

When an Agency's Budget Request Does Not Match the President's Request: The FY2018 CFTC Request and "Budget Bypass"

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Two Different Budget Requests for CFTC?

The Trump Administration released its first full [budget request](#) on May 23, 2017, for FY2018. Like other recent presidential budget requests, it includes an *Appendix* chapter for independent agencies such as the Commodity Futures Trading Commission (CFTC). Notably, the Trump Administration's budget request for CFTC does not equal the amount requested directly by the agency in its budget justification submitted to Congress. Specifically:

- The [Trump Administration's FY2018 request](#) for CFTC is \$250 million.
- [CFTC's Budget Justification](#) submitted to Congress requests \$281.5 million.

The FY2017 Consolidated Appropriations Act provided CFTC with \$250 million ([P.L. 115-31](#)). Therefore, the President's FY2018 request for CFTC is the same as last year's appropriation. By contrast, the agency is requesting a \$31.5 million increase (+12.6%). CFTC's budget justification, concurrent [statements by a CFTC commissioner](#), and [press reports](#) explain why the agency is requesting an increase over FY2017 and more than the Administration's request.

In Congress, the appropriation for CFTC is under the jurisdiction of the House Appropriations Subcommittee for Agriculture and Related Agencies and the Senate Appropriations Subcommittee for Financial Services and General Government.

Presidential Budget Requests and Agency "Bypass" Authority

Before 1921, executive branch agencies would oftentimes submit their budget requests directly to Congress without review and modification by the President. In the wake of World War I, growing domestic challenges, and a growing federal budget, however, the administrative machinery of the federal government was severely taxed. At the time, Congress did not have extensive staff resources and support agencies to help it cope with these heightened demands.

Congress responded, in part, with the enactment of the [Budget and Accounting Act of 1921](#) (codified in part at [31 U.S.C. 1108](#)). The law requires executive agencies to submit budget requests first to the President—and by further delegation to the Office of Management and Budget (OMB)—who may attempt to reconcile competing budget priorities into a single, consolidated proposal for congressional consideration. The law also established a process that many observers [later perceived](#) as enabling the President to control the nature of information that agencies released to Congress and the public.

Beginning in the 1970s, Congress reconsidered this statutory approach. Specifically, Congress began to authorize some agencies to submit budget and/or legislative information concurrently and directly to Congress, in effect bypassing the President and OMB. This "bypass authority" has also been [referred to](#) as "concurrent" or "direct" submission (using language from applicable statutory provisions).

The authorizing statute for CFTC establishes a form of bypass authority when it says:

Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. [[7 U.S.C. 2\(a\)\(10\)\(A\)](#)]

Budgetary bypass has been the subject of a [Freedom of Information Act \(FOIA\) case](#) that resulted in OMB releasing lists from different points in time of agencies with bypass authority.

The President is not obliged to accept or transmit such a proposal from an executive agency in the President's submission to Congress. Rather, the President may propose something different that reflects the President's policy preferences (see [OMB, p. 3](#)). An executive agency with budgetary bypass authority, however, might seek to submit its own separate and independent request directly to Congress.

In effect, concurrent budget submission allows Congress to see this difference, if it exists, that otherwise may be less visible without the bypass opportunity. Any differences may provide an opportunity for Congress to conduct oversight, examine assumptions, and otherwise contrast differing perspectives on an agency's resource needs.

CFTC Statements

Since CFTC was given additional oversight over derivatives markets through passage of the [Dodd-Frank Act](#) in 2010 ([P.L. 111-203](#)), funding for CFTC has been a contentious issue. Organizationally, CFTC is led by five commissioners appointed by the President, with the advice and consent of the Senate, to serve staggered five-year terms. No more than three commissioners at any one time may be from the same political party. There are currently only two CFTC commissioners in place—a [Republican appointee](#) who is the acting chair, J. Christopher Giancarlo, and a [Democratic appointee](#), Sharon Y. Bowen.

In his May 23, 2017, [transmittal letter](#) accompanying the CFTC budget request, acting chair Giancarlo did not specifically address the divergence from the Trump Administration's budget request. However, he did say, "The \$31.5 million in additional funds over FY 2017 is not a formulaic or superficial number, but a thorough and informed assessment of what the CFTC needs to execute its mission in FY 2018." He noted that the \$31.5 million in additional funding he was requesting would help the agency particularly with its examinations, including stress testing for large derivatives clearinghouses and resources to address financial technology innovation, among other purposes.

Commissioner Bowen [cited](#) the large size and complexity of the \$430 trillion swaps and futures markets (in notional value) that CFTC oversees, saying, "At our current level of resources, I do not believe we can fully protect our markets or ward off a new financial crisis, to say nothing of dealing with nascent developments like fintech or cybersecurity."

She noted that even though she believed CFTC's \$281.5 million request was too low, she was advised that formally opposing it "would block the Commission from releasing its own budget because there are only two Commissioners at present."

She asserted that the current funding process for CFTC was "inadequate and should be reconsidered." She stated that almost all other financial regulators were funded partly or wholly by market participants paying "user fees" and that such a funding model would enable "taxpayers to be freed from the burden of funding another government agency." The [funding method](#) for financial regulators has been a controversial issue in recent years.