about how they collect and maintain the data, as well as the completeness of the data, and we determined that the data were sufficiently reliable for the purposes of our report.

To identify what potential options exist to improve the cost-effectiveness of CFTC's leases, we reviewed and analyzed CFTC's legal authority to lease real property. We reviewed a current presidential memorandum and Office of Management and Budget (OMB) real property management initiatives, including OMB's *National Strategy for the Efficient Use of Real Property (National Strategy)*, a GSA study on workspace utilization, and our prior work.[10] We also obtained and analyzed CFTC leases from fiscal years 2008 through 2015 and conducted site visits at each of CFTC's four offices. We interviewed CFTC officials at the Washington, D.C., headquarters and each of the regional offices (Kansas City, MO; Chicago, IL; and New York, NY) about business processes, staffing, space planning, and management procedures. Additionally, we interviewed the CFTC Office of Inspector General's (OIG) officials about their reviews of CFTC's space utilization.[11] We interviewed GSA officials to understand their perspectives on federal lease procurement, including those agencies

[9] BOMA is an industry association representing the owners and managers of all commercial property types, including office buildings. Specifically, we analyzed data from BOMA's Experience Exchange Report (EER). These data, however, were not yet available for 2015.

[10] See, 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. (last visited March 3, 2016); OMB, *National Strategy for the Efficient Use of Real Property 2015-2020* (Washington, D.C.: March 25, 2015); U.S. General Services Administration, *Workspace Utilization and Allocation Benchmark (*Washington, D.C.: July 2011); and GAO, *Federal Real Property: Selected Agencies Plan to Use Workforce Mobility to Reduce Space, but Most Efforts Are Too New to Have Realized Savings*, GAO-14-41 (Washington, D.C.: Oct. 17, 2013).

[11] For information on the OIG reviews, see Office of Inspector General, Commodity Futures Trading Commission. *A Review of Leasing and Occupancy Levels of the Kansas City Regional Office of the Commodity Futures Trading Commission*. (Washington, D.C.: June 4, 2014); Office of Inspector General, Commodity Futures Trading Commission: *A Review of Space Utilization of the Chicago Regional Office of the Commodity Futures Trading Commission* (Washington, D.C.: Feb. 26, 2015)*;* Office of Inspector General, Commodity Futures Trading Commission: *Review of Leasing and Occupancy Levels at the New York City Regional Office* (Washington, D.C.: Apr. 16, 2015).

with independent leasing authority. Appendix I contains additional information on our scope and methodology.

We conducted this performance audit from June 2015 to April 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Background

The Commodity Futures Trading Act of 1974 (the Act)[12] established the Commodity Futures Trading Commission (CFTC) as an independent agency to better enforce the Commodity Exchange Act and oversee and regulate what was at the time an increasingly complex futures markets. The Act requires the agency to simultaneously submit its budget request to House and Senate Appropriations and oversight committees.[13] The Act also grants independent leasing authority to CFTC.[14] As such, the CFTC is not required to obtain its space through GSA.[15]

Commodity futures' trading has grown increasingly complex since its 19th century origins when agricultural commodities dominated the industry. During the 20th century, futures' trading expanded to include greater diversity in commodities, such as metals, oil, and financial products, including stock indexes and foreign currency. Subsequently, the Dodd-Frank Act expanded CFTC's regulatory jurisdiction to include the previously unregulated over-the-counter derivatives market, commonly known as the "swaps" market.[16]

[12] Pub. L. No. 93-463, § 2 (1974).

[13] 7 U.S.C. § 2(a)(10).

[14] 7 U.S.C. § 16(b)(3).

[15] In addition, in its annual appropriations for CFTC, since fiscal year 1981, Congress has authorized CFTC to make appropriations for necessary expenses for CFTC, including "the rental of space (to include multiple year leases) in the District of Columbia and elsewhere." *See, e.g.*, Pub. L. No. 113-235, 128 Stat. 2130, 2357 (Dec. 16, 2014).

[16] Pub. L. No. 111-203, tit. VII, 124 Stat. 1376, 1641.

CFTC, with a fiscal year 2015 budget of approximately $250 million, is responsible for administering and enforcing provisions of the Commodity Exchange Act, fostering open and transparent markets, and protecting futures markets from excessive speculation, commodity price manipulation, and fraud. The agency maintains four mission-related oversight divisions:

- Market Oversight: conducts trade surveillance and oversees trading facilities such as futures exchanges;
- Swap Dealer and Intermediary Oversight: oversees registration and compliance in the derivatives market;
- Clearing and Risk: oversees derivatives clearing organizations[17] and other major market participants; and
- Enforcement: investigates and prosecutes alleged violations of the Commodity Exchange Act.

In addition, the agency maintains several divisions related to functional operations and support in its four locations. CFTC closed two regional offices in Los Angeles and Minneapolis in 2003 and 2007, respectively.

## CFTC Did Not Make Cost-effective Decisions Consistent with Leading Government Guidance when Planning for Additional Space

CFTC began planning to substantially expand leased space prior to the enactment of the Dodd-Frank Act and then entered into leases that did not make efficient use of limited government resources. CFTC lease costs vary compared to other federal leases in the same markets. With the exception of its Washington, D.C., headquarters, CFTC's rsf costs are lower or about the same as lease costs among other federal agencies in the regional office locations. CFTC followed some elements of leading government-leasing practices; however, the agency lacked comprehensive policies and procedures to guide efficient and cost-effective decisions for lease procurement. As a result, CFTC currently has lease obligations for unused space that extend to 2021 and beyond.

[17] A derivatives-clearing organization is a clearinghouse or similar organization that enables each party to a transaction to substitute the credit of the clearinghouse for the credit of the parties, provides for the settlement or netting of obligations from the transaction, or otherwise provides services mutualizing or transferring the credit risk from the transaction.

## CFTC Did Not Fully Assess the Risk of Not Receiving Requested Funding when Leasing Additional Space

CFTC renewed leases and expanded space in its Washington, D.C., headquarters and three regional office locations, prior to receiving the funding necessary to hire staff to occupy the additional space. Anticipating the increased oversight that would result from regulating and monitoring the swaps market, CFTC began planning for the expansion of its leased space in the fiscal year 2009 time frame—more than a year before the enactment of the Dodd-Frank Act in July 2010.[18] The resulting leasing decisions negatively impacted the CFTC's space utilization and resulted in inefficient use of limited government resources. Federal standards for internal control call for agencies to identify and analyze relevant risks associated with achieving agencies' objectives. According to these standards, management needs to comprehensively identify risks and should consider all significant interactions between the entity and other parties as well as internal factors at both the entity-wide and activity level, including considering economic conditions.[19] Although CFTC's leasing decisions from fiscal years 2009 to 2012 significantly increased its space, CFTC could not provide us with an analysis of risks related to these decisions. CFTC has incrementally amended leases and expanded space in its Washington, D.C., headquarters since first occupying the building in 1995, and in 2009, CFTC extended the lease that was set to expire in 2015 by 10 years (through the end of fiscal year 2025) and expanded its leased space by more than 78 percent from fiscal years 2010 through 2012.[20] Similarly, CFTC amended existing leases and expanded space in its Chicago and New York regional offices in 2009 and 2011, respectively, and in 2011, CFTC relocated its Kansas City regional office to a larger space. As discussed below, these expansions resulted in reduced rates of occupancy and increased costs.

### Square footage of Leased Space Increased

As Table 1 shows, overall, the CFTC increased its leased space by 74 percent from fiscal year 2008 through fiscal year 2015. The greatest increase occurred in the Kansas City Regional Office where the volume of office space more than doubled. Also, during this period, the Kansas City Board of Trade closed and merged with the Chicago Mercantile

[18] The Wall Street Reform and Consumer Protection Act of 2009 was eventually enacted as the Dodd-Frank Act. *See* H.R. 4173, 111th Cong. (2009).

[19] GAO/AIMD-00-21.3.1.

[20] According to our analysis of the lease, CFTC initially leased about 132,000 square feet for its Washington D.C., headquarters, and expanded leased space within the building multiple times between 1994 and 2013.

Exchange. In the Chicago and New York regional offices, CFTC also increased leased space—adding approximately 20,000 square feet in Chicago and 22,000 square feet in New York. According to CFTC, the additional space currently gives the agency the capacity to accommodate 1,289 staff overall.

**Table 1: The Commodity Futures Trading Commission's (CFTC) Leased Space by Location, Fiscal Years 2008– 2015 (in Thousands of Rentable Square Feet)**

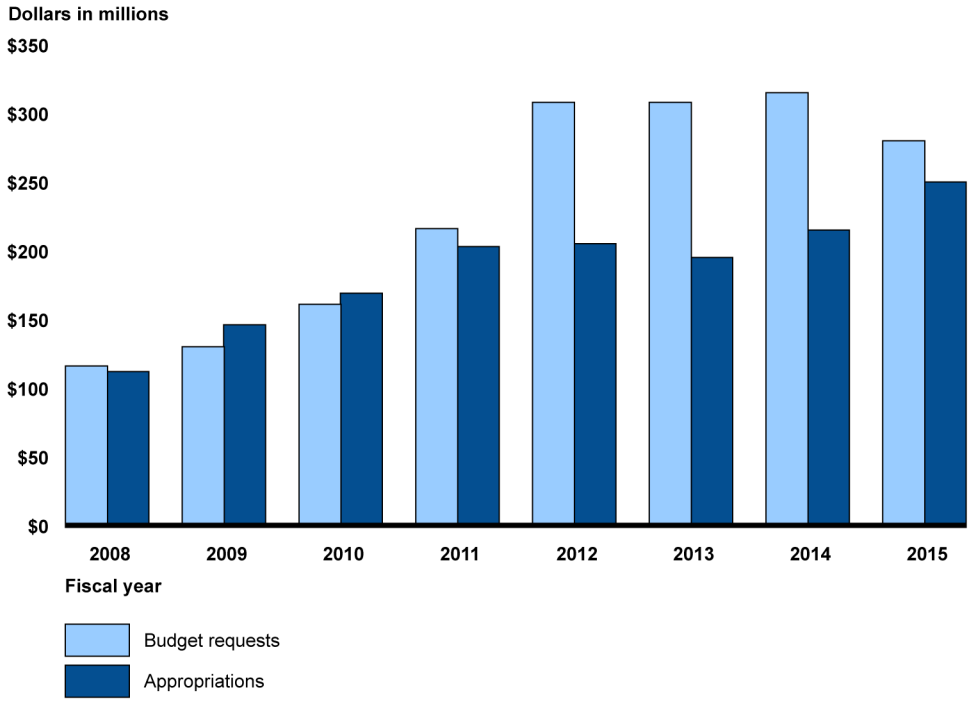
| | Fiscal year 2008 | Fiscal year 2009 | Fiscal year 2010 | Fiscal year 2011 | Fiscal year 2012 | Fiscal year 2013 | Fiscal year 2014 | Fiscal year 2015 | Increase between fiscal years 2008 & 2015 |
|---|---|---|---|---|---|---|---|---|---|
| Washington, D.C. | 162 | 162 | 162 | 271 | 288 | 288 | 288 | 288 | 78% |
| Chicago | 41 | 41 | 41 | 60 | 60 | 60 | 60 | 60 | 48% |
| New York | 39 | 39 | 39 | 39 | 46 | 62 | 62 | 62 | 56% |
| Kansas City[a] | 8 | 8 | 8 | 8 | 32a | 24 | 24 | 24 | 202% |
| **Total rentable square feet** | **250** | **250** | **250** | **378** | **420** | **435** | **435** | **435** | **74%** |

Source: GAO Analysis of CFTC data. | GAO-16-434

[a]CFTC signed a lease for additional space at a new location in Kansas City in fiscal year 2011, and vacated its prior location and began paying rent for the new space in fiscal year 2012. Therefore this table includes the space in both the old and new Kansas City locations for fiscal year 2012.

The agency requested additional funding to cover its new regulatory responsibilities and, as figure 1 below demonstrates, in fiscal years 2009 and 2010 the CFTC was appropriated funding in excess of its request. Figure 1 also shows that this period was followed by 5 years of appropriations less than the amount requested. Therefore, the CFTC could not expand its staff at a rate that would allow for full utilization of the additional leased space. On average, the agency received about 109 percent of the funding it requested in fiscal years 2009 and 2010 and about 76 percent of its requests from fiscal years 2011 through 2015.

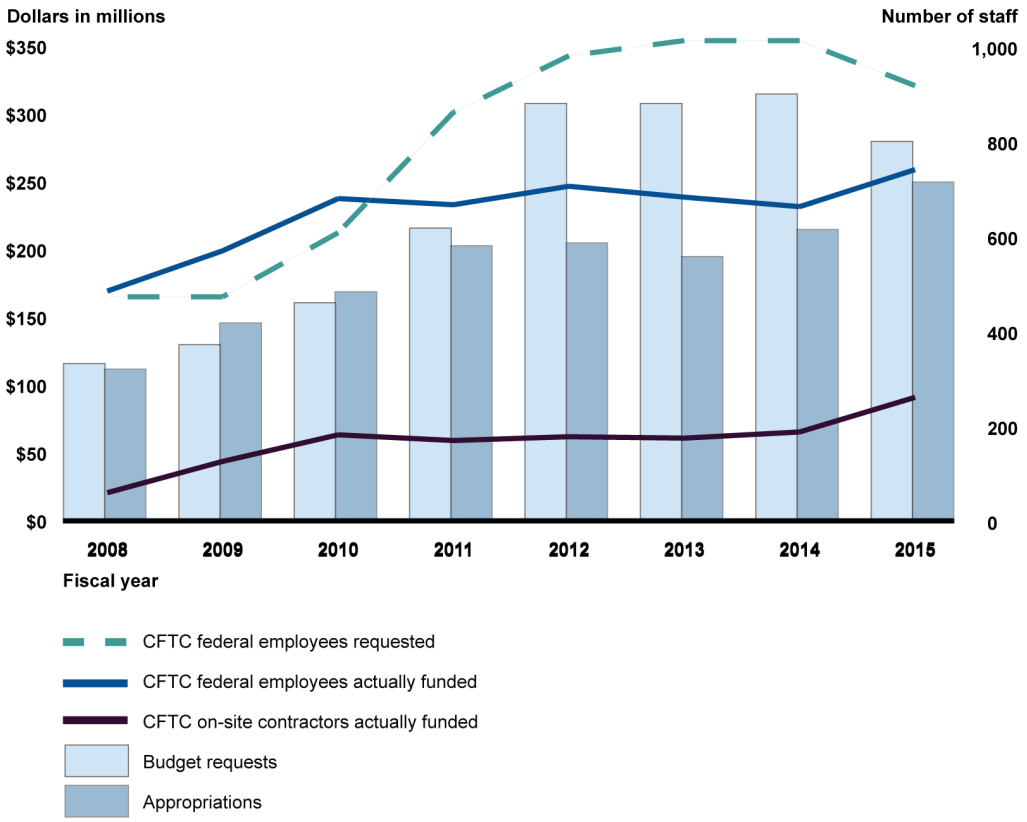
**Figure 1: Commodity Futures Trading Commission's (CFTC) Budget Requests and Appropriations (in Millions), Fiscal Years 2008–2015**




Source: GAO analysis based on Office of Management and Budget information and appropriations laws. | GAO-16-434

Figure 1 illustrates that—while not always granting CFTC's full funding request—Congress increased funding in nominal terms for CFTC every year from fiscal year 2008 through fiscal year 2015—with the exception of fiscal year 2013 when funding declined slightly. In other words, CFTC's fiscal year 2015 appropriations represent an increase of nearly $138 million, or about 123 percent, when compared to fiscal year 2008. The amount CFTC allocated versus the amount it requested for staff follows a similar pattern. In fiscal years 2009 and 2010, based on its higher than requested appropriation, CFTC hired more staff than it had anticipated. In the following 5 fiscal years, with a lower appropriation, it hired fewer staff than requested. CFTC, on average, hired about 13 percent less staff than it originally requested between fiscal year 2008 and fiscal year 2015 (see fig. 2).

**Figure 2: Difference between Commodity Futures Trading Commission's (CFTC) Budget Requests and Appropriations, Number of Staff Requested and Number Funded, Fiscal Years 2008 through 2015**




Source: GAO analysis of CFTC data, Office of Management and Budget information and Appropriation laws. | GAO-16-434

CFTC federal employee staffing increased in absolute terms by about 53 percent from fiscal year 2008 through fiscal year 2015, according to CFTC data (see table 2 below). Moreover, CFTC greatly expanded the number of on-site contractors it employs, an increase of about 324 percent during the same period. According to CFTC, since commodity futures' trading is increasingly electronic and data intensive, most of the CFTC's on-site contractors are involved with operating and maintaining CFTC's electronic data systems. This increase also reflects the $35 to $55 million Congress set aside for the purchase of information technology in the appropriations for fiscal years 2012, 2014 and 2015. When CFTC's employees and on-site contractors are combined, aggregate agency staffing increased from 549 to 1006, or more than 80 percent, from fiscal years 2008 through 2015. This increase, however, falls below the

approximately 1,289 positions for which the CFTC leased additional office space.

**Table 2: Changes in Numbers of Commodity Futures Trading Commission's (CFTC) Federal Employees and On-site Contractors, Fiscal Years 2008–2015**

| | Fiscal Year 2008 | Fiscal Year 2015 | Change |
|---|---|---|---|
| CFTC Federal employees | 487 | 743 | 53% |
| CFTC on-site contractors | 62 | 263 | 324% |
| CFTC Federal employees and on-site contractors | 549 | 1006 | 83% |

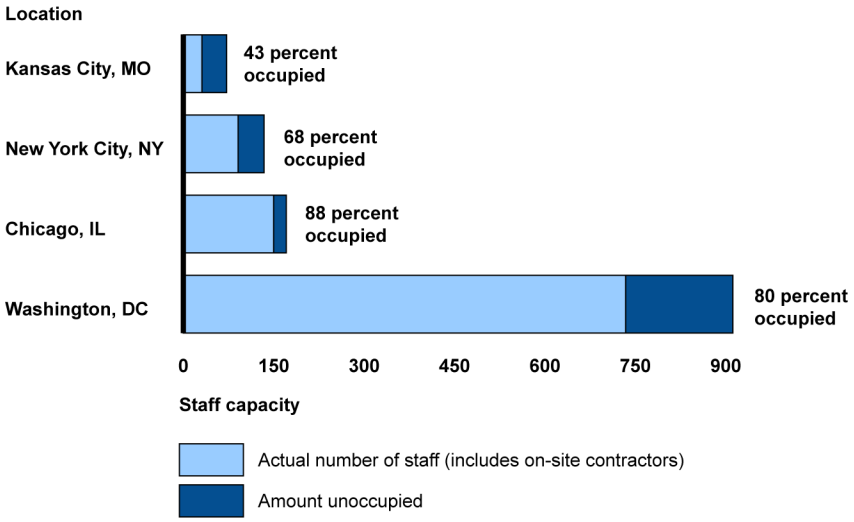
Source: GAO analysis of CFTC data. | GAO-16-434

## Utilization of CFTC's Space Decreased

As discussed below, expanding leased space before obtaining an appropriation to fund additional staff has resulted in substantial space underutilization, which increased the space allocation per CFTC staff member (including CFTC employees and on-site contractors). According to our analysis of CFTC data, the overall allocation of useable square feet (usf) per CFTC staff member in fiscal years 2008 through 2010 was 303 square feet on average. From fiscal years 2011 through 2015, the allocation increased to 465 square feet on average in contrast to the approximately 300 usf per employee noted in CFTC's 2009 Program of Requirements, a space-planning document for all four of the agency's office locations.

The total space utilization for all four CFTC offices combined was about 78 percent at the end of fiscal year 2015. However, each office had differing levels of space utilization, as figure 3 below illustrates, according to our analysis of CFTC data.

**Figure 3: Commodity Futures Trading Commission Space Utilization by Office Location, Fiscal Year 2015**




Source: GAO analysis of Commodity Futures Trading Commission space allocation data. | GAO-16-434

Note: CFTC measures its office capacity based on the number of staff it can accommodate.

As figure 3 above illustrates, the Kansas City Regional Office is the most underutilized of the four offices with a staff of 31, including contractors, housed in space intended to accommodate 72.[21] When we visited the Kansas City office, officials told us that CFTC vacated approximately a third of its leased space in response to the CFTC's OIG recommendation that the agency take steps to dispose of underutilized property in that location, including subleasing or returning the space to the landlord (see figure 4 below). According to CFTC officials, the only effective option to cease paying for the vacant space in Kansas City involves negotiating with the landlord to return the space. The landlord agreed to try to lease the vacant floor; however, there has been limited interest thus far, and CFTC continues to pay rent on the vacant space.

[21] Office of Inspector General, Commodity Futures Trading Commission. *A Review of Leasing and Occupancy Levels of the Kansas City Regional Office of the Commodity Futures Trading Commission*. (Washington, D.C.: June 4, 2014). According to CFTC, the capacity of the Kansas City Regional Office was 72 at of the end of fiscal year 2015.

**Figure 4: Vacant office space in Commodity Futures Trading Commission's (CFTC) Kansas City Regional Office**

Source: GAO. | GAO-16-434

In our review of CFTC leases, we found that all of the leases include provisions for subleasing space. CFTC officials told us that the agency was only authorized to enter into subleases in circumstances where the sublease would further the purposes of the Commodity Exchange Act.[22] According to CFTC, subleasing the space in a manner that furthers the purposes of the Act would, as a practical matter, be very difficult to accomplish.

The CFTC's OIG released additional reports in 2015 that found underutilized space in the Chicago and New York City Regional offices but not nearly to the extent found in the Kansas City Regional Office.[23] The report on the Chicago Regional Office recommended better utilization of space. According to our analysis of CFTC's data, space utilization in the Chicago office improved as CFTC increased the number of staff

[22] 7 U.S.C. § 16(b)(3).

[23] Office of Inspector General, Commodity Futures Trading Commission, *A Review of Space Utilization of the Chicago Regional Office of the Commodity Futures Trading Commission* (Washington, D.C.: Feb. 26, 2015), and Office of Inspector General, Commodity Futures Trading Commission, *A Review of Space Utilization of the New York City Regional Office of the Commodity Futures Trading Commission* (Washington, D.C.: Apr. 16, 2015).

(including contractors) from 137 in fiscal year 2014 to 150 in fiscal year 2015. The Chicago office currently utilizes about 88 percent of its space (see fig. 3). With regard to the New York City Regional Office, the OIG recommended that CFTC sublet or negotiate returning the additional space it leased beginning in fiscal year 2012. Our analysis of CFTC data found that space utilization in the New York City office, similar to the Chicago office, also improved as staff increased (including contractors) from 80 to 91, or nearly 14 percent, from fiscal year 2014 to fiscal year 2015. When we visited the New York City office in January 2016, we observed vacant offices, some of which were unfinished, unventilated, and not adjacent to one another. As of the end of fiscal year 2015, the New York City office had a utilization rate of 68 percent (see fig. 3). CFTC officials said that they have notified the landlord that they would like to return some space on one floor, but the building currently has a vacancy rate of about 30 percent, so this space would likely be difficult to rent.

## CFTC Lease Costs Increased

According to CFTC data, combined lease costs for all CFTC offices reached about $20.6 million in fiscal year 2015—a 79 percent increase in nominal dollars over the combined fiscal year 2008 lease costs (see app. II for details on lease costs). All four of the CFTC office leases typically cover a period of 10 years. As such, the current leases will not expire until fiscal years 2021 through 2025. The Kansas City Regional Office lease will expire first in 2021, followed by New York in 2022, Chicago in 2022, and Washington, D.C., in 2025. According to CFTC, lease renewal planning typically begins about to 2 years in advance of lease expiration, so it is reasonable to expect CFTC to begin planning around fiscal year 2019.

CFTC officials told us that they converted certain Tenant Improvement Allowances (TIA) provided under leases into rent abatements in order to reduce rent in 2011, 2012, and 2013.[24] CFTC used TIA to complete improvements and alterations to the CFTC office space in Washington, D.C., Chicago, New York, and Kansas City, as well as to cover such costs as architectural expenses, furnishings, equipment, cabling, and moving expenses for the CFTC offices. In addition, under the terms of certain leases, unused portion of the TIA could be converted to rental abatement and then used to offset rental payments. For example, the

[24] Tenant Improvement Allowances (TIA) are lease incentives from the landlord. These allowances can be used for construction, leasehold improvements, or rent expenses.

Kansas City Regional Office lease sets the TIA at $35 per rentable square foot. According to our analysis, at this rate, $852,670 was available for tenant improvements, and for this particular lease, any amount not expended in the first 6 months was available as a rebate against the rent expense. As appendix II shows, CFTC used $78,222 of TIA in fiscal year 2013 as a rent credit. CFTC did not state how it used TIA for space planning.

## CFTC Lease Costs Vary Compared to Those of Other Government Agencies

We compared CFTC's lease costs for fiscal year 2013 through fiscal year 2015 to average lease costs of other federal agencies that lease through GSA in privately owned buildings in the four markets where CFTC has offices. We also compared the cost of private sector leases, as measured by the Building Owner Management Association (BOMA) for 2013 and 2014, a widely recognized industry association.[25] As table 3 below shows, with the exception of the Washington, D.C., headquarters—where CFTC 2015 lease costs are about 18 percent higher than the average lease costs for federal agencies leasing office space through GSA—CFTC's rentable square foot costs are lower or about the same as lease costs among other federal agencies in the regional office locations. More specifically, CFTC's lease costs were lower than those of other federal agencies in Kansas City and New York and slightly higher than those of other federal agencies in Chicago (see table 3 below).[26]

[25] BOMA International's commercial building performance data, including income and expense data, serves as an industry benchmark. We determined, however, that BOMA Experience Exchange Report (EER). EER survey data is not generalizable to other buildings in those markets for which no BOMA survey data was reported. In addition, BOMA survey data for 2015 is not yet available.

[26] As noted above, Kansas City Regional Office offset its lease costs in fiscal year 2014 with TIA.

**Table 3: Comparison of Commodity Futures Trading Commission's (CFTC) Lease Costs with Average Lease Costs of Other Federal Agencies and Private Sector Buildings, Fiscal Years 2013 through 2015 (in Nominal Dollars per Rentable Square Foot)**

| | | Washington | Kansas City | Chicago | New York |
|---|---|---|---|---|---|
| **Fiscal year 2013** | **CFTC** | $50.58 | $18.50 | $34.61 | $30.62 |
| | **General Service Administration (GSA) leasing[a]** | $44.77 | $22.33 | $34.51 | $44.30 |
| | **Building Owners and Managers Association (BOMA)[b]** | $39.27 | $20.71 | $23.95 | $53.44 |
| **Fiscal year 2014** | **CFTC** | $50.30 | $16.88 | $36.29 | $36.16 |
| | **GSA leasing[a]** | $44.62 | $22.36 | $34.41 | $45.23 |
| | **BOMA** | $43.41 | $24.55 | $24.29 | $53.48 |
| **Fiscal year 2015** | **CFTC** | $53.12 | $23.73 | $39.23 | $37.40 |
| | **GSA leasing[a]** | $45.04 | $23.55 | $37.65 | $49.09 |
| | **BOMA[b]** | not available | not available | not available | not available |

Source: GAO analysis of CFTC, GSA, and BOMA data. | GAO-16-434

Note: Other federal leases referred to in the title are those managed by the General Service Administration (GSA).

[a]Our analysis of average lease costs did not account for the ratio of rentable square feet (rsf) to usable square feet (usf) because this information is not available in the GSA lease inventory data. Therefore, these costs do not consider the "add-on" factor (rsf/usf) commonly used to compare building space.

[b]The BOMA survey data are not generalizable to other buildings in those markets for which no BOMA survey data were reported. The number of office buildings with reportable BOMA Experience Exchange Report (EER) survey data in the Washington market in fiscal years 2013 through 2014 ranged from 82 to 93, in the Chicago market ranged from 140 to 156, in the Kansas City market ranged from 61 to 65, and in the New York market ranged from 61 to 63. BOMA EER survey data for 2015 is not yet available.

As discussed previously, the CFTC began planning space expansion more than one year before the Dodd-Frank Act was signed into law and entered into leasing decisions in response to anticipated requirements of Dodd-Frank without fully assessing the risk of not receiving appropriations sufficient to execute its plans. According to CFTC OIG estimates, the failure to consider this risk has resulted in the agency possibly spending

as much as $74 million for vacant space,[27] if current conditions persist through the end of the current leases in fiscal years 2021 through 2025. Thus, the CFTC is not carrying out its mission in an efficient and cost-effective manner.

## CFTC Used Some Leading Government Guidance when Procuring Space but Lacked Comprehensive Policies and Procedures

Both CFTC's guidance and GSA guidance share a common purpose: to maximize the value for the government while also fulfilling the agency's mission. CFTC's *Statement of General Principles*, which outlines the actual lease acquisition process, states a goal of maximizing competition to the extent practicable and making reasonable decisions to obtain space that enable the Commission to accomplish its mission in an efficient and cost-effective manner.[28] Similar to CFTC's *Statement of General Principles*, GSA's Leasing Desk Guide states that it aims to help ensure that it leases quality space that is the best value for the government. However, CFTC's guidance is very high-level and lacks the detail of GSA's guide, which provides more comprehensive leasing policies and procedures. According to federal standards for internal control, policies and procedures help ensure that actions are taken to address risks and are an integral part of an entity's accountability for stewardship of government resources.[29] When we applied this standard, we found that CFTC's policies did not include guidance to assess the risk of not receiving its full budget requests.

CFTC has two documents, the 2009 *Program of Requirements* and the 2011 *Statement of General Principles*, that comprise its leasing guidance. The *Program of Requirements*, according to CFTC officials, is a space planning document for all four of its office locations. It provides

[27] In commenting on a draft of this report, CFTC stated that they believe the OIG's estimate of "as much as $74 million" overstated the percentage of vacant space and also assumed that CFTC's occupancy rates remain flat. CFTC further stated that the number of occupants has increased since the time of the OIG's review. We did not independently verify the OIG's or CFTC's statements. Our use of the OIG's statement is intended to give an overall order of magnitude of the potential costs of the vacant space. (See app. IV for CFTC's agency comments.)

[28] CFTC created this *Statement of General Principles* in 2011 after entering into the new and expanded leases. The full name of these principles is *Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC's Office Space Leases, 2011*. (See appendix III for CFTC's *Statement of General Principles*).

[29] GAO/AIMD-00-21.3.1.

information on projected employee and contractor staff size; and requirements for offices, workstations, common use areas and other space needs. Based on the *Statement of General Principles*, CFTC follows select portions of leading government guidance, and regulation[30] that facilitate: maximizing competition to the extent practicable; avoiding conflicts of interest; adhering to the requirements of procurement integrity; and making reasonable decisions to obtain space that enables the Commission to accomplish its mission in an efficient and cost-effective manner. For example, CFTC officials told us that they followed select portions of leading government guidance when they began expanding space in 2009.[31]

Consistent with internal control standards, GSA's guidance provides comprehensive details on ways to formulate, document, and operationalize lease procurement. For example, GSA's Leasing Desk Guide specifically states that confirming space requirements includes verifying that the client has appropriate funding. By comparison, CFTC's guidance does not include this level of detail. The lack of this type of specificity in CFTC's guidance may have contributed to not executing its lease procurements consistent with standards for internal control and thereby not making cost-effective decisions. Although CFTC officials told us that the agency relies on a commercial real estate broker for all phases of the office space acquisition process—including (1) conducting market surveys, advertising CFTC's requirements and drafting solicitations for offer; (2) analyzing offers received; and (3) reviewing lease documents—this reliance did not prevent the agency from entering into lease agreements before the agency had the funding necessary to staff the space.

[30] According to CFTC officials, although not required to, they selectively follow portions of the Federal Acquisition Regulation (FAR), the primary regulation used by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. CFTC also follow portions of the *General Services Acquisition Manual* (*GSAM*) which consolidates GSA's agency acquisition rules and guidance. GSA's Leasing Desk Guide contains authorities, policies, technical and procedural guides, and administrative limitations governing the acquisition by lease of real property.

[31] According to CFTC officials, CFTC awarded its current leases in the Kansas City and New York City offices in 2010 and 2011, respectively, through full and open competition based on provisions in the FAR. In both locations, CFTC advertised its requirements and solicited offers from all interested parties. Further, CFTC renewed and expanded its existing leases in its Washington, D.C. headquarters and Chicago office in 2009 following select portions of the *GSAM*.

Federal internal control standards also state that significant decisions need to be clearly documented and readily available for examination. CFTC could only provide us with partial documentation and analysis of how it made decisions to enter into new or expanded leases. CFTC officials told us that they could not locate additional documentation because the employees who had responsibility for leasing had left the agency. Without this documentation, future decision makers may lack the institutional knowledge they need to make informed decisions.

Utilizing leading government guidance could have helped CFTC to make reasonable decisions to obtain space that enables the Commission to accomplish its mission in an efficient and cost-effective manner—in keeping with its *Statement of General Principles*. In its *Fiscal Year 2014 Agency Financial Report*,[32] CFTC says it plans to review and revise its space-related policies and procedures in keeping with OMB's *National Strategy* for efficient use of space and real property. As of February 2016, CFTC officials told us that these policies and procedures are under review, but could not provide any other details or a timeline for completion. Further, when the current leases expire between April 2021 and September 2025, it will have been approximately 10 years since the agency last undertook lease procurement. Without comprehensive policies and institutional knowledge, the agency may be at risk of continuing to make decisions that do not make the best use of limited government resources.

[32] Commodity Futures Trading Commission, *Agency Financial Report for Fiscal Year 2014* (Washington, D.C.: November 2014).

## Potential Options for Improving Cost-effectiveness of CFTC's Leasing Include Relocating, Teleworking, and Consolidating Regional Offices

As noted above, based on an executive branch memo and initiatives, a GSA study, and our own research, we have identified several options that CFTC may pursue now and in the future to increase space utilization and improve the cost-effectiveness of its leasing arrangements: (1) relocating offices to less costly locations, (2) reducing office space required through increased telework, and (3) consolidating two regional offices—Kansas City and Chicago. CFTC officials told us that these options may not be achievable before their current leases expire. However, they have not fully examined the current feasibility of these options or their potential impact on reducing leased space and increasing cost-effectiveness in the future. Looking ahead, CFTC's current leases are set to expire from fiscal year 2021 through 2025, and CFTC officials said that a reasonable practice is to begin planning for leasing activities 2 years prior to lease expiration. In the case of high-value leases—those with an annual rent above $2.85 million— GSA's Leasing Desk Guide suggests the lease acquisition process begin 3 to 5 years prior to lease expiration. In keeping with these time frames, CFTC would begin planning for new leases in the next few years; however, CFTC does not have a timeline for doing so.

### Moving Offices to Less Costly Locations

CFTC's offices in Washington, D.C., Kansas City, Chicago, and New York City are located in privately owned buildings in close proximity to the financial markets they oversee. According to CFTC, these locations support the agency's oversight role, as, for example, the Dodd-Frank Act requires CFTC to perform annual examinations of two important derivatives clearing organizations—organizations that process the financial transactions involved in futures trading. The examination of these organizations requires meetings with officials and routine on-site examinations of their operations. However, there are federal buildings in Chicago and New York City also conveniently located within walking distance of the current locations of CFTC's Chicago and New York City offices. According to CFTC officials, they did not consider leasing space in the federal buildings in these locations during the time they entered into new or expanded leases. Without doing this analysis, CFTC officials could not know whether the federal buildings may have had available space at a lower rent per square foot at the time they entered into lease agreements. As a result, they may not have acquired space in a cost-effective manner, per their Statement of General Principles.

CFTC's Washington, D.C., headquarters is located in the Central Business District submarket, which has one of the highest average rental rates in the region. By comparison, some other federal agencies have located their headquarters outside of downtown Washington, D.C. For

example, the Farm Credit Administration, an independent regulatory agency that examines the banks, associations, and related entities of the Farm Credit System, located its headquarters in suburban northern Virginia. Further, the U.S. Department of Commerce's Economics & Statistics Administration announced, in January 2016, that it plans to move its Bureau of Economic Analysis—approximately 590 employees—from private leased space in downtown Washington, D.C., to federally owned space in suburban Maryland. According to the U.S. Department of Commerce, the new location is expected to save taxpayers $66 million over 10 years.

The 2010 presidential memorandum directs executive branch agencies to dispose of unneeded federal real estate, including a specific directive to "take immediate steps to make better use of remaining property assets as measured by utilization and occupancy rates."[33] Additionally, a fiscal year 2016 House appropriations bill committee report directs CFTC "to find ways to decrease space and renegotiate leasing agreements."[34] CFTC has conducted some analysis of optimizing space and potential lease-cost reductions for its current locations. CFTC officials said that under current lease agreements, the agency has limited options for negotiating changes in the lease terms. For example, the leases lack provisions that would allow CFTC to terminate leases prior to the agreed-upon term in such a way that CFTC would not still be responsible for the remaining rent payments. However, CFTC has not calculated the complete analysis of potential costs and benefits of relocating offices. Without this type of analysis, CFTC cannot make fully informed decisions about the cost-effectiveness of relocating its offices in the near term nor fully assess alternatives available to improve its space utilization.

## Teleworking

According to a 2011 GSA study, federal agencies and private sector organizations have been forced to continuously evaluate their current workspace utilization.[35] The Telework Enhancement Act of 2010 required

[33] *Presidential Memorandum—Disposing of Unneeded Federal Real Estate*, June 10, 2010 http://www.whitehouse.gov/the-press-office/presidential-memorandum-disposing-unneeded-federal-real-estate. (accessed Mar. 21, 2016).

[34] H. Rept. No. 114-205, at 77 (2015). House Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill.

[35] U.S. General Services Administration, *Workspace Utilization and Allocation Benchmark* (Washington, D.C.: July 2011).

the head of each executive agency to establish and implement a telework policy for eligible employees and requires the Office of Personnel Management to assist agencies in establishing appropriate qualitative and quantitative measures and teleworking goals.[36] GSA's study states that federal agencies' expanded use of telework could reduce their real estate footprint and real estate costs. With wireless communication tools, such as smart phones and wireless networking available, federal agencies and private organizations have turned to alternative work environments with the potential to reduce workspace costs and optimize physical workspace. OMB's *National Strategy* notes that employee telework, among other things, has resulted in a need for less space. For example, we found in 2013 that some agencies, such as GSA and the U.S. Department of Agriculture's Forest Service, have adopted "office hoteling arrangements," a practice of providing office space to employees on an as-needed basis. This reduces the need for an additional amount of physical space that an agency needs to purchase or rent. Specifically, GSA implemented a hoteling program for all employees that allowed it to eliminate the need for additional leased space at four locations in the Washington, D.C., area, resulting in projected savings of approximately $25 million in annual lease payments and about a 38 percent reduction in needed office space. Further, the U.S. Forest Service uses hoteling, among other alternative workplace arrangements, to save an estimated $5 million in annual rent.[37]

Currently, 77 percent of CFTC employees have agreements for either recurring or episodic telework (see table 4).

[36] Pub. L. No. 111-292 (2010)

[37] GAO, *Federal Real Property: Selected Agencies Plan to Use Workforce Mobility to Reduce Space, but Most Efforts Are Too New to Have Realized Savings*, GAO-14-41 (Washington, D.C.: Oct. 17, 2013).

**Table 4: Commodity Futures Trading Commission Fiscal Year 2015 Employee Telework Agreements (as of 9/30/2015)**

| Location | Recurring[a] | Episodic only[a] | Total | Percentage of employees |
|---|---|---|---|---|
| Washington, D.C. | 170 | 196 | 366 | 73% |
| New York City | 44 | 23 | 67 | 82% |
| Chicago | 65 | 54 | 119 | 89% |
| Kansas City | 11 | 6 | 17 | 63% |
| **TOTAL** | **290** | **279** | **569** | **77%** |

Source: GAO analysis of CFTC data. | GAO-16-434

[a]Recurring telework refers to telework that occurs on a regular schedule. Episodic telework is telework that occurs on an as-needed basis.

According to GSA's study, the average workspace typically costs between $10,000 and $15,000 annually per person. Eliminating 100 workspaces, for example, could conceivably save an organization over $1 million a year. While CFTC officials told us that they do need an on-site presence in certain cases, such as for oversight and enforcement activities, since commodity futures trading is now wholly electronic, according to CFTC officials, increased teleworking could be a possible alternative to reduce CFTC's rental space costs in future leases. CFTC officials said that their current policy allows for recurring telework 1 to 2 days every 2 weeks but have not assessed the option of increasing telework and reducing leased space as current leases expire and are renewed. However, CFTC officials said they have efforts under way to consider what policy makes sense for their operations.

## Consolidating the Kansas City and Chicago Regional Offices

OMB's *National Strategy* states that a key step in improving real property management is to reduce the size of the inventory by prioritizing actions to consolidate, co-locate, and dispose of properties. As discussed, the Kansas City regional office currently has 31 staff working in office space that accommodates 72. In addition, the Kansas City Board of Trade merged with the Chicago Mercantile Exchange in 2012. According to CFTC officials, the Kansas City Board of Trade only traded futures and options for one product (hard-red winter wheat) during all or substantially all the period from fiscal years 2008 through 2012. The majority of Kansas City CFTC staff are involved with enforcement, swap dealer and intermediary oversight, and market oversight—similar to the staff in the Chicago office. Further, the Chicago Regional Office also has underutilized office space and, according to our analysis, could possibly accommodate staff from the Kansas City office. We found that CFTC's

space could be better utilized in both of these regional offices. As noted above, for the Kansas City regional office, CFTC officials have said that they have been unable to return their unused space. According to CFTC officials, they have not assessed the option of possibly consolidating these two regional offices. As a result, CFTC may continue to pay for vacant space through the duration of the Kansas City lease until 2021.

While not an exhaustive list, these options—relocation, telework, and consolidation—are in keeping with OMB's *National Strategy* to realize the greatest efficiency, reduce portfolio costs, and conserve resources for service and mission delivery.

## Conclusions

CFTC began planning to substantially expand leased space in anticipation of proposed requirements prior to the enactment of the Dodd-Frank Act. The agency renewed leases and expanded space in its four office locations before fully assessing the risk of not receiving sufficient funding to hire staff to use the space. By not considering this risk, CFTC has taken on the obligation to potentially pay as much as $74 million for unused space over the term of the current leases—a situation that could span more than a decade, given the agency's lease obligations. We found that CFTC did not have comprehensive leasing policies or procedures in place, but followed some leading government guidance when procuring additional space. This lack of comprehensive policies and procedures presents challenges in making sound management decisions to obtain space in an efficient and cost-effective manner. OMB's *National Strategy* states that a key step in improving real property management is to reduce the size of the inventory. Potentially cost-effective options include relocating offices to less costly locations, enhancing teleworking, and consolidating two regional offices—Kansas City and Chicago. Exploring these possibilities and establishing a timeline for completion could result in CFTC's using its available funds in a more cost-effective manner.

## Recommendations for Executive Action

To help ensure that the CFTC makes cost-effective leasing decisions, and considers options for reducing future lease costs, we recommend that the Chairman of the CFTC take the following two actions prior to entering into any new or expanded lease agreements:

- Ensure that as CFTC revises its leasing policies and procedures, it includes comprehensive details on lease procurement that are

consistent with leading government guidance and standards to assure cost-effective decisions.

- Establish a timeline for evaluating and documenting options to potentially improve space utilization and reduce leasing costs including, but not restricted to, (1) moving offices to less costly locations, (2) implementing enhanced telework, and (3) consolidating the Kansas City and Chicago regional offices.

## Agency Comments and Our Evaluation

We provided a draft of this report to CFTC for review and comment. CFTC provided written comments, which are summarized below and reprinted in appendix IV of this report. CFTC also provided technical comments, which we incorporated as appropriate.

CFTC concurred with our first recommendation that prior to entering into any new or expanded lease agreements, as CFTC revises its leasing policies and procedures, it should include comprehensive details on lease procurement that are consistent with leading government guidance and standards to assure cost-effective decisions. CFTC stated that it intends to review its procedures to address the recommendation and to ensure that the agency makes cost-effective decisions. In addition, CFTC noted that its staff will engage the General Services Administration (GSA) regarding how the two agencies can work together to better leverage GSA's leasing expertise in addressing current leasing issues and assessing future space requirements. We are encouraged by these plans, as they have the potential to help CFTC make sound leasing decisions to obtain space in an efficient and cost-effective manner.

CFTC generally concurred with the second recommendation, which states that prior to entering into any new or expanded lease agreements, CFTC establish a timeline for evaluating and documenting options to potentially improve space utilization and reduce leasing costs including, but not restricted to, (1) moving offices to less costly locations, (2) implementing enhanced telework, and (3) consolidating the Kansas City and Chicago regional offices. Specifically, CFTC stated that it will develop a timeline and plans for evaluating, initiating, implementing, and documenting space-related actions, especially as the various lease expiration dates approach. CFTC further stated that it will continue to look for actions it can take to make the most efficient use of space. However, CFTC noted that it does not believe it can reduce leasing costs in the near term without incurring significant expense and likely increasing the agency's overall space-related expenses. According to agency officials,

CFTC's leases generally lack provisions that would allow CFTC to terminate leases prior to the agreed-upon term. CFTC also did not specifically agree or disagree to consider the three specific potential options we suggested for consideration. We continue to believe that CFTC should consider these options to make the most efficient use of space prior to entering into any new or expanded lease agreements. The options we suggested are in keeping with OMB's *National Strategy* and other agencies' actions to realize the greatest efficiency, reduce portfolio costs, and conserve resources for service and mission delivery.

We will send copies of this report to the appropriate congressional committees and the Commissioner of the Commodity Futures Trading Commission. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at 202-512-2834 or wised@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found at the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

David J. Wise
Director, Physical Infrastructure Issues

# Appendix I: Objectives, Scope, and Methodology

This report examines (1) the extent to which CFTC made cost-effective decisions and followed leading government guidance in planning for additional space for fiscal years 2008 through 2015; and (2) what potential options exist to improve the cost-effectiveness of CFTC's leasing. To identify leading government practices and guidance on leasing, we reviewed GAO reports on real property and held discussions with GSA officials. To identify requirements applicable to CFTC leasing, we reviewed federal laws, and regulations. To address the extent to which CFTC followed leading government practices and guidance for leasing additional space, we reviewed and analyzed CFTC's strategic plans, lease procurement policies, and space-planning documents covering fiscal years 2008 through 2015. We also reviewed, analyzed and evaluated the extent to which CFTC's leasing practice aligned with: the Office of Management and Budget's (OMB) *National Strategy for the Efficient Use of Property*, *(National Strategy)* its Reduce the Footprint policy; GSA's leasing practices and guidance on lease procurement and pricing; and evaluated the extent that CFTC leasing processes were consistent with the Standards for Internal Control in the Federal Government. In addition, we also reviewed and analyzed relevant CFTC's Office of Inspector General (OIG) reports on space utilization among three of the four CFTC offices. We also obtained and analyzed CFTC data on lease payments, rentable square feet (rsf) and lease expansions, and CFTC's staffing history.

To assess the reliability of CFTC data, we determined which CFTC data were derived from computerized data systems, interviewed cognizant CFTC officials about these systems, and reviewed system documentation. We determined that these data were sufficiently reliable for the purposes of our report. To determine costs per rsf, we divided the lease costs for each CFTC office by its total rentable square footage for fiscal years 2008 through 2015. To determine the impact of CFTC's excess space on its utilization, we converted the leased space from rsf to useable square feet (usf). We calculated the average rsf per staff member (including CFTC employees and on-site contractors) for fiscal years 2008 through 2010—the period before CFTC expanded existing or entered into new leases—and then determined the conversion factor to align this average with the 300 usf per staff member cited in CFTC's 2009 Program of Requirements. Using this factor (21.17 percent), we calculated the average usf per staff member for fiscal years 2011 through 2015—the period after CFTC expanded existing or added new leases. To determine how CFTC lease costs compare to the average cost per rsf of other federal agencies leasing space in commercial buildings in the four markets where CFTC offices are located, we analyzed data from GSA's

lease inventory for fiscal years 2013 through 2015—the years for which these data are available. We combined the monthly GSA lease inventory reports into fiscal years and then sorted the data by leases by state and county matching those where CFTC maintains offices. Next, to better approximate CFTC leases, we sorted the data to include only those offices that were 100 percent office space and "fully serviced," before dividing rsf by lease costs to determine the cost per square foot for each lease. We then sorted the leases by size to approximate the size range of CFTC leases and by location to include only the cities in which CFTC maintains offices.

To illustrate how CFTC lease costs may compare to the private sector, we analyzed data from the Building Owners and Managers Association (BOMA). Specifically, using BOMA's Experience Exchange Report (EER) survey data for the four markets, we sorted the data to include privately owned buildings within the city limits where CFTC maintains offices and choose the BOMA average cost per rsf for Office Rent Income category. We confirmed with BOMA officials that "Office Rent Income" from the building owners' perspective was the equivalent of cost per rsf from the tenant perspective. BOMA's EER survey data have not yet been compiled for fiscal year 2015. To assess the reliability of these data, we interviewed GSA and BOMA officials about how they collect and maintain the data, as well as the completeness of the data, and we determined that the data were sufficiently reliable for the purposes of our report. However, BOMA does not collect EER survey data in a way that allows for an assessment of survey coverage, that is, there is no information available to measure the percentage of buildings in any given market that are included in the data, nor is there any information available to measure the extent to which particular types of buildings may be under-or over-represented. Therefore, the measures of lease cost per square foot resulting from BOMA's EER survey data are not generalizable to other buildings in those markets for which no BOMA survey data were reported. However, when reporting measures of cost per square foot from the BOMA EER survey data, we include the number of buildings with reportable data from which the measure was derived. We attempted to use Federal Real Property Profile (FRPP) data to determine per-square-foot lease costs between fiscal years 2008 through 2014, but based on our analysis of the data and meetings with GSA, we determined that the data were unsuitable for that purpose.

To identify what potential options exist that CFTC could consider towards improving the cost-effectiveness of future lease procurement, we reviewed and analyzed CFTC's legal authority to lease properties. We

also obtained and analyzed CFTC leases and conducted site visits at each of the four offices (Washington, D.C., headquarters, (Kansas City, MO; Chicago, IL; and New York, NY). We interviewed CFTC officials at CFTC Headquarters and all of the regional offices about their business processes, staffing, and space procurement planning and management procedures. Additionally, we interviewed CFTC Office of Inspector General (OIG) officials about their findings and ongoing reviews on CFTC space utilization. Furthermore, we interviewed GSA officials to understand their perspectives on lease procurement, including those by agencies with independent leasing authority. Using our analysis of CFTC leases, space procurement planning documents, policies and procedures, our interviews with agency officials, along with our review of a current presidential memorandum, OMB real property management initiatives and GSA leasing guidance, we identified several potential options CFTC may consider to improve the cost-effectiveness of its lease portfolio.

We conducted this performance audit from June 2015 to April 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: CFTC Leasing Costs from Fiscal Years 2008 through 2015

**Table 5: CFTC Lease Costs by Location, Fiscal Years (FY) 2008 through 2015 (in Millions)**

| | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | Increase FY 2008 - FY 2015 |
|---|---|---|---|---|---|---|---|---|---|
| **Washington**[a] | $7.3 | $8.5 | $8.4 | $11.3 | $14.7 | $14.6 | $14.5 | $15.3 | 109% |
| **Chicago**[b,c] | $1.7 | $1.9 | $1.7 | $1.7 | $2.1 | $2.1 | $2.2 | $2.4 | 36% |
| **New York**[d,e] | $2.2 | $2.4 | $2.3 | $2.4 | $0.2 | $1.9 | $2.2 | $2.3 | 1 3% |
| **Kansas City**[f,g] | $0.2 | $0.2 | $0.2 | $0.2 | $0.7 | $0.5 | $0.4 | $0.6 | 215% |
| **Total** | **$11.5** | **$13.0** | **$12.5** | **$15.6** | **$17.7** | **$19.0** | **$19.3** | **$20.6** | **79%** |

Source: GAO Analysis of CFTC data. | GAO-16-434

[a]2012: Washington, DC, Regional Office applied $1,165,706 from Tenant Improvement Allowance (TIA) to rent payment.

[b]2012: Chicago Regional Office's newly negotiated rental rates take effect.

[c]2011: Chicago Regional Office applied $535,344 from TIA to rent payment.

[d]2012: New York Regional Office reflects rental reduction credit.

[e]2015: New York Regional Office lease costs exclude an additional $22,192 accounting for an upward adjustment due to utilities overage.

[f]2012: the lease for the Kansas City Regional Office at its former location terminated in fiscal year 2012. Thus, Kansas City fiscal year 2012 lease costs include the cost and an early cancellation payment for the old lease ($237,600) plus the cost of the new lease ($479,630).

[g]2013: Kansas City Regional Office applied $78,222 from TIA to rent payment.

# Appendix III: CFTC's Statement of General Principles and Practices Pertaining to the Award and Administration of CFTC's Office Space Leases, 2011

I. Leasing of Space:

A. General Principles:

The general principles governing Commodity Futures Trading Commission ("CFTC" or "Commission") acquisition of office space include:

- Maximizing competition to the extent practicable;
- Avoiding conflicts of interest;
- Adhering to the requirements of Procurement Integrity; and
- Reasoned decision-making to obtain space that enables the Commission to accomplish its mission in an efficient and cost-effective manner.

Although neither the Federal Acquisition Regulation (FAR) nor the General Services Acquisition Manual (GSAM) specifically apply to the acquisition of office space by CFTC, the principles cited above are embodied in those documents. Accordingly, CFTC has chosen to comply with aspects of their requirements that facilitate these ends. This is discussed further below.

B. Applicability of Regulations and Policies:

The FAR does not apply to the acquisition of leased office space. Specifically, the scope of the FAR' s coverage is defined in Section 1.104 as follows: "The FAR applies to all acquisitions as defined in: Part 2 of the FAR, except where expressly excluded." According to Part 2.101(b), the term "acquisition" is defined as the "acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated." The term "supplies" is defined as "all property except land or interest in land." Because a lease of real property, including a lease of office space, is an interest in land, it is not a "supply" and the FAR does not apply.

The GSAM is also inapplicable to the lease of office space by CFTC. The GSAM applies to the acquisition of leased office space by GSA and any agencies delegated independent leasing authority by GSA and so required by GSA to use the GSAM. CFTC's independent leasing authority was mandated by its authorizing legislation and not by GSA. Accordingly the GSAM is not required for use by CFTC in its acquisition of office space for lease.

In the absence of explicit regulatory direction, CFTC has chosen to comply with aspects of these documents that facilitate the principles cited above. The GSAM is used specifically for its guidance as to the considerations and findings necessary to support a lease procurement by other than full and open competition. Additional guidance and processes that may be applicable to lease acquisition are contained in CFTC's acquisition policy.

C. Acquisition Process:

The acquisition process for all lease awards begins with requirements definition and completion of market research. Market research is used to determine whether CFTC is best served by an open market competitive acquisition or a follow-on award to the incumbent lessor.

*I. Steps in a competitive acquisition of leased office space are as follows:*

- Develop Program of Requirements
- Conduct market survey
- Define delineated area
- Formulate an acquisition strategy
- Advertise requirement
- Review expressions of interest
- Tour properties
- Develop a solicitation list
- Draft and issue a Solicitation for Offers
- Draft a Technical Evaluation Plan
- Designate a Technical Evaluation Committee (TEC)
- Evaluate initial offers
- Complete initial TEC report
- Complete price analysis
- Complete Phase II Determination (assumes negotiation, otherwise, the Contracting Officer will draft a Source Selection Statement at this time)
- Conduct negotiations
- Solicit and evaluate revised offers
- Complete Final TEC Report
- Contracting Officer completes Source Selection Statement
- Memorialize terms of agreement between the parties in a lease document

*2. Steps in award of a lease by other than full and open competition are as follows:*

- Develop Program of Requirements
- Conduct market survey
- Complete Justification for Other Than Full and Open Competition
- Conduct negotiations
- Memorialize terms of agreement between the parties in a lease document

D. Acquisition Objective:

The functional objective of the acquisition process described herein is to acquire office space in a building that efficiently supports CFTC's mission; provides a high quality work environment; and offers a satisfactory breadth and variety of amenities. This outcome must be met in a manner that maximizes

value to the Commission, considering price and technical factors. It must be provided at a price that is fair and reasonable.

II. Construction of Space:

CFTC's office space is constructed in accordance with the terms of its office space lease agreements. Construction contracts and trade subcontracts, as appropriate, are awarded based on a competitive process that results in fair and reasonable pricing. CFTC's Contracting Officer is privy to bid information and, in consultation with CFTC's architect, project manager, and other knowledgeable Commission personnel, approves project pricing as well as any required contract change orders.

III. Administration of Leases:

CFTC's Contracting Officer is responsible for analyzing rent-related charges and authorizing payment as appropriate. The Contracting Officer is also responsible for addressing with the landlord any issues pertaining to lease compliance. The Office of Management Operations is responsible for day-to-day facility operational matters and consults with the Contracting Officer on lease-related issues as appropriate.

# Appendix IV: Comments from the Commodity Futures Trading Commission

**U.S. Commodity Futures Trading Commission**
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581
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Timothy G. Massad
Chairman

(202) 418-5050
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April 5, 2016

David J. Wise, Director
U.S. Government Accountability Office
441 G. St., NW
Washington, D.C. 20548

Dear Mr. Wise:

Thank you for providing the Commodity Futures Trading Commission (CFTC or Commission) with the opportunity to comment on the Government Accountability Office's (GAO) draft report, *Federal Real Property: Commodity Futures Trading Commission Needs Better Leasing Guidance to Improve Cost Effectiveness* (*CFTC Leasing Report* or Report). We appreciate GAO's work on this topic, as well as the professionalism and courtesy of the GAO staff who contributed to the Report.

As noted in the Report, the Commission has already taken steps to address issues related to its leasing, and will continue to do so, with the intended goal of increasing space utilization and decreasing rental costs while best fulfilling the agency's mission.

We would like to address the two "Recommendations for Executive Action" provided in the *CFTC Leasing Report*:

1. Ensure that, as CFTC revises its leasing policies and procedures, it includes comprehensive details on lease procurement that are consistent with leading government guidance and standards to assure cost effective decisions.
2. Establish a timeline for evaluating and documenting options to potentially improve space utilization and reduce leasing costs including but not restricted to, moving offices to less costly locations, implementing enhanced telework, and consolidating the Kansas City and Chicago regional offices.

The *CFTC Leasing Report* notes the CFTC's current leases for office space expire as follows:

| Lease | Year of Expiration |
|---|---|
| DC Headquarters | 2025 |
| New York | 2022 |
| Chicago | 2022 |
| Kansas City | 2021 |

While the agency already has extensive lease procurement procedures, we intend to review those to address the recommendations and to ensure that the agency makes cost effective decisions. The CFTC will also develop a timeline and plans for evaluating, initiating, implementing, and documenting space-related actions, especially as the various lease expiration dates approach.

In addition, CFTC staff has engaged, and will continue to engage, the General Services Administration (GSA) regarding how the two agencies can work together to better leverage GSA's leasing expertise in addressing current leasing issues and assessing future space requirements. The agency will continue to reach out to the GSA as the lease expiration dates approach.

While the GAO's recommendations are helpful as the agency looks toward renegotiating its leases in the coming years, we do not believe they offer a means to reduce lease cost in the near term. In particular, acting on the second recommendation today would incur significant expense and likely increase the agency's overall space-related expenses.

To illustrate these short term challenges, the CFTC's leases in Kansas City, Chicago, and New York do not include provisions that would allow the agency to terminate the leases either for the convenience or at the discretion of the government. The CFTC's lease in Washington D.C. does contain a termination provision, but it is not exercisable at the CFTC's discretion, and it would come with a significant budgetary cost. The termination provision can only be invoked if Congress in its annual appropriation to the CFTC specifically makes no funds available for making lease payments. Therefore, while the CFTC could negotiate with its various landlords to terminate the existing leases, these landlords are not obligated to engage in such negotiations and likely would not agree to termination amounts unless they were substantial and perhaps even approximate to all future rent payments (given that the landlord must incur significant cost and risk to re-lease the property). Moreover, the CFTC would incur additional costs to move or consolidate offices which would be significant.

Additionally, as the Report notes, the CFTC does not have express statutory authority to sublease its space. Under 7 U.S.C. § 16(b)(3), it can only enter into subleasing contracts that further the purposes of the Commodity Exchange Act. Subleasing the space in a manner that furthers the purposes of the Act would, as a practical matter, be very difficult to accomplish. It is important to note that while the taxpayer would benefit if the CFTC were able to successfully sublease space because the payments would be deposited as miscellaneous receipts with the U.S. Treasury, a sublease would not decrease the CFTC's liabilities under its current leases.

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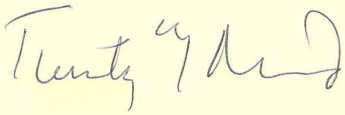
The CFTC will continue to look for actions it can take to make the most efficient use of space. Shortly after I took office, the agency consolidated its use of space in Kansas City to one floor and informed its landlord that it would like to return its space on the other floor. We also notified the landlord in New York of our desire to return unused space. The respective landlords have agreed to try to lease the vacant spaces. The agency will continue to seek opportunities to negotiate with the landlord at each of the Commission's four office locations to align the amount of rented space with the Commission's programmatic needs and budgetary limitations.

This paragraph, regarding the CFTC OIG, is addressed on page 16 at footnote 27.

I would like to comment on one other point made in the Report. The GAO references a conclusion of the CFTC Office of the Inspector General (OIG) that the agency may spend "as much as $74 million for vacant space" (see Footnote 10 of the OIG's Review of Leasing and Occupancy Levels in Kansas City dated June 4, 2014). We believe the OIG's estimate overstated the percentage of "vacant" space today, and it also assumed that the CFTC's occupancy rate remains flat. In FY 2015 alone, the year after the OIG made its estimate, the number of occupants in CFTC space increased by 18%, from 855 to 1,006. I would also note that, if the President's FY 2017 budget request is fulfilled, the CFTC would no longer have excess capacity, and would have insufficient space for its employees and contractor staff.

Thank you again for the opportunity to provide comments on the draft report. This Commission welcomes the opportunity to work collaboratively with GAO and others to improve its leasing operations and space utilization. If you have any questions, please do not hesitate to contact us at the CFTC.

Sincerely,



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# Appendix V: GAO Contact and Staff Acknowledgments

## GAO Contact

David J. Wise, (202) 512-2834 or wised@gao.gov

## Staff Acknowledgments

In addition to the contact named above, Amelia Bates Shachoy (Assistant Director), Lindsay Madison Bach, Dwayne Curry, Lawrance Evans, Terence Lam, Hannah Laufe, Sara Ann Moessbauer, Minette Richardson, Amelia Michelle Weathers, and Crystal Wesco made key contributions to this report.

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