Description of document:	Commodity Futures Trading Commission (CFTC) Reports of selected CFTC Inspector General (OIG) Investigations Closed in 2020
Requested date:	20-September-2021
Release date:	14-October-2021
Posted date:	25-July-2022
Source of document:	Freedom of Information Act Request FOIA Compliance Office Commodity Futures Trading Commission Three Lafayette Centre 1155 21st Street, NW Washington, DC 20581 CTFC FOIA Online Request Form FOIA.gov

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

FOIA Office

October 14, 2021

RE: 21-00150-FOIA

This is in response to your request dated September 20, 2021, under the Freedom of Information Act seeking access to:

> A copy of the Report of Investigation, Final Report, Closing Report, Closing Memo, Referral Memo, Referral Letter, and other conclusory document for each of the following CFTC OIG investigations: 17-I-12, 18-I-05, 18-I-08, 18-I-09, 19-I- 01, 19-I-04, 19-I-05, 19-I-06, 19-I-07, 19-I-08, and 20-I-01. I would like the documents for both the substantiated and unsubstantiated investigations.

In accordance with the FOIA and agency policy, we have searched our records, as of September 21, 2021, the date we received your request in our FOIA office.

We have located 30 pages of responsive records. I am granting partial access to and attaching copies of the accessible records. Portions of the records fall within the exemptions to the FOIA's disclosure requirements, as explained below.

Some of the records are exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), because they are exempt from disclosure by another statute. Specifically, Section 8 (a)(1) of the Commodity Exchange Act, 7 U.S.C. § 12(a)(1), prohibits the release of data or information which would disclose business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person. Additionally, Section 26 (h)(2)(A) of the Commodity Exchange Act, 7 U.S.C. § 26(h)(2)(A), prohibits the release of information, including information provided by a whistleblower, which could reasonably be expected to reveal the identity a whistleblower.

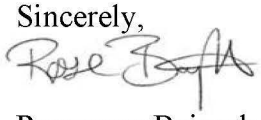
Some records contain personal information, which is exempt from release under FOIA Exemption 6 because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information. 5 U.S.C. § 552(b)(6); *see also The Lakin Law Firm v. FTC,* 352 F.3d 1122 (7th Cir. 2003).

If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact me at 202-418-5912, or Jonathan Van Doren, our FOIA Public Liaison, at 202-418-5505.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8th Floor, 1155 21st Street, N.W., Washington, D.C. 20581, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

Sincerely,



Rosemary Bajorek
Assistant General Counsel

TO: Files

From: Judy Ringle

RE: 17-I-12 Allegation of time and attendance fraud against (b)(6) in Kansas City, Missouri

Date: January 19, 2020

On July 11, 2017, GAO forwarded to CFTC OIG an anonymous allegation it received that (b)(6) in Kansas, Missouri, was committing time and attendance fraud, with very little detail given. In response to this vague allegation, (b)(6) requested, and received by early Fall 2017, (b)(6) position description, copies of (b)(6) time sheets for 2016 and part of 2017, and (b)(6) log-in activity for August 1, 2016, through August 1, 2017. In addition, (b)(6) interviewed an individual with knowledge of CFTC's cell phone data retrieval and preservation practices, and learned that the cell phone data as currently tracked by CFTC generally would not be useful; however, certain functionality could be "turned on" that might be.

There is no indication in the file that (b)(6) took any steps whatsoever to examine or analyze or document his opinion of the evidence he requested, prior to his departure in June 2018. Moreover, there is no indication that (b)(6) interviewed (b)(6) immediate supervisor, (b)(6) during this time. Finally, it appears CFTC OIG has received no further allegations regarding (b)(6) coming and goings in the intervening years.

I took a cursory look at the time and attendance sheets (which appeared unremarkable) and the log-in sheets, which did not indicate significant gaps. I would note, however, that it is possible to work without being logged in, for instance during training, conferences, or even while working from home using an iron key and tracking email remotely (iPhone, iPad, or OWA).

In light of the stale-ness of the allegation and the fact it has not been repeated, I suggest closing this file.

(b)(6)

Judith A Ringle, DIG/Chief Counsel

A. Roy Lavik, Inspector General

Date: February 21, 2020
By: Judy Ringle
RE: 18-I-05; DoJ cooperation re (b)(6); Closing memo

(b)(6) opened an investigation in order to assist the DoJ in an investigation unrelated to the CFTC mission but involving a CFTC (b)(6). It appears that (b)(6) coordinated with (b)(6) and (b)(6) to obtain digital records created/touched by (b)(6) and to obtain information regarding (b)(6) comings and goings. (b)(6) left in June 2019 with the file still open. I reached out to the DoJ contact, (b)(6) (b)(6) (b)(6) in September 2019, and January 2020, with no return of my voicemail and email. I reached (b)(6) today. He said this matter may be closed by CFTC OIG. He asked us to not make our files or information public. I said we would close the matter and would not make anything public. Obviously, if we get a FOIA request for anything in this file, we will contact (b)(6)

I recommend this investigation be closed immediately.

(b)(6) 2/21/20
Judith Ringle DIG/Counsel

2-24-20
A. Roy Lavik, Inspector General

To: 18-I-08 (b)(6) file

From: Judy Ringle

RE: Closing memo

Date: January 20, 2020

This investigation began with an allegation from (b)(6) that he was unfairly terminated because he threatened to go to OIG with his complaint that (b)(6) was cheating CFTC by charging 42 hours for a task he could do in2 hours. He was vague a about what the task was, at least to this non-IT savvy individual.

I read the interviews. It is clear that (b)(6) complained to CFTC management that another contractor, led by someone named (b)(6) completed a task and billed 42 hours when he believes he could have performed the work in 2. (b)(6) states that he told CFTC staff in a meeting that he would go to OIG about this problem, and that is why he was fired. Not everyone at the meeting appears to remember this utterance; however, not everyone was asked (in OIG interviews). The story is backed up by at least two interviewees (b)(6) though he waffles and (b)(6) (second hand)). It is not clear if the (b)(6) knew. I don't think it matters.

Nothing in the file indicates that (b)(6) was fired because he threatened to go to the OIG or because he was otherwise (b)(6)

Overall, witnesses uniformly agree that (b)(6) removed (b)(6) from the contract after (b)(6) lost his temper at a meeting, yelled and banged on the table, and (b)(6) for the contract reported it to (b)(6) who brought it to (b)(6) attention for handling. The (b)(6) (b)(6) did an informal review of the meeting – he was not there, and the (b)(6) felt that, because she already had an opinion of (b)(6) behavior (that it was unacceptable and she felt threatened), it would be inappropriate for her to perform a review. Witnesses all agreed that (b)(6) yelled and banged on the table. Witnesses all agreed that (b)(6) was upset that (b)(6) had billed excessive hours in his opinion for work he (b)(6) could have done faster. Witnesses do not agree the assertion is true. Two witnesses, CFTC FTEs possibly more familiar with (b)(6) contract than (b)(6) believe the work was difficult and do not agree that the hours were necessarily excessive (b)(6). In any event, not all witnesses appear to realize that (b)(6) claimed he would go to OIG. It does not appear to be a factor in any decision to report the meeting or, ultimately, to remove (b)(6)

I do not believe (b)(6) would have been reported to the (b)(6) to the contractor, and ultimately removed but for his angry outburst at the meeting. In light of the fact that there is no indication that (b)(6) was removed because he threatened to go to OIG, I recommend closing this matter.

(b)(6)

Judith Ringle, DIG/Chief Counsel

A. Roy Lavik, Inspector General

TO: Files

From: Judy Ringle

RE: 18-I-09 Suspicious access to ISS data

Date: January 19, 2020

In May 2019, CFTC OIG issued its report titled *Review of CFTC's Data Governance Program: Integrated Surveillance System* (18-AU-07). During the fieldwork for the project, the audit team obtained usage statistics for ISS by CFTC employees and contractors. The DIG/Chief Counsel suggested reviewing usage stats to identify any irregular or unusual usage that might indicate misuse of the data or unauthorized access. The usage statistics, generated around August 2018, indicated that one contractor was accessing ISS at odd hours and for long periods of time:

Row Labels	(b)(6)					Grand Total
w_form102			57			57
w_form40	3	16	35		8	62
w_form40.uo_1		1			1	2
w_form40.uo_1.tab_1.tabpage_trader.dw_trader.d_form_40			22			22
w_iss_frame	1	1	35	1	4	42
w_lt_consolidated_query			1			1
w_lt_std_b_acct_report					1	1
w_lt_std_b_trader_report					1	1
w_reporting_firm_entry			1			1
w_reporting_firm_query			1			1
w_special_account_list_by_rpt_id_acct	1		38			39
w_special_account_list_by_trader_id	2		39			41
w_special_account_query	3		12			15
w_trader_owner					2	2
w_trader_owner.uo_1.dw_query.d_trader_owner_query					1	1
w_warning_message		1	9	1	2	13
Grand Total	**10**	**19**	**250**	**2**	**20**	**301**

The chart above was created by the OIG Office of Audit in connection with the audit discussed above. As you can see, usage by (b)(6) outpaces other users by a factor greater than 10.

On January 19, 2020, I searched but could not find (b)(6) in the CFTC email system. It appears that (b)(6) was a FTE or a contractor who has since left the CFTC. (b)(6) confirmed that (b)(6) left CFTC some time ago.

In light of the stale-ness of the allegation, the departure of the individual, and the fact that no complaints were received concerning (b)(6) usage of ISS, I suggest closing this file.

(b)(6)

1/29/2020

Judith A Ringle, DIG/Chief Counsel

1-29-20

A. Roy Lavik, Inspector General

CFTC OIG Investigation # 19-I-01

Investigation into Missing CFTC Information Technology Equipment

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

March 31, 2020

Contents

Background: The CFTC Security Office Documented Missing Information Technology Equipment in June 2017 and CFTC Management Asked OIG to Investigate in November 2018

In February 2017, the CFTC Security Chief performed an inventory check of CFTC Office of Data and Technology (ODT) storage room #0306 and reported in June 2017 (June 2017 memo) that the following CFTC Information Technology (IT) assets were missing:

Number missing	type of asset	date acquired/age	Date of last inventory
34	Dell E7450 laptops	November 2015	February 2017[1]
12	2412M monitors	"several years old"	2012-2016
5	2408 monitors	not given	2012-2015
12	Ironkeys	not given	2013-2016
4	XPS 12 Laptops	not given	2014
5	790 Optiplex CPUs	not given	2012-2014
2	2410 Monitors	not given	2012
11	"miscellaneous types of IT equipment"	not given	2012-2015
TOTAL 85			

[1] The February 2017 inventory check was the first inventory for the 34 Dell E7450 laptops (acquired in November 2015).

The June 2017 memo stated that CFTC official policy for alerting the security office of the missing assets was not followed.[2] The June 2017 memo also stated: "Security cannot determine if assets were actually stolen or just not properly documented, per ODT procedures. However, due to the number of items reported missing, there is a strong likelihood that they may have been stolen over the period of time since the last inventory." The dates of the last inventories of the missing assets ranged from 2012-2017.

The June 2017 memo closed with these recommendations:

- Conduct a 100% CFTC-wide physical inventory NOW of all computer assets, to hopefully identify mis-placed equipment and accurately update the asset management database. This means physically viewing all items stored in a box, not just looking at the outside serial number affixed to the box.
- Implement a two-man entry policy into all storage rooms with a sign-in log (date, time, and reason) for entry. Additionally, strictly limit reader access to the storage rooms with minimum access.
- Consider purchasing a motion-sensor/record capability CCTV for the rooms which can monitor all activity.
- Consider purchasing a more robust asset system with hand-held scanner that will automatically remove/relocate equipment and update a central database for accuracy.
- Purchase a locked storage cabinet (key strictly maintained) within the storage rooms to house smaller items (Ironkey, I-phones, etc.).
- Designate an Inventory Specialist (FTE or Contractor) responsible for managing and maintaining all equipment activity.
- All future LSDD incidents MUST be reported immediately, per the LSDD Policy, so that the Chief of Security can initiate a thorough investigation without delay.

On November 29, 2018, former Chief of Staff Michael Gill informed the Inspector General that there appeared to be 70 missing laptops,[3] and asked us to investigate. On the same day, we received the June 2017 memo, discussed above, from the Office of General Counsel, Office of General Law (OGL).[4]

OIG Performed a Limited Review of IT Equipment Processes and Submitted a Management Draft in February 2019

Because the June 2017 memo said that the exact number of missing assets and their location could not be determined based on current available records, we decided initially it would be beneficial to perform

[2] Specifically, processes for submitting LSDDs (Lost, Stolen, Damaged, or Destroyed reports) were not followed. The LSDD Policy, dated Oct. 3, 2014, can be found here: http://cftcnet/_layouts/OSSSearchResults.aspx?k=LSDD&cs=This%20Site&u=http%3A%2F%2Fcftcnet.
[3] Michael Gill (former Chief Operating Officer) email dated Nov. 30, 2018 (we believe 70 was an error).
[4] Deputy General Counsel for General Law email dated Nov. 29, 2018 (with June 2017 memo attached). OGL also gave OIG a memo generally describing the situation, voicing their opinion that theft or an actionable breach of established controls had occurred due to the number of missing IT assets, and requesting an investigation by OIG.

a review of controls for laptop accountability (safeguarding assets), and to conduct an investigation thereafter if the facts indicated theft.[5] We limited our review to recordkeeping controls as applied to 34 Dell E7450 laptops, all purchased in September 2015. We reviewed the control environment, including inventory management policies related to IT assets and Office of Financial Management (OFM) cycle memos, and interviewed key personnel.

Eighty-eight days after receiving the November 29, 2018, referral, on February 25, 2019, we submitted a draft of "Briefing Report: Unaccounted Assets" (Briefing Report) to CFTC management for comment (Management Draft). We determined that CFTC had adequate controls to document the receipt of incoming IT assets, but found that the Property Inventory Management System (PIMS) instructions were outdated in some regards (for instance, the title of an official with assigned duties no longer existed at CFTC) and in some regards simply not followed. Most notably, PIMS required a weekly review of assets that are not assigned to any location (i.e., are in storage) and this was not done after the initial scan into storage.

We also found that ScanAsset, a system used to track IT equipment, was outdated. We expressed our belief that, to the extent that contractors are used to monitor IT assets, it is incumbent upon the Contracting Officer Representative (i.e., the CFTC employee charged with certain oversight duties for the contract) to ensure the completeness of system records maintained by contractors. Lastly, we noted that ODT had no detailed procedures for documenting the issuance of reportable IT assets to end users and concurrently updating ScanAsset, an issue that could impact tracking assets as well as tracking contract compliance.

We concluded that current CFTC internal controls and documentation would not permit us to determine whether the E7450s were stolen or not, and concluded (similar to the June 2017 memo) that a full inventory must be performed to determine whether the E7450s identified as unaccounted were lost or stolen, or were actually in use or in storage (elsewhere at CFTC) but not properly documented. We recommended enhanced internal controls to assure the reliability of IT inventory processes in the future:

- Set a timeframe for tagging after vendor delivery and CFTC acceptance,
- Review badge scans of secure rooms on a weekly basis to detect unauthorized personnel or unusual entry times, and

[5] Similar reviews have been performed by other IGs to address unaccounted IT, firearm, and other sensitive assets. See, Dept. of Homeland Security OIG, *DHS' Controls Over Firearms and Other Sensitive Assets*, Oct. 25, 2017 ("Between fiscal years 2014 and 2016, [DHS] personnel lost … 228 firearms; 1,889 badges; and 25 secure immigration stamps"); Treasury Inspector General for Tax Administration, Report # 2018-20-041, *Management Controls Should Be Strengthened to Improve Hardware Asset Inventory Reliability*, July 13, 2018 (23,573 unverified and missing hardware assets documented in FY2017); National Credit Union Administration OIG, OIG-19-05, *Audit of the NCUA's Information Technology Equipment Inventory* (Mar. 28, 2019) ("25 percent of the NCUA's inventory records did not match to items on hand"). None of the reports opined that theft was suspected; however, the NCUA OIG report stated, "[W]e believe that the risk for fraud within the NCUA's inventory systems was high due to an ineffective internal control environment and therefore make no judgments as to its existence." All three reports recommended, among other things, improved controls.

- Install security cameras in the storage rooms.
- Establish procedures for issuing reportable assets to assigned users.
- Review systems logs to verify information is accurate and complete and to detect unusual update activity
- (Given CFTC's reliance on contractors for IT asset management support) Ensure that asset management contract terms are fully executed and monitored, or modified as appropriate.

We recommended CFTC prioritize the completion of a full inventory, and refer any indications of theft or fraud to OIG.

OIG Investigated Ten Missing Laptops with Unusual ScanAsset Entries Beginning March 2019

After submitting our Briefing Report to management for comment, we received informal feedback indicating that ScanAsset records were suspicious for 10 laptops in particular. Our auditors believe they noticed the same irregularities with the same 10 laptops during their fieldwork, but this was beyond scope because the 10 laptops were not part of the 2015 laptop purchase that was the report's focus.[6]

We decided to investigate. We reviewed the ScanAsset records for the 10 laptops and agreed with OED staff that it appeared that the 10 laptops were manipulated in the ScanAsset system in a way that could hide theft. There is no way for a standard user of ScanAsset to delete or remove an asset from the system (only a higher level user may do that). The 10 laptops had ScanAsset entries that resulted in changed characteristics (such as changed serial numbers, model numbers, and CFTC ID numbers) thus overwriting the original entries, coupled with entries indicating they had been surplussed to the General Service Administration (GSA). The fear was that the laptops went home with the ScanAsset user (or users), and not to GSA.

The suspect ScanAsset entries were entered by one FTE (one laptop) and one now-departed contractor (nine laptops). Staff interviews revealed that, for various operational reasons, usernames and passwords for ScanAsset had been shared in the past in order to facilitate timely updates to the system during staff absences; therefore there was no reason to presume that either the FTE or the now-departed contractor had actually made these entries. We also learned that the FTE, who is still on staff, is highly respected, and is not remotely considered a suspect by fellow staff for the theft of one laptop.

It appears likely that the entries were made by the same individual. One December 14, 2017, ScanAsset shows that the FTE (or whoever logged in as the FTE): 1) changed the descriptions of two laptops and indicated each was transferred to GSA Surplus, but then 2) changed the same two laptops back to their original description and status (with one detail of the correction completed the following day for one of the laptops), and finally 3) changed the description of a third laptop and indicated transfer to GSA, without correction.

[6] The ScanAsset irregularities were noted in our final Briefing Report, on page 1, fn.1 (available here: https://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm under "Audit Reviews").

On February 20, 2018, ScanAsset shows that the now-departed contractor (or whoever logged in as the contractor): 1) changed the description of the same two laptops that had been changed and corrected back on December 14, 2017, and once again indicated their transfer to GSA surplus, and 2) changed the description of seven additional laptops and indicated their transfer to GSA surplus. No corrections to these entries were made.

From staff interviews, we learned that the 10 laptops were all given identities of former CFTC IT equipment items that were, in fact, surplussed to GSA.

We reached out to the CFTC Security Office to obtain entry records for the relevant CFTC supply room (i.e., badge scans into the room). Since we knew exactly when ScanAsset was altered for the 10 laptops (December 14, 2017, and February 20, 2018), talking to everyone who had entered the supply room on those two days (and surrounding days) might be enlightening. The Security Office informed us that scan records to the supply rooms are not kept past one year, and that this information was not available to CFTC or to the OIG.

Document review and staff interviews regarding the 10 laptops took place between March 20 and June 20, 2019.

Management responded to Our February 2019 Management Draft in April 2019; OIG Issued its Final Briefing Report to the Commission in May 2019

On April 23, 2019, CFTC management responded to our February 25, 2019, management draft, and we issued our final Briefing Report to the Commission on May 13, 2019 (with the management response attached).[7] Management noted that they requested an OIG investigation of all assets reported missing, but the OIG report examined only one group of laptops.

Management agreed with our recommendations. Management reported that ScanAsset has been replaced by a system called ServiceNow, which "will address many of the gaps we have identified in our current asset management program." Management also reported that they would perform "a 100% inventory" (which was also recommended in the June 2017 memo). Management added that, during fieldwork for the Briefing Report, and while they deployed the new asset management system, CFTC discovered several additional groups of missing laptops, 63 in total, which they documented in an appendix. Management suggested that we investigate these additional missing IT assets. In addition to the 10 laptops altered in ScanAsset and discussed above, management suggested that we investigate 53 additional missing IT assets:

- 1 missing based on shipment (2017)[8]
- 36 Dell Latitude 7450 (2016)
- 1 Dell Latitude 7470 (2017)

[7] Available here: https://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm (under "Audit Reviews").
[8] CFTC management neglected to tell us the make and model of the laptop, and we have not asked for that information.

- 3 Dell Latitude 7470 (Lost in shipping) (2018)
- 10 missing discovered via audit (2019)[9]
- 2 additional 7470 Laptops discovered missing (2019)

In response, the Assistant Inspector General for Audit (AIGA) noted that CFTC management had "discovered several additional groups of missing laptops," but stated, "the control environment has allowed for unauthorized removal of government property and changes to asset records." The AIGA recognized that CFTC management had taken both short- and long-term corrective actions to mitigate future losses, and the recommendations are closed.

Following publication of our report, no one came forward with information about the missing assets.

CFTC's Agency-wide Inventory is Ongoing; Conclusion

CFTC staff and management undertook an agency-wide inventory in 2019, and it is still in progress; however, we learned from staff that the missing Dell E7450 laptops (the subject of our Briefing Report) and the 10 laptops with unusual ScanAsset entries were not found.[10] There is no indication that the laptops discussed in the Briefing Report were ever deployed, and the 10 laptops with unusual ScanAsset entries were in storage when the suspicious entries were made.[11] With regard to these assets, it appears there was no loss of data.[12] If a missing laptop does not contain CFTC confidential information or PII, its current depreciated value may not justify the time and effort of an investigation.

The obstacles to successfully investigating the missing IT assets as requested by CFTC management were the passage of time, the former lack of controls and/or enforcement of controls, and the lack of entry records into supply rooms. Unless someone comes forward with additional information, these shortcomings would make any further investigation very likely fruitless. If someone comes forward (which has not happened despite publication of our Briefing Report discussing 34 missing laptops and describing 63 additional missing IT assets), we will consider reopening this investigation.

[9] For these 10 assets, CFTC management neglected to tell us the make and model of the laptops, and we have not asked for that information.
[10] We note that OMB's most recent *Federal Information Security Modernization Act of 2014 Annual Report to Congress, Fiscal Year May 2018*, (released Aug. 23, 2019), at page 49, conveys CFTC's report of no loss or theft of equipment for FY16, FY17, and FY18. CFTC may wish to update its report as appropriate following reconciliation of the agency-wide inventory. Reconciliation (and any loss report determined appropriate) is not yet complete.
[11] IT assets in CFTC storerooms should not contain Personally Identifiable Information (PII) or confidential information regardless of whether they are new-in-box or returning to storage after use by a CFTC employee or contractor. See, PIMS and ODT CyberSecurity Handbook (internal CFTC documents).
[12] The Department of Homeland Security has published detailed reporting requirements for breaches of PII, available here: https://www.us-cert.gov/incident-notification-guidelines.

To: 19-I-04 investigative file

From: Judy Ringle

RE: Closing memo

Date: March 30, 2020

This preliminary investigation concerns allegations of discrimination against (b)(6).

The complainant reached out to us in April 2019, complaining that he was discriminated against in 2017 by someone named (b)(6). (b)(6) is a (b)(6) in ODT. We have received no other complaints regarding (b)(6) or discrimination in the (b)(6) function at CFTC ODT.

There is no investigative plan, but (b)(6) has been recorded in an interview but not transcribed. There is also email between (b)(6) and the complainant (provided by (b)(6)) where the complainant is voicing the same complaint, (b)(6) is trying to find out what constitutes the acts of discrimination, and the complainant is fearful of retaliation and gives no information. The contractor reached out to (b)(6) in 2017, with their last email communication in January 2018.

The complainant is (b)(6) in DC. (b)(6). Inasmuch as he has the knowledge and skill to pursue any lawsuit he may have against CFTC for discrimination, and because we have not received any other allegations of discrimination involving the same managers, I do not believe this is a matter that is appropriate for OIG to investigate. As OHR has not heard from the complainant since January 2018, and we have not heard from the complainant since since April 2019, and we have heard no other similar complaints (indicating this issue is not systemic and would better be addressed through individual litigation), and the Inspector General has given verbal approval, I am closing this matter.

(b)(6)

Judith Ringle, DIG/Chief Counsel

March 30, 2020
Date

To: Files
From: Judy Ringle
Re: Closing Memo 19-I-05
Date: March 13, 2020

I am recommend closing investigation 19-I-05, and permitting it to exist as currently expressed in the allegation files. It appears (b)(6) opened this preliminary investigation without establishing that he had a credible allegation of fraud/waste/abuse/inefficiency by a CFTC employee or contractor relating to the programs and operations of the CFTC. (b)(6) opened this preliminary investigation in April 2019, about eight weeks before his departure. He never made a plan of investigation.

The allegation (and entire file) consists of a voicemail. We have a tape of the voicemail, an email from (b)(6) to (b)(6) requesting a summary, and a summary of the voicemail prepared by (b)(6). The individual states that the Division of Enforcement completed a successful enforcement action against a company with which he was invested. CFTC Enforcement thereafter treated his account as commingled rather than segregated. This caused him to (b)(3):7 U.S.C. §12 (CEA); (b)(6)

I would note that I believe it would be rarely appropriate for OIG to investigate and opine on a purely factual issue in a CFTC enforcement litigation matter (here, whether an account is segregated or commingled). This is an issue that would properly be capable of address and redress through the judicial system.

The individual did not contact OIG again, and there is no indication that (b)(6) reached out to this individual or referred the matter to Enforcement. As the individual has not followed up since April 2019, I would presume that the individual is no longer interested. This memo will close the investigative file.

(b)(6)

Judith A. Ringle

March 13, 2020
Date

Roy gave verbal permission on March 16, 2020

A. Roy Lavik, Inspector General

Date

To: Files
From: Judy Ringle
Re: 19-I-05
Date: January 12, 2021

I reviewed this file and closing memo today in connection with a FOIA request. I immediately regretted not calling the complainant. It is something I always do, and I do not know why I did not do it here, other than the passage of time with no further inquiry from the complainant, and frustration that the prior AIGI did not call.

I called the complainant. He remembered his complaint and said he was an investor who withdrew approximately (b)(3):7 U.S.C. from his account prior to the discovery of fraud. When the pro rata distribution was made from available funds following a CFTC Enforcement action, his pro rata share was reduced by the amount of his prior withdrawal, which was characterized by CFTC Enforcement as an early distribution. Complainant is adamant that he did not receive an early distribution and that his prior withdrawal should not have impacted his share of the pro rata distribution. He did not say how much the pro rata distribution to him would have been. He also did not say whether his prior withdrawal was of principle or profit. He also stated that he was treated as a customer of the target's ponzi scheme when he was an investor in another investment vehicle; he asserted he should not have been treated with the ponzi victims, and that there was an insurance policy (life insurance, which makes no sense) for his fund and that he should have been paid from that. He stated that the failure to receive the expected distribution caused him to (b)(6) (b)(6) He said he invested with (b)(3):7 U.S.C. §12 (CEA); (b)(6), with (b)(3):7 U.S.C. §12 (CEA); (b)(6). He said he spoke with Enforcement (b)(6) at length and that (b)(6) did not like him because he was the largest investor.

While he was talking I looked up the names he gave me. CFTC settled an enforcement action against (b)(3):7 U.S.C. §12 (CEA); (b)(6) I told complainant that it was likely too late to do anything about his claim, that CFTC OIG could not represent individuals in connection with litigation involving CFTC, and that he needed to have obtained an attorney at the time. He said he has heard this before and that he could not afford an attorney at the time. I reiterated a couple times that CFTC OIG cannot assist private litigants against the CFTC (or in any lawsuit).

He asked if (b)(6) was still with the Commission. I found public information online indicating he is still with the Commission and let him know this (he is in (b)(6) according to his LinkedIn.com profile). I told Complainant that I would find out if the matter had been reopened because that would be the only way I could fathom that he would have some avenue to recovery. He said they will probably say, (b)(6) I told him inquiring as to whether the matter has been reopened was all I could do. I reiterated several times he needs private counsel if he wants to take action against CFTC.

I called (b)(6). He remembered the case. He sent me the distribution list as well as the order. Complainant is in the distribution list. It appears all investors, regardless of the

investment vehicle they invested in operated by the target, were treated the same. I thought it puzzling that investors whose prior withdrawals resulted in them receiving more than their pro rata share based on their investment were not asked to remit the excess, that is, there was no clawback as there has been in other ponzi cases, such as Madoff. I was also a little surprised that there was no indication in the document regarding the treatment of profits as opposed to capital, on the other hand maybe there was no trading done. In any event, some investors received an overpayment, including complainant.

While I was speaking with (b)(6) the complainant called and left a message saying he had remembered some details and would like to speak again. I called. The complainant again explained, this time in more detail, why he believed he should not be treated the same as the ponzi investors. He said the life insurance policy was in place because he urged the target to fund it, and it was supposed to cover any losses (this makes no sense to me). I let the complainant know I spoke with the supervisor in charge of the litigation and that it is closed and it has not been reopened. He asked me to let him know if it is ever reopened and I said I will try. Complainant asked if there were any fund to repay victims of scams such as this and I said, no, I am not aware of any. He also said he would appreciate it if I did some "digging," and I said that in many investment scam enforcement cases the victims are never repaid, and expressed how sorry I am that he has gone through this. He thanked me for my time and then we hung up.

This case will remain closed. Had the (b)(6) done minimal preliminary investigative work, namely calling the complainant, the investigation would not have been opened is my guess.

Date: February 25, 2020
By: Judy Ringle
RE: 19-I-06; (b)(3):7 U.S.C. §26(h)(2)(A) (CEA); (b)(6) complaint re WB office; Closing memo

(b)(6) opened an investigation into allegations received from (b)(3):7 U.S.C. §26(h)(2)(A) (CEA); (b)(6) about the Whistleblower office. I spoke with (b)(3):7 U.S.C. §26(h)(2)(A) (CEA); (b)(6) today. He explained that he (b)(3):7 U.S.C. §26(h)(2)(A) (CEA); (b)(6) In any event, it has been (b)(3) years and there is no decision. He thinks this is an outrage. I said that, as a policy, we do not get involved with pending CFTC litigation. He seemed to agree that was proper. I suggested he might want to get new counsel and he said he was already working on that. I said that (b)(3) years sounds like too much to me, and that I would present the issue to the IG. While we will not get involved with pending litigation, it might make sense to take a look at the length of time it is taking to complete cases and issue orders in the Whistleblower program, and especially the time it is taking to process appeals, but this would be undertaken based on staff limitations and competing priorities etc.. (b)(3):7 U.S.C. §26(h)(2)(A) asked me to check in with him to get his experience if we do such a project.

I recommend this investigation be closed.

(b)(6)

Judith Ringle DIG/Counsel

A. Roy Lavik, Inspector General

To: Files
FROM: Judy Ringle

Date: September 3, 2019
RE: NFA election complaint; closing memo

On April 16, 2019, (b)(3):7 U.S.C. §26(h)(2)(A) (CEA); (b)(6) wrote the CFTC OIG hotline regarding (b)(3):7 U.S.C. (b)(6) he presented to the Commission (b)(3):7. (b)(3):7 U.S.C. he alleged that the NFA 2014 election for its board of directors was noncompliant and therefore should be voided. He also alleged that he was treated badly when he complained to NFA at the time, and he alleged that CFTC has a "massive conflict" with NFA because CFTC works too closely with NFA to do any meaningful oversight. He did not allege specific harm from the 2104 NFA Board of Directors election, nor any bad acts of the allegedly improperly elected board. Finally, (b)(3):7 U.S.C. §26(h)(2)(A) alleged that NFA was now auditing (b)(6) too frequently.

A person named (b)(6) from (b)(6) emailed additional details on April 17 about the problems (b)(3):7 U.S.C. had with NFA after challenging the 2014 NFA board of directors election. The (b)(6) is basically (b)(6) lawyers in (b)(6). They specialize in personal injury, real estate, foreclosure, family law, bankruptcy, and trucking litigation (b)(6)

It appears that (b)(6) spoke with (b)(3):7 U.S.C. §26(h)(2)(A) or at least they planned to speak following the April 16 email. On April 17, (b)(6) referred to "tomorrow's call."

(b)(6) emailed back and forth with (b)(3):7, requesting relevant information. (b)(3):7 let (b)(6) know on April 23 that (b)(6) of CFTC was "investigating why NFA is auditing us again so soon and NFA agreed to a 3 week extension on any document production while he looks into it"

On May 8, (b)(6) had his final email with (b)(3):7 U.S.C. and asked if anything was happening with (b)(6) inquiry, and (b)(3):7 U.S.C. §26(h)(2)(A) had no news to report. (b)(6) final day at CFTC was June 8. On June 12, I went to NYC and met with (b)(3):7. I found him somewhat hard to follow but interesting. He is fairly convinced that the NFA board is conflicted (even if compliant with the rules) and that the rules for elected boards was not followed (in technical ways) in 2014. I asked him to give me a timeline because he was jumping around a lot. I also asked (b)(6) to create a timeline from the docs previously provided to (b)(6). Finally, I asked for the Enforcement closing memo, because (b)(3):7 U.S.C. had previously reported the issue (b)(3):7 to Enforcement.

I received the Enforcement closing memo later in June, and read it today when I cleaned off my desk. Enforcement concluded that the rules were followed with the 2014 board of directors election for NFA. Their explanation makes sense; they concluded there was an irregularity that was cured prior to the vote. I never received a timeline or further information from (b)(3):7 U.S.C.

I recommend closing this investigation. Even if I did not agree with Enforcement I would not want to challenge CFTC's monitoring of an NFA board of directors election 5 years after the fact. It would be a waste of resources.

(b)(6)

Judy Ringle, DIG & Counsel

A. Roy Lavik, Inspector General

To: 19-I-08 investigative file

From: Judy Ringle

RE: Closing memo

Date: March 30, 2020

This preliminary investigation concerns allegations of improper hiring by (b)(6).

In May 2019 we received an anonymous complaint over the CFTC OIG phone hotline. The complainant alleged that the hiring of (b)(6) was not done properly. The complainant alleged that the hiring official announced "publically that they bypassed competition to hire their friends and then this individual who was hired though he has not started yet is not a government employee, is attending government meetings as a disinterested third party because he doesn't start his employment until the tenth of June and he acting if he is a government employee and is directing contractors. And they have contractors that are answering to him and that's a big problem because he's not a government employee and he was hired by a friend who should have recused himself as a hiring authority." The anonymous caller said he works in (b)(6) and that his phone # is (b)(6).

Separately, we received a complaint from (b)(6), in person at our office on June 14, 2019, regarding three complaints, one of which was that (b)(6) hired a personal friend. He gave his phone number as (b)(6). It appears he told (b)(6) on June 14 that he was the anonymous caller from May.

There is no investigative plan in the file. No work was done on this at all by (b)(6). I would like to close this preliminary investigation and place this allegation with pending allegations which go to CFTC's FISMA compliance. Because it is the same complaining witness voicing issues with (b)(6) (i.e., FISMA compliance and hiring irregularities by (b)(6)), it would make sense to address them altogether. The other allegation file is being held pending the execution of an IAA with USPS OIG (and there is one other complainant who has voiced issues with CFTC's FISMA compliance).

Because this allegation will be merged with relevant FISMA allegations and because Inspector General has given verbal approval, I am closing this matter.

(b)(6)

Judith Ringle, DIG/Chief Counsel

March 30, 2020
Date

TO: A. Roy Lavik, Inspector General

FROM: Judy Ringle, DIG/Counsel

RE: Investigation 2020-I-1

DATE: December 15, 2020

Introduction and Summary: On May 13, May 26, and June 1 of 2020, we received email from an anonymous source regarding Chicago enforcement attorney (b)(6). The source alleged that (b)(6) committed time and attendance fraud, improperly supported the hiring of (b)(6) as an enforcement attorney, was improperly promoted based on favoritism rather than professional merit, and that she was improperly reimbursed for travel. The source provided the dates of travel, location, and even a picture of (b)(6) at the luxury resort "Nautilus" in Miami. The source alleged that (b)(6) was reimbursed for one night at the resort improperly.[1] The rest of the allegations were not described in great detail.

This memo will close this investigation. The allegations are not supported; however, while the evidence demonstrates that (b)(6) made no false statements in connection with travel; the voucher for a trip in February 2020 appears irregular with apparent errors resulting in potential over- and under-payment to (b)(6). I will refer the matter back to the travel office for its review and any action determined appropriate.

The Travel Allegation:

The anonymous source wrote:

> "It is my belief that (b)(6) did not stay at the Nautilus the evening of February 7, 2020 and was reimbursed by the CFTC for this night and for her cab from Miami airport to the resort on February 8, 2020. Her travel voucher may show that the required deposit fee for the stay was likely less than the amount she was reimbursed."

[1] The source also alleged that (b)(6) had friends staying with her at the resort. The source provided a link to a picture, which I saved to the file. It shows seven women by the hotel pool, including (b)(6). The source alleges all seven shared (b)(6) suite at the hotel. I am not sure why that would be relevant. Federal employees often travel with spouses and significant others, including friends. The travel regulation appears silent on the issue.

Methodology.

I interviewed a supervisor in the Division of Enforcement, an administrative assistant in Enforcement who worked on this trip, and a contractor in the CFTC travel office. I reviewed email, receipts for travel, and the authorization and voucher. Travel Office and the Division of Enforcement staff provided all documents.

Facts.

(b)(6) traveled with another Enforcement attorney to Brazil for a work-related trip scheduled originally for February 3-6, 2020. (b)(6) flew overnight from Chicago to Sao Paolo on February 3, arriving February 4, and flew to Curritiba, Brazil on February 4. She stayed at a hotel in Curritiba, Brazil, overnight on February 4 and 5.

In accord with travel regulations and policy, (b)(6) did not seek lodging reimbursement for February 3 because she was not in a hotel, and she requested lodging reimbursement for the Curitiba hotel in the actual amount charged (which was less than the permissible per diem) for February 4 and 5. She left Curritiba on February 6.

The administrative assistant who assisted with this trip confirmed that no direct flights between Sao Paolo and Chicago were available on February 6 for the return home, and Miami was an authorized option for a layover. (b)(6) reserved an overnight flight from Sao Paolo to Miami for February 6, and booked a hotel in Miami for February 7 and 8 for personal time, which is permissible under CFTC travel policy. She returned home to Chicago from Miami on February 9, 2020 (completing the layover).

The trip proceeded smoothly until February 6. On that day, (b)(6) was scheduled to fly from Curitiba to Sao Paolo, and then overnight to Miami, arriving February 7. Due to delays, (b)(6) arrived in Sao Paolo late and, after midnight on the 6th, checked into and out of a hotel in Sao Paolo on February 7. (b)(6) did request lodging reimbursement for February 6 for the hotel with the check-in and check-out date of February 7, which merely registers the fact that she did not show up on the 6th until after midnight. The lodging amount requested is the actual charge, which is less than the permissible per diem for lodging in Sao Paolo.

(b)(6) then took an overnight flight out of Sao Paolo on the 7th, arriving in Miami on the 8th. It appears that official travel therefore was extended to February 8. (b)(6) did not request lodging per diem for February 7 because she was on an airplane that night.

(b)(6) kept Enforcement staff and travel staff fully informed regarding travel delays. She submitted all required receipts to support her voucher, including the hotel in Miami.

(b)(6) voucher appears to contain at least four irregularities. There are presented in chronological order:

1. (b)(6) hotel in Curitiba for February 4 and 5 appears to be reimbursed in the correct amount (which is less than the permissible per diem) but is dated February 3 rather than February 6.

2. (b)(6) appears underpaid for meals and incidental expenses (M&IE). With official travel extended to February 8 (due to flight delays), (b)(6) should have requested and received full M&IE for February 7, and partial M&IE for February 8. Instead, she requested and received partial M&IE for February 7 (which was likely carried over from the authorization), and no M&IE for February 8.

3. $701.17 was reimbursed to (b)(6) and dated February 8. Listed as "Additional CC Payment" (as opposed to "Lodging," "Taxi," etc.), it includes this note: "2-7-20 Lodging (could not be cancelled 24 hours ahead)." Presuming a federal traveler may be reimbursed for a non-refundable hotel fee in circumstances where delays in official travel do not permit the federal traveler to use the room, then the reimbursement may be appropriate. I am not sure of the resolution when the hotel is for personal use, but here it appears the official travel was delayed and extended into the intended personal travel. In any event, the problem here is the amount; it exceeds the actual cost of the room, which totaled $501.25 for February 7, including fees and taxes. Witness statements indicated that the $701 might include the February 7 hotel bill; however, that amount appears to have been reimbursed (lodging dated February 6). And, while the federal travel regulation permits lodging reimbursement in excess of lodging per diem in certain circumstances in an amount up to triple the authorized per diem, $701 exceeds triple the per diem for Miami lodging. The amount could simply have been a typographical error.

4. (b)(6) sought and received reimbursement for her cab fare from the Miami airport to the hotel on February 8, did not seek reimbursement for her taxi from the Miami hotel to the airport on February 9, but sought and received reimbursement for her cab fare from the Chicago airport to her home on February 9. The cab fare on February 9 between the airport and home may be improper (because official travel apparently ended on February 8 with the cab ride to the Miami hotel). This is admittedly a small amount.

Conclusion. Based on document review, and interviews with staff in the travel office and in Enforcement, it is clear that (b)(6) made no false statements in connection with the voucher for her trip. Because it appears that she did nothing improper, and the travel was facilitated and processed by Enforcement and travel office staff, I did not interview her. Because the voucher appears irregular, I will refer the matter back to the travel office for any administrative action they believe appropriate.

The Time and Attendance Allegation

The source alleged:

> (b)(6) routinely works less than other trial attorneys while receiving special accommodations and treatment. …..This includes working less than full-time hours while being paid for full-time employment, fulfilling her duty hours outside the core hours and routinely collecting comp time and credit hours. Among other things, prior to the pandemic (b)(6) rarely worked on Fridays. (b)(6) worked six-hour days three days of the work week and left the office before 4:00 p.m. I believe a comparison of (b)(6) computer log-ins and activity from July 2019 through March 12, 2020, will show (b)(6) consistently worked outside the core hours to fulfill duty hours and reported working on her timesheets when she was not.

On its face, (b)(6) conduct as described does not describe a time and attendance violation, but instead describes a Maxi-Flex work schedule that includes partial telework days. As we pointed out in the investigation into a New York CFTC employee who was accused of time and attendance fraud in connection with his approved volunteer work (using CFTC equipment):

> It appears that, under the CFTC Maxi-Flex work schedule, start and stop times may be flexible within the core hours of 6:00 am and 7:00 pm. Consequently, it does not appear improper or impermissible for a CFTC employee to work on outside matters, so long as 8 hours of work are completed between 6:00 a.m. and 7:00 p.m. (and the employee is available as necessary). We did not check to see whether (b)(6) properly documented a maxi-flex schedule, but it appears that (b)(6) worked one. (b)(6) did document comp time (hours worked beyond an eight hour day) on his timesheets during the relevant period; we received no allegations that (b)(6) abused comp time.[2]

(b)(6) truncated work days indicate a Maxi-Flex schedule of eight hour days with start and stop times between the core hours of 6:00 am and 7:00 pm. CFTC telework policy (prior to March 13, 2020) counted each partial tele-work day toward the maximum permitted telework days per pay period. Consequently, on its face the allegation does not indicate time and attendance fraud under CFTC time and attendance and telework policy (prior to March 13, 2020). There may be irregularities in (b)(6) documentation of a Maxi-Flex work schedule, or minor violations of the CFTC telework policy (if partial telework days exceed the maximum number of permissible telework days). The statement that (b)(6) routinely collects credit hours and comp time, without more, does not allege violative conduct.

Later, the source wrote:

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[2] ROI 17-I-A, page 10, fn.31, December 19, 2019.

> It is my belief that (b)(6) engaged in time and attendance fraud on February 10, 11, 12, 13, 19, 20, and 25, 2020, and March 2, 3, and 4, 2020 by claiming she worked core hours when a review of her log in and computer activity may prove otherwise.

Computer log-ins do not equal work. You can be logged in and not working; you can work without being logged in. Without more, the statement above does not allege time and attendance misconduct. Due to the paucity of detail, the absence of evidence for the other claims received from this source, and due to the amount of effort it would take to have the Office of Data and Technology amass computer access details for (b)(6) for the dates above, and especially due to the fact that, standing alone, the computer access details would prove nothing, we will not undertake this examination. We interviewed (b)(6) supervisor during the relevant period. The supervisor stated that (b)(6) has a reputation as a hard worker and often works directly with Enforcement supervisors in D.C.; therefore, he is not completely familiar with her time and attendance. However, he has not received any complaints about her time and attendance and she does maintain a reputation as a hard worker. The supervisor said that he suspects many (if not all) Enforcement attorneys in Chicago "do not put in their hours," but offered no specific examples. He agreed that with the maxi-flex and gliding work schedules it is difficult to track time, and that Enforcement attorneys sometimes put in excess hours leading up to hearings, depositions, and litigation deadlines. Based on this statement, there is no reason to continue to investigate possible time and attendance fraud by (b)(6). We will keep this allegation and reopen it if additional details come in.

In summary, the source, while claiming that time and attendance fraud is being committed, describes work schedule details that on their face do not indicate time and attendance fraud, and instead appear consistent with current CFTC time and attendance policy. Suggestions that (b)(6) may have not logged in to her computer on certain days is not dispositive, without more (such as a failure to complete work, or information stating what she was doing instead of working). In addition, the relevant supervisor states that she has a reputation as a hard worker and, while he suspects time issues with all Enforcement attorneys, OIG has received no other allegations that (b)(6) (or anyone else in that office) does not work sufficient hours. Consequently, we decline to investigate this allegation further at this time. we have received no other allegations that (b)(6) does not put in her hours. Consequently, we decline to investigate this allegation at this time. We will hold this allegation pending the receipt of further complaints or details that would indicate a time and attendance violation.

<u>Nepotism allegation</u>

The source alleged:

> [I]n May 2019, Enforcement hired (b)(6), who is (b)(6) of trial attorney (b)(6). The current Deputy Director of Enforcement in Chicago, (b)(6)

(b)(6), told Enforcement staff that (b)(6) was selected for an interview because she is (b)(6). (b)(6) is personal friends with (b)(6); they were law school classmates and socialize outside of the office. (b)(6) and (b)(6) both advocated for (b)(6) during the hiring process and it is my belief that (b)(6) told Enforcement staff, including those on the hiring committee, that the Director of Enforcement wanted (b)(6) to be interviewed.

(b)(6) behavior described above is legal. It is not nepotism. 5 USC 3110(b) and 5 CFR 310.103(a) prohibit certain individuals known as "public officials" from recommending family for employment. Under 5 USC 3110(a)(2), public official is defined:

> (2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency;

So, with regard to "public officials," certain actions are strictly prohibited under 5 USC 3110(b):

> (b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

And by strictly prohibited, I mean 5 USC 3110(c):

> (c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

There is no indication that (b)(6) is a "public official." Since she has no authority to hire, or recommend (in an official capacity), she is not capable of nepotism with regard to her sister.

While it is not appropriate for any federal employee to voluntarily use his or her title or position in connection with a job reference for a private citizen for a private job, a federal employee "may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment

or whom he is recommending for Federal employment." 5 CFR § 2635.702. I have understood this to mean that you may use your title/position to recommend a fellow Federal employee for private employment based on experience gleaned in the Federal workplace only, and only upon request. In addition, you may, as a Federal employee, use your title/position to recommend any person for Federal employment based on personal knowledge of the person, and this recommendation may be volunteered. In short, (b)(6) conduct would be inappropriate if she was trying to get (b)(6) a job in the private sector and using her title/position to do so; it is okay in connection with a recommendation for Federal employment. The only caveat under 5 CFR § 2635.702 would be if (b)(6) was not speaking based on personal knowledge of (b)(6) (b)(6), but that is not alleged, and it would be somewhat unusual to not know (b)(6)

In any event, recommending friend or family for Federal employment, while not a violation of anti-nepotism statutes (so long as you are not a "public official") or ethics rules addressing recommendations for Federal employment (so long as it is based on personal knowledge), can still be illegal. A Federal employee is always "prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest." 5 CFR 2635.402(a). Please note that 18 USC 208 applies to all Federal employees (in connection with recommending family for Federal employment) without the distinction that permits 5 USC 3110(b) to apply only to "public officials." So, while recommending friends and family for Federal employment may be legal (if you are not a "public official"), it will not be legal if the financial interests of the friends or family recommended can be imputed to the Federal employee making the recommendation, the theory being the recommendation may be based on a personal need to assure your financial wellbeing, rather than merit.[3]

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[3] Section 208 is also interpreted under section 2635.502 of the OGE regulations, 5 C.F.R. § 2635.502. Part 2635 houses the Standards of Ethical Conduct for Employees of the Executive Branch; section 502 is located under Subpart E, which addresses impartiality in performing official duties in instances where personal or business relationships exist. Section 502 governs the conduct of federal employees in connection with "particular matters" that are likely to have a direct and predictable effect on the financial interest of a member of the employee's household or an individual with whom the federal employee has a "covered relationship." 5 C.F.R. § 2635.502 provides that a federal employee has a covered relationship with the following people:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

Note: An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

A federal employee may not participate in a particular matter with a member of his household or with any person who is a "covered relationship" unless he has informed the agency designee of the appearance problem and received authorization from the agency.

It is quite obvious that (b)(6) informed people at the agency that an Enforcement applicant was (b)(6). While there is no indication that anyone was aware of the impact of 18 USC 208 on the legality of her otherwise lawful recommendation of (b)(6), there is also no indication that (b)(6) were so close that the finances of (b)(6) could be imputed to the other. Because the applicable regulation equates "household members" with "a relative with whom the employee has a close personal relationship" when defining "covered relationship" (see fn.1), and especially given that recommending relatives to Federal employment is otherwise legal under another section of the ethics regs, it appears that a relative must be as close as a household member, at least in terms of financial considerations, to trigger the conflict prohibition when it comes to recommendations for Federal employment.

There is no indication in the allegation that (b)(6) has a financial relationship with (b)(6) that would require (b)(6) finances to be imputed to (b)(6) sufficient to give rise to a conflict. The source presumes that it is against the law for a Federal employee to recommend family for Federal employment, when in fact under normal circumstances it is legal.

Favoritism in Promotion Allegation

The source alleges that

> Enforcement now appears to have preselected (b)(6) and another favored attorney for a promotion to a supervisory position. Enforcement posted an internal vacancy announcement for (b)(6) positions in Chicago that closed May 12, 2020. Even though the posting just closed and no interviews have been conducted, it is my understanding that several Chief Trial Attorneys have told Enforcement Staff that the positions will go to (b)(6) and (b)(6). Like (b)(6), (b)(6) is personal friends with (b)(6). (b)(6) regularly takes 70-minute lunches with (b)(6) on workdays and socializes with (b)(6) outside of the office. (b)(6) would also regularly leave the office before 4:00 p.m. As a supervisor, (b)(6) took no action

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(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

against (b)(6). It appears that these two positions are based on favoritism and friendship and were created to reward (b)(6) and (b)(6) because these positions are unnecessary. There will be six Chief Trial Attorneys supervising eight trial attorney and four investigators.

(b)(6) and (b)(6) have been given favorable treatment in the past. (b)(6) and (b)(6) were both recently given Chairman's awards for routine enforcement work. (b)(6) was awarded for a series of administrative settlements stemming from one investigation that she worked on with a team of attorneys and an investigator. It is my understanding that these settlements remain uncollected and the team knew they would not be paid. (b)(6) was given the award after initiating tag-along civil actions against defendants who had already been convicted of criminal offenses. (b)(6) did not conduct any investigation; her work consisted of watching the criminal trial and drafting settlement papers after the defendants were found guilty. It is my understanding that these settlements also remain uncollected. These unnecessary promotions may violate the prohibited personnel practices and also constitute government waste.

Later the source wrote:

(b)(6) and (b)(6) were selected for the Chicago (b)(6) positions. It is my understanding that (b)(6) and (b)(6) conducted all Chicago (b)(6) interviews and (b)(6) was late or left early to all candidate interviews except for the interviews of (b)(6) and (b)(6). Chicago (b)(6) interviews concluded on the afternoon of Thursday, May 21, 2020. Prior to the final (b)(6) candidate interview on May 21, 2020, it is my belief that (b)(6) and (b)(6) were assigned to investigations in the legal files case management system without a (b)(6) in anticipation of their promotions and prior to (b)(6) announcing her departure from the Commission to (b)(6) and other staff on May 21, 2020. It is my belief that Mr. McDonald did not interview any candidate for the Chicago (b)(6) positions because they were preselected to be (b)(6) and (b)(6), but interviewed recent Chicago trial attorney candidates in 2020. (b)(6) notified candidates on Tuesday, May 26, 2020, the day after Memorial Day, that (b)(6) and (b)(6) were selected for the positions. One (b)(6) candidate who was passed over for (b)(6) and (b)(6) was interviewed in 2020 for the Chicago (b)(6) position filled by (b)(6). (b)(6) applied for the Chicago (b)(6) position filled by (b)(6) and was not selected for an interview.

None of the statements above indicate a violation of law. Presuming the allegations are true:

That (b)(6) was not interviewed for the position filled by (b)(6) but people interviewed for the position filled by (b)(6) were not interviewed for the position awarded to (b)(6) is not illegal without more (such as some indication that the interviewees were selected in violation of

the law, and immediately what comes to mind is impermissible considerations such as race or religion).

That CFTC notified candidates of the selection of (b)(6) and (b)(6) on the day after Memorial Day is not illegal.

That the Director of the Division of Enforcement conducted more interviews for a lower position in Enforcement than he did for the positions awarded to (b)(6) and (b)(6) is not illegal. My initial presumption is that it is based in scheduling needs and conflicts. There is no requirement of which I am aware that the Director conduct interviews. In fact, I would advise any Director to not conduct interviews (other than for direct reports), so as to be insulated in the event the legality of an interview is challenged.

That (b)(6) and (b)(6) were assigned to litigations on the final day of interviews (May 21), prior to (b)(6) retirement announcement of the same day, and prior to their promotions and in anticipation of their promotions, is not illegal. I would be more worried if they had been assigned to the litigations while interviews were ongoing (but the mere assignment to litigations would not be illegal regardless).

The fact that (b)(6) entered late or left early to all interviews except (b)(6) and (b)(6) is not illegal. The other interviewers, (b)(6) and (b)(6), are not alleged to have missed anything. It simply does not matter. (b)(6) may have had scheduling issues. There is no requirement of which I am aware that three people conduct interviews.

This allegation will also be closed. Certainly, if additional details are alleged that indicate violative conduct, we will revisit as appropriate.