

**FEDERAL LEASED PROPERTY:
ARE FEDERAL AGENCIES GETTING A BAD DEAL?**

HEARING

BEFORE THE

FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT
INFORMATION, FEDERAL SERVICES, AND
INTERNATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
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CONTENTS

Opening statements:	Page
Senator Carper	1
Senator Brown	5
Prepared statements:	
Senator Carper	39
Senator Brown	41

WITNESSES

THURSDAY, AUGUST 4, 2011

David Foley, Deputy Commissioner, Public Buildings Service, U.S. General Services Administration	7
James M. Sullivan, Director, Office of Asset Enterprise Management, U.S. Office of Veterans' Affairs	9
Hon. David Kotz, Inspector General, U.S. Securities and Exchange Commission	11
Jeff Heslop, Chief Operating Officer, U.S. Securities and Exchange Commission	13
David J. Wise, Director, Physical Infrastructure Issues, U.S. Government Accountability Office	14

ALPHABETICAL LIST OF WITNESSES

Foley, David:	
Testimony	7
Prepared statement	43
Heslop, Jeff:	
Testimony	13
Prepared statement	79
Kotz, Hon. David:	
Testimony	11
Prepared statement	55
Sullivan, James M.:	
Testimony	9
Prepared statement	50
Wise, David J.:	
Testimony	14
Prepared statement	87

APPENDIX

Appendix 1 referenced by Mr. Wise	97
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FEDERAL LEASED PROPERTY: ARE FEDERAL AGENCIES GETTING A BAD DEAL?

THURSDAY, AUGUST 4, 2011

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, FEDERAL SERVICES,
AND INTERNATIONAL SECURITY,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room 342, Dirksen Senate Office Building, Hon. Thomas R. Carper, Chairman of the Subcommittee, presiding.

Present: Senators Carper and Brown

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Good afternoon everyone. On behalf of Senator Brown and myself, welcome to today's hearing. I was just saying to Senator Brown that we may be the only hearing in the Senate today. I do not know, but the others are dropping like flies.

But if you see the two of us, you know we are serious about saving some money and we are for our country. We are glad that our witnesses can be here today and our guests as well. Today we are going to examine the challenges that our Federal Government faces managing its real property and in particular, its reliance on spaces leased from the private sector to satisfy long-term real estate needs.

I just addressed a group over in the House side a little while ago, Scott, and they come from the accounting industry, auditing industry, and actually do a whole lot of work as a firm to support the Government Accountability Office's (GAO's) efforts with respect high-risk list, high risk for using a lot of money, taxpayer money. But we have had a number of hearings here in the past about real estate, high risk, and we have literally thousands of pieces of property sitting around us. There are a thousand pieces of property that the Federal Government owns and we pay utilities for, maintenance for, security for that we are going to get rid of. We do not use them.

And we also find out that there is something else that we are spending a lot of money for and that is—GAO has been riding us for a couple of years, and that is we have a lot of agencies that lease space for years, in some cases for decades, and we save a lot of money. They save a lot of money if instead of leasing we actually buy this stuff.

(1)

And there are still a lot of instances where it actually makes a lot of sense to lease, like the Department of Census Office. Every 10 years you do a census. It does not make sense to buy all those pieces of property they are going to use once every 10 years.

But that is a little bit of background here. There is a general consensus that our Federal Government has to get smart about the ways we manage our buildings and land. Presidents in both parties now have made doing so a top management priority and with concerns over the implication of our deficit and national debt mounting, eliminating waste, achieving cost savings in this area remains a top priority for us and I hope for the rest of our colleagues in the House and the Senate and the Administration.

Between 2001 and 2009, we ran up as much debt as we did in the first 208 years of our Nation's history. Last year we ran up what may be the largest budget deficit in our Nation's history. Most of us here in Washington are united in our desire to find a solution to our Nation's fiscal problems. We are still facing an ocean of red ink as far as the eye can see, even after enactment earlier this week of the spending cuts included in the legislation to raise our country's debt ceiling.

A wide variety of ideas have been put forward on how to reduce our budget deficit and begin whittling down our debt. Last fall, the majority of the bipartisan deficit commission appointed by President Obama, co-chaired by Alan Simpson, former Republican Senator from Wyoming, and by Erskine Bowles, former chief of staff to then President Bill Clinton, they provided us, along with their colleagues on the Deficit Commission, a roadmap to reduce cumulative Federal deficits over the next decade by some \$4 trillion, and at the same time getting a reform of our title programs, tax reform. Pretty comprehensive, bipartisan comprehensive and would actually not be just a deal. It would actually have been a solution to the challenges that we face.

Their work is reinforced by the Gang of Six, three Democrats, three Republicans, and unfortunately, in my view the President initially followed their lead too late, as it turned out, and the leaders of the House and Senate, Democrat and Republican, did not follow it at all and that is a sad thing, I think, for this country.

As a result, we settled this week for a bill that reins in discretionary spending, but does little to tackle our long-term financial challenges. In short, it was a deal, not a solution, and not a very good deal as far as I am concerned. It only addresses the symptoms of our Nation's fiscal ailments, specifically the debt ceiling, but failed to cure our serious disease of debt and deficits. And unfortunately, we largely put off until tomorrow what we ought have been doing right now.

And as Senator Brown has heard me say probably more times than he wants to remember now, but I said a lot, and my staff certainly feels that way, but I am going to keep saying it for as long as I am around here, a lot of Americans believe that those of us here in Washington are not capable of making or taking the difficult steps that are necessary to put our country back on the right fiscal track. And given what has happened in recent weeks, it is easy to see why they feel that way.

They do not think we can do the hard work that we are hired to do, that is, to effectively manage the tax dollars that they entrust us with. They look at the spending, the tax decisions we have made in recent years and also the poor management across government and question whether the culture here is broken. They question whether we are capable of making the kind of tough decisions that American families make with their own budgets.

And I do not blame folks for being skeptical, especially in light of the debate we have seen in recent months and the deal that we arrived at in recent days. Now more than ever we need to establish a different kind of culture here in Washington.

When it comes to spending we need to move from what I have described here many times as the culture of spendthrift to a culture of thrift. This shift must involve looking in every nook and cranny of the Federal Government and asking this question about all kinds of programs, domestic programs, discretionary programs, entitlement programs, how do we get a better result for less money, or how do we get a better result for the same amount of money?

When it comes to property management, it is clear to me and others that we can get better results and we can save money. Federal property management has been on the Government Accountability Office's high-risk list since January 2003, in part due to significant amounts of underutilized and excess property. This problem is coupled with the fact that Federal agencies depend on costly—too often depend on costly leased space to meet new space requirements, although building ownership has proven to be more cost effective over time, not always, but often times.

The most recent comprehensive data available shows that Federal agencies apparently possess more than 45,000 underutilized buildings, totaling more than 340 million square feet in space. These buildings cost nearly \$1.7 billion annually to secure and to maintain. Fixing that problem does not balance the budget, but it is a great step in the right direction.

But in addition to the past 20 years, GAO has been telling us that we have been too reliant on leasing. Since 2008, the General Services Administration (GSA) has leased more property than it owns. In fiscal years (FY) 2011, the agency will spend over \$5 billion to house Federal employees in 184 million square feet of private office space. In addition, while GSA serves as the central leasing agent for the Federal Government and is responsible for managing and obtaining space for agencies, many agencies have obtained their own leasing authority and in doing so, have chosen not to take advantage of GSA's expertise in Federal real estate.

Given that many of these agencies lack experience in performing lease procurements, they often bind the government into costly, long-term lease obligations that result in millions of dollars in additional cost to the Federal Government, actually tens of millions and maybe even hundreds of millions of extra dollars in cost.

For example, the U.S. Securities and Exchange Commission (SEC) is—we know this one all too well—but is an agency that has been granted independent leasing authority, along with some other agencies. In July 2010, the Commission entered into a sole source lease for 900,000 square feet of space at a privately owned building

called Constitution Center in Washington. That lease would have cost taxpayers some \$556 million over 10 years.

Although the SEC has held independent leasing authority for more than 20 years, the Commission's inspector general has found that the agency still lacks adequate policies and procedures for managing its leasing actions. The fact, this was the second time within the past 5 years in which the SEC was involved in an unnecessarily expensive leasing arrangement.

Unfortunately, this is not the only agency that operates this way. Similarly, in 2006, the Federal Bureau of Investigation (FBI) executed a 30-year operating lease to house employees in its Chicago field office that cost an estimated \$40 million more than construction over a 30-year period.

Fortunately, both Congress and the Obama Administration are united in their commitment to address these issues. The President's latest budget included a recommendation to form a Civilian Property Realignment Board (CPRA) to review the government's property portfolio and dispose of those deemed excess in an expedited manner.

I think, if I am not mistaken, Senator Brown may have actually introduced legislation to codify that proposal. This is a proposal that my colleagues and I on the Homeland Security and Government Affairs Committee (HSGAC) had an opportunity to examine on our June 9th real property hearing. And while the proposal, folks, is primarily on assisting agencies in the disposal of excess and underutilized buildings, it does provide for opportunities to consolidate or co-locate operations, which could ultimately help to reduce the government's leasing portfolio.

I have concerns about the cost and effectiveness of the President's approach, but I look forward to taking what works in his proposal and Senator Brown's legislation, along with other ideas, and introducing a bill in the fall that will help right-size the government's portfolio in a way that is advantageous for Federal agencies, for community stakeholders and the clientele served by those agencies.

Clearly, the momentum is building to address a widely recognized problem, yet in all of our zeal to save, we must be intelligent in our approach. Rome, I am told, was not built in a day. The Federal Government's bloated property portfolio cannot be un-built in a day. We have an opportunity though to do this right and change the way the Federal Government manages its hundreds of billions of dollars worth of assets.

That said, the agency should not be waiting for a civilian Base Realignment and Closure (BRAC) to solve their problems, or at least begin to solve their property management problems now. In an era of shrinking budgets and scarce resources, it is critical that agencies come up with an innovative property management tool that will identify opportunities to right-size our real estate portfolio to reduce costs and achieve savings by eliminating unneeded assets and expensive long-term space.

Before I turn it over to Senator Brown, let me just say, every now and then, and I am sure Scott has noticed this as well, we misalign incentives. We misalign incentives in the Federal Government. We incentivize the wrong kind of behavior and then we get

the wrong kind of results. And what we do within the Federal Government, we incentivize a lot of Federal agencies to lease. The incentives are to lease.

With the way that we call, if you ever really want to buy a building or something like that upfront, even if that makes sense long term, we incentivize them with the way that we score that expenditure in the first year, as opposed to leasing, which could be scored for 10, 20, 30 years or even more.

And one of the things I hope comes out of this hearing today are some good discussion on how we change those incentives, get them properly aligned so that we not only meet the space needs of our agencies, but we meet the fiscal constraints of our country.

So I look forward to this hearing, from our witnesses—we both do—as you share with us your thoughts on how to transform our asset portfolio in a way that generates significant and lasting savings to the public. And with that, I am happy to turn it over to Senator Scott Brown of Massachusetts.

STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you, Mr. Chairman. Thank you to our witnesses. I would venture to guess we are the only hearing in D.C. right now. It is interesting listening to you, Mr. Chairman, I want to thank you for holding this important hearing. Through a lot of our efforts, your efforts, we have been able to help put the spotlight on some of the programs that just are not doing it right.

It is funny. Half a billion dollars for leased office space, it just blows my mind how we get in these situations. People wonder where the money is going. Well, it is very clear where it is going. It is going some places very poorly chosen, whether it is leased spaces, programs, whether it be military programs that are not working, are obsolete. We are just wasting money all over the place, and in the middle of a financial emergency, I find that very, very disturbing.

That is why I was proud to put party politics aside and work with the President and Congressman Denham on the Civilian Property Realignment Act (CPRA). The bipartisan legislation that you referenced will bring private sector discipline to the management of Federal real estate. It will empower an independent commission to break through the longstanding barriers created by red tape and politics to facilitate the efficient disposal and realignment of unneeded Federal property.

This bipartisan approach will address a problem GAO has designated as a high-risk area and would achieve savings of approximately \$15 billion, and that is real money when we are trying to make some very real and tough decisions in the next couple of years.

It is funny, time and time again, government agencies have proven they cannot properly manage their own real estate and today, as we already referenced, both of us, that half a billion dollars in leased space really will never be used efficiently or properly. And not only did they enter into this wasteful lease, but they—the SEC, as was referenced—but they did so they could spend their work-days, quite frankly, in a lavish building, complete with panoramic views of the city, limestone floors, marble walls and a landscape

courtyard that was transformed into a one-acre private garden. I guess it is nice if you can get it, especially when it is at the taxpayers' expense.

That being said, I came to Washington to look at the way we spend our dollars and to be a fiscal watchdog, Senator, to address our fiscal challenges so we do not have to leave young Americans with a tab that they just cannot afford anymore, Mr. Chairman.

I am looking forward, as you are, to making those tough decisions. We started already. We will continue to work in that vein and hopefully gain the confidence of the American people once again. I look forward to hearing from our witnesses.

Senator CARPER. Thanks very much for that statement. Let me just take a moment to introduce each of our witnesses, a Hokie from Virginia Tech here to lead off. David Foley, appointed Deputy Commissioner of the Public Building Services and U.S. General Services Administration in 2010. He is responsible for the real estate acquisition operations of the agency, previously served as the Deputy Assistant Commissioner for portfolio management at GSA and worked in a number of leadership roles within GSA in offices in, get this, Dallas, Kansas City and Atlanta.

Mr. Foley is a graduate of Missouri State University, has a master's in business administration from the home of the Hokies, Virginia Tech.

Mr. Jim Sullivan, also known as James, is the Director of the Office of Asset Enterprise Management at the U.S. Department of Veterans' Affairs (VA). It seems like we pick on the VA a lot and we actually use them a lot of times as an example of an agency that does things well.

Sometimes folks in these hearings, they like to conduct these like gotcha hearings. What we like to do is when folks are behaving in inappropriate ways, managing in inappropriate ways, we like to put a spotlight on that. When agencies are actually managing and behaving in more appropriate ways and actually serve an example, we like to put a spotlight on them and any number of times we have done that with the VA.

But Mr. Sullivan assumed this new leadership role in 2009, after serving as a Deputy Director since 2000—I guess since May 2002, something like that. But you are now the Director of the Office of Asset Enterprise Management at VA. And Mr. Sullivan has over 25 years of experience in capital budgeting and planning and asset management. He plays a pivotal role in managing one of the largest portfolios of property in the Federal Government, including in Delaware.

The Honorable David Kotz has served as the Inspector General for the U.S. Securities and Exchange Commission since December 2007. Prior to joining the SEC, Mr. Kotz served as the Inspector General for the Peace Corps and practiced Federal administrative law for a decade in the private sector. Inspector General Kotz is a graduate of the University of Maryland, which makes him a Terrapin, and the Cornell Law School.

Jeff Heslop was named the U.S. Securities and Exchange Commission's first ever Chief Operating Officer (COO) in May 2010. He is responsible for the agency's information technology, financial reporting and record management duties.

Prior to joining the SEC, Mr. Heslop was managing Vice President at Capital One, which has just acted to acquire ING Direct in Wilmington, Delaware, right in my hometown. And there, at Capital One, Mr. Heslop was responsible for the company's information and risk management operations.

He received his bachelor of arts degree from Davidson College. When did you graduate?

Mr. HESLOP. Seventy-six.

Senator CARPER. Seventy-six. John Spratt, Congressman John Spratt, who is one of your bachelorettes as well. Do you know who the president is there, now?

Mr. HESLOP. Carol Quillen.

Senator CARPER. She is from Delaware. Delaware. Yes, she just became your president the 1st of this month, and I think the first woman in the history of the college.

You have your master's in business administration from College of William and Mary, where our youngest son has started his senior year this fall. Great school.

David Wise is Director for Fiscal Infrastructure Issues at the U.S. Government Accountability Office, affectionately known as GAO. He specializes in transportation and communication and Federal real property issues.

His career at GAO dates back to 1981. Mr. Wise has a bachelor of arts in political science from the University of Pittsburgh and a master's in public administration's degree from Pitts Graduate School of Public and International Affairs. And now that the National Football League (NFL) strike has been averted, or lockout has been averted, I was going to ask my first question of you.

What NFL football team will you be rooting for this fall with that kind of bio?

Mr. WISE. Patriots.

Senator CARPER. All right. Welcome one and all. Your entire statement will be made part of the record. If you like to summarize, that would be great. We are asking you keep remarks to roughly 5 minutes. If you go a little beyond that, that is OK. If you go way beyond that, that is not OK. Just go ahead and once you all are finished, Senator Brown and I will take turns just asking questions of you.

Mr. Foley, please proceed. Thank you all for coming.

STATEMENT OF DAVID FOLEY,¹ DEPUTY COMMISSIONER, PUBLIC BUILDINGS SERVICE, U.S. GENERAL SERVICES ADMINISTRATION

Mr. FOLEY. Thank you. Good afternoon, Chairman Carper, Ranking Member Brown. I appreciate being invited here today to discuss GSA's efforts to reduce our reliance on leased space, our approach to lease acquisition, and how we manage delegations of authority.

GSA searches for the most cost-effective ways to provide space for Federal agencies to help them achieve their missions. Our first priority is to use existing government-owned space and then lease space already under contract to the government. When existing

¹The prepared statement of Mr. Foley appears in the appendix on page 43.

space is not available, GSA determines the best method to acquire new space, whether through leasing or new construction.

We consider the size, duration, cost and complexity of the requirement. For most long-term needs, especially those with unique requirements, like courthouses or land ports of entry, it is more cost-effective for the government to build and own these facilities. For small short-term general office requirements, leasing from the private sector is typically more economical.

GSA currently manages an inventory of over 370 million square feet of space, of which roughly 191 million is leased from the private sector. Approximately 80 percent of our 9,000-plus leases are for the smaller short-term needs that are less than 20,000 square feet. Our lease acquisition process entails carefully sequenced steps to ensure adequate competition and a fair rental rate for taxpayers, which are outlined in my written statement.

GSA has multiple internal controls in place for our largest leases with annual rental payments that exceed \$2.8 million. These leases require additional reviews within the GSA and the Office of Management and Budget (OMB), along with prospectus approval by GSA's congressional authorizing committees. This process ensures any growth and cost from staffing or space increases are supported in the President's budget and are transparent to Congress and the public.

Since real property was identified as a high-risk area by GAO in 2003, GSA has worked closely with Federal agencies to maximize the utilization of leased space. At the end of fiscal year 2010, the vacancy rate in GSA's leased inventory was less than 1 percent.

GSA and the Administration have also made it a priority to reduce the cost of leasing by minimizing the need for build-to-suit projects, adjusting requirements to maximize competition for existing space, purchasing leased assets to create Federal ownership, and converting costly lease proposals into Federal building renovations or new construction projects.

For instance, in 2010, GSA exercised a purchase option for Columbia Plaza, a long-term lease here in Washington, DC. The fiscal year 2010 budget also provided funding for the FBI field office in Miami. This project had previously been authorized as a lease proposal.

In fiscal year 2012, GSA's budget request contained funding that would retrofit the Phillip Burton Federal Building in San Francisco, California. This would satisfy an FBI requirement and avoid a costly lease proposal, saving taxpayers almost \$100 million over the next 30 years. Congressional cuts to the President's budget threaten this progress. In fiscal year 2011 alone, several key projects in the President's budget were not funded, including the next phase of the Department of Homeland Security (DHS) consolidation at St. Elizabeth's and a purchase option for an Internal Revenue Service (IRS) lease in Martinsburg, West Virginia. Failing to move forward with these projects will result in the government's continued leasing of space, costing taxpayers millions more in the long run.

Additional cuts in fiscal year 2012 would only make the situation worse. GSA has been aggressive with another opportunity for savings by improving the efficiency of the Federal inventory to facili-

tate consolidation of leases into government-owned space. Our GSA headquarters is a good example. By renovating the building and opening up the floor plan, we can increase the number of occupants from approximately 2,500 to 6,000 people. This will allow us to eliminate multiple leases, saving taxpayers millions of dollars annually.

GSA, as you mentioned, is not the only agency that leases on behalf of the Federal Government. More than 25 agencies and commissions, like the VA and SEC, have their own statutory authority to hold land and acquire leasehold interest. GSA is not usually involved in these transactions.

Some agencies also lease space under a delegation of authority from GSA. Agencies using this delegation must abide by the same laws and controls that govern GSA and certify that they have a properly warranted lease contracting officer to conduct the procurement and execute the lease. We are involved in these transactions to provide the appropriate levels of oversight.

In conclusion, GSA strives to maximize space utilization and minimize the cost associated with leasing. We are continually looking for ways to streamline, standardize and simplify our leasing process with the appropriate controls to maximize competition and find the optimal solution for taxpayers, while helping agencies achieve their missions effectively.

Thank you for inviting me to appear before you today. I appreciate the opportunity to discuss GSA's leasing practices and expertise and I welcome your questions.

Senator CARPER. Thanks so much for your testimony. Mr. Sullivan, please proceed. Thank you.

STATEMENT OF JAMES M. SULLIVAN,¹ DIRECTOR, OFFICE OF ASSET ENTERPRISE MANAGEMENT, U.S. OFFICE OF VETERANS' AFFAIRS

Mr. SULLIVAN. Thank you, Chairman Carper and Ranking Member Brown. Thank you for the opportunity to appear today to discuss the Department of Veterans' Affairs' management of its capital asset portfolio, and more specifically its leased property portfolio.

At the outset, let me say, VA evaluates all of its capital decisions, including leasing, based on three following critical principles. First, does it directly benefit veterans and their families? Second, does it improve the operations of the VA? And third and last, does it allow us to be a good member of the local community?

VA is the operator of one of the largest healthcare real estate portfolios in the country. VA also maintains facilities for the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA) as well. Leasing has been and continues to be an essential part of VA's capital portfolio management practice.

VA is authorized to acquire facilities, including leased facilities, for medical and non-medical purposes, which include hospitals, community based clinics, cemeteries, medical research space, and other medical related functions. VA enters into leases to meet veteran needs across the Nation. One of VA's primary goals is to pro-

¹The prepared statement of Mr. Sullivan appears in the appendix on page 50.

vide services to veterans and their families where they live, not where old hospitals are, but where veterans need the care.

In many cases, leasing provides more flexibility in lieu of construction to meet demographic shifts, changing service demands, technology improvements in terms of medical care and benefit care delivery to our Nation's veterans. The need for space is supported by VA's mission as identified through the Strategic Capital Investment Planning (SCIP) process at VA.

Through SCIP, VA systematically evaluates all proposed capital investments based on how well they address identified performance gaps. These gaps identify infrastructure or services needed to enhance or to meet needs of current and more importantly, future veterans. Only investments that have scored well against these performance gaps are presented to Congress for funding and authorization.

VA considers the size and mission criticality when deciding between building and leasing. New construction of large inpatient and specialty care facilities that we will be in for many years, in most cases will be the most cost-effective solution to our need. Smaller facilities, such as outpatient or ambulatory care centers, can generally be acquired for more efficiently using leasing, as they provide more flexibility to meet changing demands in technology.

VA does follow GSA regulation and complies with all competition and contracting act requirements and the Federal Acquisition Regulation (FAR) in conducting its lease procurements. VA's real property service has years of experience in managing the department's robust leasing program, employing skilled workers comprised of highly trained realty specialists and certified contracting officers.

Oversight of VA's leasing program is provided internally through an extensive series of checks and balances in VA. Externally, all leases in excess of \$1 million require congressional notification and more importantly, authorization. Congress also is notified of any significant change in the cost or scope of any authorized lease, or for that matter, authorized construction projects.

In addition, VA has been granted by Congress enhanced-use leasing (EUL) authority. This tool provides VA with an innovative process to partner with public and private sector entities for up to 75 years. In return, VA receives negotiated monetary or in-kind consideration. The leased property is then developed, used and maintained for uses that support VA's mission.

Enhanced-use leases allow VA to reuse properties to meet mission-related needs such as veterans' homeless housing. EUL program results have included significant cost savings and substantial private investment in the department's capital infrastructure. In the last 6 years, VA has received in consideration more than \$216 million from this program.

VA's authority to enter into this program will expire on December 31 of this year. Without reinstatement, VA will lose a well-needed tool to help us manage our property more effectively.

Mr. Chairman, the department understands the importance of a balanced real estate portfolio to address its needs. VA has a rigorous capital planning process that takes into account current and future needs of America's veterans. VA strives to maintain the optimal mix of investments, both owned and leased assets, to achieve

its strategic goals and to assure the highest level of performance of our assets.

I thank you and the Subcommittee for the opportunity to be here today and will be happy to answer any questions. Thank you.

Senator CARPER. The pleasure is ours. Thanks so much. Mr. Kotz, please proceed.

**STATEMENT OF HON. DAVID KOTZ,¹ INSPECTOR GENERAL,
U.S. SECURITIES AND EXCHANGE COMMISSION**

Mr. KOTZ. Thank you for the opportunity to testify before this Subcommittee. I appreciate the interest of the Chairman, the Ranking Member, the SEC, and the Office of Inspector General (OIG).

On November 16, 2010, we opened an investigation as a result of receiving numerous written complaints concerning the SEC's decisions and actions relating to the leasing of space at the Constitution Center office building in Washington, DC. As part of our investigative efforts, we analyzed thousands of pages of documents and interviewed 29 witnesses with knowledge of facts or circumstances surrounding the SEC's leasing of the space.

We also searched over 1.5 million e-mails from various time periods pertinent to the investigation. On May 16, 2011, we issued a comprehensive report of our investigation containing over 90 pages of analysis and 150 exhibits. Our investigation concluded that based upon estimates of increased funding and staffing, primarily to meet the requirements of the Dodd-Frank Act, between June and July 2010, the SEC's Office of Administrative Services (OAS), conducted a deeply flawed and unsound analysis to justify the need for the SEC to lease 900,000 square feet of space at the Constitution Center facility.

We found that OAS grossly overestimated the amount of space needed for the SEC's expansion by more than 300 percent and used these groundless and unsupportable figures to justify the SEC committing to an expenditure of over \$557 million over 10 years. We found that OAS used a standard of 400 square feet per person to calculate how much space would be needed for the additional positions it believed it was gaining.

This standard was an all-inclusive number that included common space and amenities and an additional 10 percent for contractors, 10 percent for interns and temporary staff, and 5 percent of future growth. We found that the 400 square feet per person standard was described as a back-of-an-envelope calculation. Moreover, notwithstanding this all-inclusive number, when OAS later did its calculations to justify the lease, it added even more unnecessary space by double counting for contractors, interns and temporary staff.

We also found that each one of these estimates was widely inflated and unsupported by the data being used by OAS. After the SEC committed itself to the 10-year lease term at a cost of over \$556 million, it entered into a justification and approval for other than full and open competition, a document required by the Federal Acquisition Regulation.

¹The prepared statement of Mr. Kotz appears in the appendix on page 55.

The FAR permits other than full and open competition when the agency's need is of such an unusual and compelling urgency that the agency would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids. We found the justification and approval to lease space at Constitution Center without competition was inadequate, not properly reviewed and backdated.

The OAS official who signed the justification and approval as the SEC's competition advocate, acknowledged in testimony that the SEC would in fact not be seriously injured if it lost the opportunity to rent the Constitution Center space. She further admitted that she took no substantive steps to verify that the information in the justification and approval was accurate and that when she signed the document she was unaware that the funding had not been appropriated and that she did not have an understanding of when the projected personnel were expected to be hired.

The FAR also requires that the justification and approval be posted publicly within 30 days after contract award. As the letter contract for Constitution Center was signed on July 28, the deadline for publication of the justification and approval was August 27. However, the SEC did not post the justification and approval until September 3, although the document was signed by four individuals as dated August 2.

The investigation found that the justification and approval was in fact not finalized until September 2, 2010, and substantial revisions were being made up to that date. We found that three of the four signatories executed the signature page on August 2, 2010, before a draft even remotely close to the final version existed.

We found that the SEC's competition advocate executed the signature page on August 31, initially backdated her signature to August 27. She then subsequently whited out the 7 to make it appear that she had signed the document on August 2. The actions of the signatories for justification and approval gave the public a false impression that the document was finalized a few days after the letter contract was signed.

In light of our findings, we recommended that the SEC's chief operating officer conduct a thorough and comprehensive review and assessment of all matters currently under the purview of OAS. We further recommended that the chief operating officer determine the appropriate disciplinary actions to be taken.

We specified that such disciplinary actions should include, at a minimum, action up and to and including dismissal against two senior individuals and disciplinary action against a third individual. Finally, we recommended that the SEC request a formal opinion from the comptroller general as to whether the commission violated the Anti-Deficiency Act by failing to obligate funds for the Constitution Center lease.

Subsequent to the issuance of our report of investigation, we received a corrective action plan with regard to the substantive recommendations we made for improvements. We will monitor the planned activities carefully to ensure that the necessary improvements are made and to ensure that the individuals who we identified as being responsible for the failures and improprieties in our report are held accountable for their actions.

Thank you, and I would be happy to answer any questions.
 Senator CARPER. Just add a comment. I leaned over to Senator Brown when you were going through that litany and I said to him, what were they thinking about? My Lord.
 Mr. Heslop, please proceed.

**STATEMENT OF JEFF HESLOP,¹ CHIEF OPERATING OFFICER,
 U.S. SECURITIES AND EXCHANGE COMMISSION**

Mr. HESLOP. Thank you for the opportunity to testify today on behalf of the Chairman of the SEC regarding the lease of office space at Constitution Center and the steps we are taking going forward.

The report by the Commission's Office of Inspector General concerning Constitution Center identified a number of significant flaws in the SEC's leasing process. We are extremely disappointed by the failures that have been identified and regret that they have taken us all away from our primary mission of protecting investors, facilitating capital formation, and ensuring stability in the financial markets.

The fact that the SEC has not paid any rent to date for this property and that the bulk of the space has been leased to other tenants does not adequately address a situation that should never have occurred. The only appropriate response by the SEC is to resolve the remaining space issues, to correct the deficiencies in our leasing process by working with GSA and OMB with respect to future space needs, and to ensure accountability for the events surrounding this lease.

By way of background, in the spring of 2010, the SEC correctly anticipated that it would receive significant new responsibilities under the Dodd-Frank Act for derivatives, hedge fund advisors, credit rating agencies and much more. This was, of course, on top of our longstanding core responsibilities. As a result, we believed—and continue to believe—that the SEC needed additional staff to fulfill its mission and help further restore investor confidence in our markets.

At the time the agency was considering the leasing decisions, Chairman Schapiro indicated her preference for hiring new staff in the regions rather than in the headquarters, and she indicated to staff her preference that any new space in Washington be within walking distance of the Commission's Station Place building to eliminate the need for expensive shuttle services.

In July 2010, the then executive director, who was responsible for the agency's leasing activities, informed the chairman that all of our leasing options no longer existed, that the space at Constitution Center was our only option given our space needs, that the pricing was advantageous, and that we had to move quickly as there was competition for the space.

Given the previous discussions with the staff, the chairman assumed the proposal was consistent with both our budget projections, future employee growth, and her preference for the staff to be housed, where possible, in the regions. When it subsequently became clear that the SEC would not receive the funding necessary

¹The prepared statement of Mr. Heslop appears in the appendix on page 79.

to implement its new responsibilities, we took immediate steps to release the space to others and to reduce the SEC's exposure.

My written testimony details what we have learned from the flaws in our recent process and how we intend to address them. I would like to emphasize a few of these. First, we are promptly implementing the IG's recommendations and have already submitted, as he indicated, a written corrective action plan to him.

Second, in light of the failure identified, the SEC recognizes the benefits of having GSA manage the Commission's future lease acquisitions. Leasing is not part of the Commission's core mission and as an agency we cannot allow it to impede that mission. GSA, by contrast, has long experience in leasing.

In a recent meeting at GSA, Chairman Schapiro and I discussed with the GSA Administrator ways in which GSA could assist the Commission on our leasing efforts going forward. GSA indicated that it was open to playing a significant role in these efforts, and following that meeting, Commission staff has had further multiple discussions with the GSA staff. Earlier this week, the SEC and the GSA entered into a Memorandum of Understanding (MOU) that contemplates an immediate role for the GSA in managing upcoming SEC leasing activities, as well as all other future leasing needs as they arrive.

Third, the OIG report recommended that the SEC initiate disciplinary proceedings for three individuals involved in the Constitution Center leasing process, and we have begun that process. Chairman Schapiro has expressed a desire for this process to move forward as quickly as the laws and regulations permit, consistent with fundamental fairness, to assess and implement remedial measures and discipline as appropriate.

In the meantime, the individuals for whom the OIG report recommend a disciplinary review have been reassigned. Their current duties do not involve any leasing or any other authority that could bind the Commission, nor do they involve activities that relate to the expenditure of appropriated funds.

As our chairman indicated, the true test of an organization is not whether things go wrong, but how an organization responds to problems and whether its leaders take such opportunities to make necessary improvements. We are committed to doing that.

I would be happy to answer your questions.

Senator CARPER. Thanks, Mr. Heslop. Mr. Wise, you want to wrap it up and then we will go to Q and A's?

STATEMENT OF DAVID J. WISE,¹ DIRECTOR, PHYSICAL INFRA-STRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. WISE. Chairman Carper, Ranking Member Brown and Members of the Subcommittee, thank you for the opportunity to testify today on our work related to real property leasing among civilian Federal agencies. The Federal real property portfolio is vast and diverse, totaling over 900,000 buildings and structures worth billions.

My testimony today will address three topics. First, the factors that contribute to the government's reliance on costly leasing; sec-

¹The prepared statement of Mr. Wise appears in the appendix on page 87.

ond, how the Administration's proposed Civilian Property Realignment Act may provide an opportunity to reduce reliance on leasing; and third, Federal agencies' independent leasing authorities and GSA delegations of those authorities.

One of the primary reasons we designated Federal real property management as high risk was the Federal Government's overreliance on costly leased space to meet new space needs. Our work over the years has shown that operating leases often cost more than ownership, especially for long-term needs.

Increasing ownership, when appropriate, could save millions of dollars over the long term. Federal agencies rely extensively on leasing and leased buildings. At the end of fiscal year 2010, for example, GSA's leased square footage exceeded owned footage 191 million to 179 million. GSA has relied heavily on operating leases to meet new long-term needs because it lacks funds to pursue ownership.

The decision to lease rather than own space for Federal operations is often influenced by factors other than cost-effectiveness, including budget issues and operational requirements. The Budget Enforcement Act of 1990 directs that the budget authority to meet the government's real property needs is to be scored, meaning, recorded in the budget in an amount equal to the government's total legal commitment.

If GSA buys or constructs a building, the budget authority for the full cost must be recorded upfront to reflect the government's financial commitment. However, for operating leases, GSA is only required to record the government's commitment for an annual lease payment and any potential fees for canceling the lease.

This reduces the upfront funding commitment, but generally costs the Federal Government more over time. We have raised the scorekeeping issue as a challenge that needs to be addressed in several reports and testimonies in the past. We believe that if the issue is not addressed, the reliance on leasing will likely persist.

Accordingly, in 2007 and 2008, we recommended that OMB develop a strategy to reduce agencies' reliance on costly leasing where ownership could result in long-term savings. OMB agreed that a strategy was needed, but has not yet implemented one.

Agency operational requirements are among the reasons why leasing is often preferred by agencies. For example, officials said that more than 200 GSA-owned and leased buildings were damaged by Hurricane Katrina, necessitating the relocation of 2,600 Federal employees from 28 Federal agencies, many of which were GSA tenant agencies. To meet this emergency need, GSA expanded its use of leases to house agencies in temporary space to fulfill a short-term need.

In May 2011, the Administration proposed CPRA, which may have provided an opportunity to reduce overreliance on leasing. While CPRA does not explicitly address this issue, one of CPRA's purposes, to realign civilian real property by consolidating, co-locating and reconfiguring space to increase efficiency, could help to reduce the government's reliance on leasing.

CPRA also provides for the potential co-location of Federal civilian offices and postal properties, many of which are already owned.

We are currently examining the potential for consolidating leased facilities into federally owned sites for this Subcommittee.

Congress has authorized many agencies independent statutory leasing authority, allowing them to acquire leased space. The authority may be for a particular type of space or for general leasing authority. Agencies with such authority and their respective authority types are listed in Appendix 1¹ of my written statement.

GSA may also delegate leasing authority to agencies. For example, all Federal agencies may acquire a specific type of space, such as antennas, depots, piers and greenhouses. Thirteen Federal agencies are authorized to lease their own special purpose space, subject to limitations. For example, the Commerce Department has delegated authority to lease space to conduct the decennial census.

In November 2007, GSA amended its delegation of leasing authority to increase oversight after audits found instances in which agencies failed to meet the conditions of their leasing delegation. Although GSA's goal is to cover the administrative cost of private sector leases with fees it charges the tenant agencies, it has been unable to do so in recent years, losing more than \$100 million in fiscal year 2009, raising concerns about the agency's management of its leased properties. We have an ongoing engagement examining this issue, among others, for your Subcommittee.

Mr. Chairman, this concludes my statement. I will be pleased to answer questions from you and other Members of the Subcommittee. Thank you.

Senator CARPER. Yes, thanks, Mr. Wise, and I have asked Senator Brown if he would like to lead off and he has agreed to do so.

Senator BROWN. Thank you, Mr. Chairman. So Mr. Kotz, I appreciate your initial opening. During the time period where you made the recommendations of disciplining three people, what in fact has been done at this point; do you know?

Mr. KOTZ. I have been told that there is a process in place, but I do not believe anybody has been disciplined as of yet or any proposal for discipline has been made.

Senator BROWN. So it has been over a year now since they entered into this lease arrangement, and I guess my question is, what does it take to get fired or disciplined at an agency when you enter into a lease that is basically a half a billion, no half—yes, billion we are talking about, a billion dollars?

And I guess I should ask you, Mr. Heslop, what does it take to get disciplined and fired at your agency when something like this happens?

Mr. HESLOP. Sir, the disciplinary process, essentially our IG's report was issued I believe on May 17 of this year and since that time, we have followed Mr. Kotz's guidance. We have reviewed that report. Our general counsel has analyzed it in great detail.

We have conducted supplementary investigations and supplementary interviews. There was a slight hold when we—basically when Mr. Kotz referred to the Department of Justice (DOJ) the individuals mentioned in the report. As a matter of practice, we do not complete investigations or interview the individuals named until the Department of Justice comes back to us and gives us their

¹The Appendix referenced by Mr. Wise appears in the appendix on page 97.

OK that we can, so that it does not interfere with their investigation. We received that OK. The investigation then began to proceed.

As the investigation unfolded, it became apparent that in the interest of objectivity and fairness, it would be in our best interest to hire an external party to help us conduct that investigation, and we are in the process right now of employing that external party.

Senator BROWN. So what about fairness to the taxpayers? It is like fairness for the individual. What about fairness to the taxpayers in getting the best bang for our dollar? You were in that—you were with the SEC back then when this all happened, right?

Mr. HESLOP. I was hired in the SEC on May 17, 2010.

Senator BROWN. OK. So you had no knowledge of any of this stuff?

Mr. HESLOP. No, and this was not under my purview.

Senator BROWN. Mr. Kotz, based on these types of failures, and we seem to hear it over and over, I mean, let's just talk about the SEC, for example. Do you think that Congress should simply revoke their independent leasing authority?

Mr. KOTZ. I think that certainly Congress should give very serious consideration to that. I mean, I have thought previously that perhaps if the SEC completely revamped its leasing area it might be given another opportunity. But I do understand now that Chairman Schapiro and Mr. Heslop have said that they intend to get out of the leasing business, that they do not feel that there is enough competence at the SEC to handle that.

So I do think at this point it would be prudent to take away the independent leasing authority, yes.

Senator BROWN. Thank you. Mr. Wise, thank you for your testimony as well, your introduction. As you know, I am filing and have filed a bill that basically mirrors the President's idea on how to address these issues when it comes to leasing and buying and the like.

I was wondering if you could describe how one of the CPRA's purposes, which is realignment of civilian real property by consolidating, co-locating and reconfiguring space to increase efficiency, do you think that could help reduce the government's overreliance on leasing? I think you kind of hinted on it in your initial opening.

Mr. WISE. Senator Brown, thank you for your question. And actually, to be perfectly honest with you, the CPRA does not explicitly discuss leasing, but as I think we point out in our testimony, it certainly has a provision in it that we think could be very useful to help alleviate some of the reliance on leasing that the government has, especially with the discussion about consolidation, co-location and realignment of the Federal footprint.

So we think, as we go forward, if CPRA does become codified, that there is a very good possibility that it could be a contributing factor toward helping to reduce the government's reliance on costly leases.

Senator BROWN. I remember your testimony when you said it takes about \$1.66 billion annually to operate and basically keep open some of the underutilized buildings. I found that really fascinating. I went back to the office. We talked about it. As a result, we are trying to come up with ways to address it and get those

properties out the door and get them back on the tax rolls and the like.

One of my goals in my legislation is to address these. How do you think we could unlock these savings for the taxpayers?

Mr. WISE. Well, I think the—as you allude to it in your statement, the key thing for the Federal Government is to get out from under costly leases that are not really very useful for the government. Because, as you noted, the operations and maintenance costs are costs that keep recurring year after year after year. So, as we move forward and the CPRA does become a law, hopefully this will lead toward the government's ability to get out from under leases that are not useful and be able to shed property that is not being utilized in various ways.

Senator BROWN. I know in Massachusetts when we were having some financial difficulty, a lot of the registries and motor vehicles were actually closed and a lot of the leases were canceled at the government's convenience and we were able to find spaces that were already owned by the Commonwealth of Massachusetts to put them in, whether it would be at a city hall or a State-owned building or work out an arrangement with the Federal Government. So I would hope that we could do the same thing. There is plenty of Federal buildings around where we could co-locate and combine.

And Mr. Foley, how would the GSA leverage its expertise in asset management to support the CPRA process and specifically lease consolidation, do you think?

Mr. FOLEY. Sure, Senator Brown. Thank you for the question. GSA is a leader in asset management for the Federal Government, and as I outlined, we have a strong leasing process. I think we are already working with client agencies as a part of helping them shape—

Senator BROWN. Can I just interrupt for one second?

Mr. FOLEY. Sure.

Senator BROWN. So if you have such a strong leasing process, I do not understand how we get into these messes with the SEC and others. Where is the breakdown, if you could, and please finish your statement.

Mr. FOLEY. Sure.

Senator BROWN. And then if you could say like where is the breakdown? Why are we even here? Why are we even having this hearing today? Because if you have such a great process, how come we are not doing it right?

Mr. FOLEY. Let me finish.

Senator BROWN. Yes.

Mr. FOLEY. And then I will come back and address that.

Senator BROWN. Yes.

Mr. FOLEY. I think one of the key things is working with agencies upfront to make sure that we appropriately shape the requirement so that we know how many people—we ensure that we are getting the most utilization out of it and that we can make sure that we can fit it into existing Federal space wherever possible, or minimize the amount of space that we have to lease from the private sector.

So we are working with agencies on that. I thank you for your support of the CPRA bill and we look forward to working with you

on that. I think that will do several key things that can really help us with consolidation. One, it incentivizes agencies to get rid of property, and two, probably more critically, it provides a source of funding to deal with some of the upfront costs.

And I know a lot of people think that is toward getting a property ready for sale, but one of the intents is also to help with existing Federal property, to let us retrofit those, make them more efficient and allow us to consolidate out of leases, or perhaps build or buy a new facility to consolidate and shrink the Federal footprint. So I think we have a real opportunity under the CPRA legislation and we look forward to working with you on that.

As far as your question of if we have a solid process in place, how do we end up in these situations, as I mentioned in my testimony, there are multiple agencies with multiple different authorities. The SEC lease was done outside of GSA's authority under their own independent authority, and so we were not involved in that transaction. We are working closely with them moving forward and willing to lend our expertise.

And as Mr. Heslop indicated, we signed an MOU with them earlier this week where we will then be doing their leasing action for them moving forward and following the transparent process that we currently use at GSA.

Senator BROWN. Great. Thank you, Mr. Chairman.

Senator CARPER. Thank you for those questions. Thanks for the responses as well.

I spent a little bit of time this week talking, in light of the deal to avoid default on the Nation's debt, I spent a fair amount of time talking with my colleagues and to the American people and the people of Delaware through the press, about how we have a tendency around here to focus on addressing symptoms rather than addressing underlying, if you would, using a health analogy, underlying cause of disease.

In a situation where the Federal Government, the symptom is the debt crisis, debt ceiling crisis, the cause, and that is the sick patient. The cause of the illness, the sickness is the fact that we do not spend money wisely, we do not collect, frankly, all the money that is owed, and so what we ended up doing is not addressing the underlying cause, unfortunately. But we addressed the symptom by raising the debt ceiling and leave to another day addressing the real underlying cause.

In reading through the testimony, especially GAO's testimony, I came back to the question—let me just back up. One of the things that when we look at Federal agencies, some of whom do a pretty good job at disposing of surplus properties, unneeded properties, I think VA does an especially good job, but there are others as well. One of the reasons why some agencies do a better job than others is because we actually incentivize them not to keep underutilized, unused property around.

We actually allow them to sell them, keep some of the proceeds to actually fund their operation. Here we have, looking now at the situation with lease versus purchase, if you look at the way the Congressional Budget Office (CBO), scores a lease versus a purchase, we incentivize agencies to lease even when they ought to be purchased. You only know they are going to save money.

And I would ask you, Mr. Wise, I am going to ask you to walk us through why we have this incentive, I think a misincentive, disincentive? Why do we have the wrong incentive? How do we actually fix it? What would it take to fix it? Does it take CBO changing their scoring approach? Is it something that we need to do legislatively to empower, direct CBO to change the way that they score lease versus purchase? Please.

Mr. WISE. Senator, thanks for the question. You bring up a really important point and we have recommended a couple different times and we have also discussed in other testimonies the really important—OMB is really a key player here because they are kind of the orchestrator of the whole Federal property environment and we have recommended that they really need to work within the Federal Real Property Council to come up with a strategy to take a look at how the entire Federal property portfolio is managed.

While they have agreed that is a good idea that needs to be done to kind of rationalize the entire process, they have yet to implement such a strategy because as you mentioned in your opening remarks and subsequent remarks—the issue having to do with the scoring is a major issue for agencies to be able to come up with the needed capital in order to take a look at a rational process.

Another really important point is the necessary analyses that need to be done in order to make sure that you are making the right kind of decision. While, as you mentioned earlier, generally building is a less expensive option in the long run than is leasing, it is not always the case. But you need to do the economic analyses in order to do that.

And so it is important to do the 30-year net present value analysis so you see how things will play out over time, and the scoring, and do the comparisons so that we can make the right decisions. You look at the commercial real estate market. It maybe makes sense to lease something where the real estate market is say relatively soft compared to a Boston or a New York or a Chicago versus a Dallas or Atlanta perhaps.

So it is a pretty complex formula that goes into making these kinds of decisions, but in order to come up with the right decision, you really need to approach it in a multi-faceted way so that at the end of the day you are making the best call for the taxpayer.

Senator CARPER. Let me just ask you to cut through all that. I appreciate what you said. What do we need to do? What needs to be done so that CBO in the future will not say almost routinely that even when it makes economic sense to purchase, we are not going to score it that way, instead, we are going to score it in a way that almost mandates that agencies lease? How do we change that?

Mr. WISE. Well, it gets into a policy area that is really not so much our purview, but as we have discussed, or as we noted, we make recommendations to OMB that they need to come up with a strategy in order to rationalize this process and so agencies can make the right kind of decision of whether to lease or to build. And we really believe that OMB is the key player that needs to address this scorekeeping issue, otherwise, the reliance on leasing, as we noted in our testimony, is likely to persist.

Senator CARPER. All right, let me turn to others on the panel. Same question. What I would like for you to do is give Senator Brown and me and others on our Subcommittee, our colleagues in the Senate, give us a to-do list. Put something on our to-do list. Is there something we ought to be doing to change this? It is really to change the culture. We are always looking for a culture. Anybody have a good idea?

Mr. SULLIVAN. Mr. Chairman.

Senator CARPER. Go ahead, Mr. Sullivan.

Mr. SULLIVAN. Mr. Chairman, I will maybe swim a little up river here. VA's position is a little bit different, I think, than other Federal agencies. Part of our portfolio, only about 11 percent is leasing, so out of 165 million square feet, we lease about 12 million square feet. Three of it GSA does for it. The rest we do it ourselves.

Our real problem is our existing infrastructure, not leases. What do we do to consolidate? What do we do to get rid of the old infrastructure that cannot be fixed easily? In some places we do not need it.

Right now we have an estimate to fix our current portfolio based upon the needs projected for veterans in 2020. We will need \$60 billion to invest in our infrastructure. Clearly, that is not going to be able to be provided for in direct appropriation. I think the key to unlock that problem is to be able to tap private sector financing in working with public/private ventures or joint ventures or with localities or other non-profits to be able to find uses for the repurposing for Federal property, to get it off the Federal rolls, to put it potentially back on the tax rolls and to relieve agencies of the large operation and maintenance (O&M) costs.

The biggest drag for VA is, and I imagine for some other agencies, is the O&M costs that we have to maintain facilities that could be made more efficient, and/or consolidate. So I think it is a little bit different and the big issue about third-party financing or private sector money is the other side of the score.

CBO's scoring treatment of the use of third-party funds, even if it is for non-profits or for non-government entities, they scored as if it was direct Federal spending, which basically turns off the third-party spigot of trying to utilize them to unload unneeded inventory.

Senator CARPER. All right, I am going to go back to Senator Brown. Before I do, one of the things that I may ask this in our next round of questions, but I spoke earlier of a need for a comprehensive bipartisan approach on deficit reduction along the lines of that recommended by the Deficit Commission co-chaired by Erskine Bowles and Alan Simpson.

My sense in listening to your testimony and earlier hearings that we have had is that we also need a comprehensive approach with respect to real property management, not just to deal with the lease versus purchase issue, but to deal with all this underutilized or unutilized Federal properties that we do have.

One of the things that I want to do maybe at this hearing, if not we will certainly do a followup in writing, is get your input on what should be the components of that comprehensive approach. And to the extent that we can craft a comprehensive approach where we harness market values, we change incentives which I think are

misaligned toward more appropriate alignment. I would appreciate your input on that. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman. Mr. Sullivan, just to followup, I remember your hearing—actually, as a result of your testimony telling about some of the challenges with some of the prime VA properties that potentially could be sold and taken off your rolls and put you back having more money for the veterans that need our help, instead of using it to keep buildings open and the like, you testified as to how CPRA was a welcome addition to the toolkit that you would need in reducing unneeded assets.

Could you just elaborate on that, as to how that will compliment your existing tools? And also, what role does politics, do politicians have in interfering with you doing your job? I mean, if you have some assets and you want to sell them, how often does State or local—State or Federal Government come up and kind of put a monkey wrench in the plan?

Mr. SULLIVAN. Senator, I will try and answer that in a couple of different ways. The first way would be our toolkit right now is to use our enhanced lease authority and in those cases where we can develop, if you will, a win-win strategy with the local community, the veterans, the veteran service organizations and the private interest in that area we can forge outlease with a public/private venture under that authority.

We have done that in many places and it works where we can reach consensus. Where we cannot reach consensus at the local level with all the interested parties, especially local communities, the CPRA process would be a welcomed addition to be able to deal with those hard-to-do properties around the country.

So I think we should use both of these approaches where we have something that works and can continue to flourish and shrink our footprint and deal with our underutilized properties we want to maintain, that authority but there are some places that CPRA would assist us in addressing those issues.

There are a lot of stakeholders involved in real property in VA. As other agency and GSA has experienced, stakeholders have different interests and when we cannot align those interests, that is when things stop. So those are constant challenges in dealing with them and we face it every day. And as we move down this track, there needs to be a way to deal with those interests.

Senator BROWN. So getting back to my final question, I think you kind of answered it without wanting to really say it, but what role does State or Federal politicians and politics affect it? Do they specifically call and/or stop your efforts when you are trying to do some things for the benefit of the VA?

Mr. SULLIVAN. In some cases, yes. When we cannot get alignment of interests, we have local interests that may not have the same interests that VA has, and in cases that happens and things come to a grinding halt.

Senator BROWN. Very smooth. It was a good answer. Very, very nice. And that is unfortunate, because Chairman Carper just asked for recommendations. I mean, I would think one of the recommendations is to let—you leave the politics out of it and let us do our jobs based on fact and based on the necessity to deal with these issues without any type of outside influence. And I would

hope if you make that recommendation you would include that, very frankly, so we do not really beat around the bush in that regard.

Mr. Wise, generally in larger prospectus level projects over 2.7 million and lasting over 10 years, the net present value analysis indicates it is more advantageous to purchase rather than lease. So I was wondering in the CPRA legislation that I am filing, it requires a net present value analysis of the cost of the lease compared to the cost of constructing new space.

How important is it to provide this information to Congress, do you think?

Mr. WISE. I think it is very important, Senator, because through using analyses like net present value and scoring, you can then be comparing basically apples to apples, because this is something that GSA had done previously and it then enables you to—it enables the agency or enables the decisionmakers to be able to come up with a decision based on where the dollar value is today versus what it will be 30 years onwards, including any potential inflation returns and other factors that get put into the mix.

So we believe that a net present value analysis is certainly a key aspect of the entire economic analysis picture in order to make these kinds of decisions.

Senator BROWN. Thank you. Mr. Foley, what steps does GSA take to ensure that the leases contracted on behalf of the Federal clients achieve the best value for the taxpayer while also supporting the mission critical requirements?

Mr. FOLEY. Sure. We do a couple of things and we do perform a net present value analysis, so we compare the cost of building a new Federal facility, renovating an existing facility and the cost of leasing, so we do the 30-year net present value analysis to evaluate the financial aspects.

Again, as I mentioned earlier, one of the key things is making sure that we have a firm understanding of the requirements and we work with the agencies to understand how they may be able to adjust their requirements slightly to get a better deal for the taxpayer. So for instance, instead of having to be in one building of a particular size, might drive construction of a new building or limit competition to one or two buildings that have a certain amount of space available. If they can be in two proximate buildings within a block of each other or right next door or perhaps on the same campus, that opens up the competition and drives down the cost of leasing.

So there are a lot of simple things that we can do working with client agencies to make sure that we can still find a way to meet their mission requirement, but leverage our expertise in the real estate market to make sure we get the best value for the taxpayer.

Senator BROWN. In previous testimony, I note you said that you are continually assessing your performance against other rental rates in same or similar markets to a lease cost relative to market measure. So how is the GSA doing in comparison to the commercial market in various sectors?

Mr. FOLEY. We continue to lease at a cost below the market. I believe at the end of last year it was somewhere around 10 percent below the private sector benchmarks we were using.

Senator BROWN. And is that geographically driven? Is this just overall?

Mr. FOLEY. Yes, we do it based upon a geographic market and a submarket. So we look at where we are leasing and then we find comparable rental rates from the private sector in that particular market.

Senator BROWN. I will just defer to you, Mr. Chairman.

Senator CARPER. OK, we will have a third round, so feel free.

I have been jotting down some questions as you all testified and responded to questions from Senator Brown and myself. I just want to kind of walk through this list briefly if I could. One of the areas of jurisdiction that we also have is the U.S. Postal Service. We face a situation with the Postal Service literally running out of money, running out of cash later this year, if not later this year, then next year. It will be unable to make payroll. It will create a huge mess, economic mess in our country. I think about eight million jobs that depend on the mailing industry.

So we are looking hard for ways to help the Postal Service right itself in a twitter, e-mail, Facebook age, to be able to meet our needs, mailing needs, but do so in a way that they cover their costs. There has been some discussion here today about consolidation, consolidating property and consolidating activities in ways that make sense. We do that through the Base Realignment and Closure Commissions and Department of Defense (DOD) about every half dozen years.

Think out loud for me. Think out loud for us, about how the U.S. Postal Service might play a role here that would enable us to kill two birds with one stone. One is to meet the property needs of a number of Federal agencies that have nothing to do with the Postal Service, and yet, help the Postal Service with—to better meet its revenue obligations in order to free themselves of support from the Federal Government, Federal taxpayers.

OK, whoever wants to take a first shot at that, go right ahead, please. Mr. Foley.

Mr. FOLEY. I will start first. GSA, we worked with the Postal Service for a number of years. They are a tenant in many of our Federal buildings and we also lease space from the Postal Service. So we have many Federal agencies that are located in Postal Service Buildings.

We have worked with them closely as they have been disposing of properties to identify where it makes sense for us to acquire those where we have existing Federal needs, as well as we worked with them to figure out where we are disposing of properties or where we have available underutilized properties where they might be able to utilize that.

Several years ago, going back as far as 1985, we set up an MOU at the Postal Service that allowed for an exchange of properties and basically a netting of the fair market value of that. And it has been very effective, I think, for both agencies.

Another area where we have been able to partner with them, Mr. Sullivan mentioned sort of the enhanced use leasing authorities. They have some authorities that we do not at GSA and so we have been able to lease from them and develop properties too specific for the IRS for service centers in Philadelphia and Kansas City, where

we have been able to use a former Postal Service facility, renovate that and use their authority to create modern, efficient space for the IRS and help find a good value for the taxpayer.

Senator CARPER. Well, that is very encouraging. Anyone else on this? That is good stuff. Thank you. Anybody else?

Mr. SULLIVAN. I am sure Senator, if the Post Office had sites that become available due to a downsizing and they were available and for us what would be key, would they be located in the place where we need space? That would be the critical point, of how close they would be to where veterans' needs are. And if they could be easily adapted to deliver healthcare, I am sure we would look at those and see if there was a match and take advantage of any economies that were there.

Senator CARPER. Oh, good. Thanks. I will just ask our staffs, both Democratic and Republican staff, to please note that. I think this is a scenario where we could help the Postal Service help themselves and if we are smart about it, could help the Federal agencies get better value for their space needs.

Anybody else have a comment before I ask another question? OK. We have had some discussion, delegation of lease authority, some instances where it is done well and some instances, most certainly SEC, was not done well.

Let me just ask Mr. Heslop, you used to work at Capital One, correct?

Mr. HESLOP. That is correct.

Senator CARPER. If you had employees at Capital One who were, I will use the term "guilty" for the kind of gross bad judgment in terms of preparing the SEC for meeting its space needs going forward, how would those employees be dealt with; what kind of accountability would have been brought to them?

Mr. HESLOP. I think in a relatively similar manner. Obviously, there are not the same level of rules and regulations that the Federal Government has as it relates to their employment practices, but there definitely are rules and procedures that apply.

And so employees in a situation like that would be—they would have some availability of due process and it would not be an arbitrary summarial dismissal, if you will. But there would be an investigation and upon the conclusion of that investigation, appropriate disciplinary action would be taken.

Senator CARPER. I would hope at the end of the day appropriate disciplinary action—I think I speak for both of us—that appropriate disciplinary action be taken. One of the things that really frosts citizens of this country, taxpayers, and those of us who are privileged to represent them, is when we have bad behavior, grossly bad behavior, on the part of Federal employees or others who are using Federal—contractors, and there is just little, if any, accountability. And that is not right. I would just ask you keep that in mind.

We want to be fair, but we also want—it is tough love. It is like a tough love situation. I think we need to be tough. We need to provide the example.

At the beginning, I think, of your testimony, Mr. Sullivan, I think you may have asked, there were three questions that the VA asked. Would you just say those questions again for us, please? I

looked through your testimony to see if I could find them. I did not see them.

Mr. SULLIVAN. Sure. When we make capital decisions, real property decisions whether to keep something, to renovate it, to sell it, to do whatever, our primary priority is how will that impact that decision to affect veterans and veteran families, first, and we will not be doing anything that will negatively impact them.

Our second priority is to make sure that decision improves the operational efficiency and cost-effectiveness of VA operations, whether it is consolidating, whether it is building a new building or whether it is buying a piece of property.

The third one is we want to be a good neighbor. We are located in 165 communities around this country with major presence and sometimes we are the largest presence in that community and we do to the extent possible want to be a good neighbor to the community and reach a decision that helps us, but helps the local community.

We take them in that priority, first for veterans and families, efficiency and then to try and be a good neighbor.

Senator CARPER. All right. Let me just ask your other panelists, are those three pretty good questions that we could use, not just in the VA, but with a little bit of modification, use outside of the VA?

Mr. FOLEY. It is very similar to the process GSA uses and we have a broad range. But first we consider is there—what is the requirement? Is there a Federal need for the asset? And so if it is the VA, it is looking at how does it serve the VA and their customers? If it is the IRS, how does it serve the IRS and their customers or Social Security?

And so the first consideration is the operational piece. The second piece that we look at is again the efficiency, the cost-effectiveness, as Mr. Sullivan said. And then the third, we do look at being a good neighbor in the community. We are in over 2,000 communities in all 50 States and 6 U.S. territories with government-owned or leased facilities and so we have a critical role across the country that we play, and particularly are focused on transit-oriented development and sustainability as well.

Senator CARPER. OK. Any other thoughts? Please. OK. I want to go back to the issue of delegation of lease authority, some instances where it is done well, some instances where it is done badly.

As I understand it, correct me if I am wrong, but in your testimony, have you asserted that we actually lease more—through GSA we actually lease more space than we own; is that correct?

Mr. FOLEY. Yes, that is correct.

Senator CARPER. And has that always been the case or is that something that has happened in recent years?

Mr. FOLEY. It is relatively recent. I believe 2008 was the first year where we crossed over to having more leased space than government-owned.

Senator CARPER. Why do you think that changed?

Mr. FOLEY. I think a couple of things. Some of it is just purely shifting demographics and where we had Federal buildings, populations have shifted. Agency missions and needs to serve the public have moved and for a lot of the smaller locations, leasing has be-

come the default mechanism to meet those requirements, because you would not build a 5,000-square foot building in a small community with Federal construction dollars.

We put our focus toward building land ports of entry, courthouses, the major headquarters agencies and consolidations, like the Food and Drug Administration (FDA) at White Oak, the St. Elizabeth's for the Department of Homeland Security here in Washington, DC.

And so it is about prioritizing the limited dollars and then for the more generic requirements that are basic vanilla office space, they often do end up in leased space instead of Federal buildings.

Senator CARPER. All right, thanks. Thanks very much. Senator Brown.

Senator BROWN. Thanks Chairman. Just a couple more. So Mr. Heslop, can you explain—I am still having trouble wrapping my arms around the whole concept of having the SEC in kind of a—I mean, here the SEC is being used to regulate Wall Street, and in fact it looks like Wall Street with the lavish surroundings, the fact that they would even take up in an area like this.

Gosh, I would think they would want to go to a blighted area in Washington and bring some economic development, get a good value for the taxpayers and kind of it is a win-win-win all around. So I guess I know you were not there per se, but I mean, you are still there now, right?

Mr. HESLOP. I am there now, yes, sir.

Senator BROWN. I mean, how do you explain those kind of lavish surroundings when we are in a period of austerity?

Mr. HESLOP. It is my understanding that the situation that occurred was this. I do not believe that the lavish surroundings was as much of a motivator as a very flawed process to develop a space estimate and then a very flawed process to get the decision made to take the building.

You have to remember that at the time, Dodd-Frank had just passed. The SEC was given a significant amount of new responsibilities, derivatives oversight of a trillion dollar industry, registration of hedge funds, as I mentioned in my testimony, a number of new responsibilities. It was going to drive the hiring of a significant number of new employees, and those new employees needed space to be housed.

There is a housing versus hiring mismatch. We typically can bring employees on in about 90 days. As you know, it takes significantly longer to house them and so I think, it is my understanding, but I believe the people at the time felt very much under the gun to try to obtain space sufficient for the resources we were bringing in.

Because they used a flawed space estimate, we were originally looking at four properties in the D.C. area, oh by the way, against the chairman's guidance. She wanted them to look in the regions for housing for our enforcement—

Senator BROWN. What chairman?

Mr. HESLOP. Chairman Schapiro. She wanted them to look in the regions for both our enforcement and our examination staff, because that is where a lot of the activity occurs. For whatever reason in this broken process, the staff and the facilities group dis-

regarded that directive and then tried to look for space and when they went through the estimate process that Mr. Kotz has described and it was grossly inflated, they arrived at a number of 900,000 square feet.

Once they hit that number and landed on that, the other three properties that were being considered were suddenly out of the equation. And so they believed they were left with one and only one property. It was an emergency situation and they felt at the time, I think, that they were getting a good deal because the rental rate received was below the market rate at the time. And so that is the way it was presented.

Senator BROWN. OK. I am just wondering if that type of office space is appropriate for a Federal agency, quite honestly. That is top-of-the-line space and I guess I am wondering, I think it would be probably Mr. Foley then, what is the square footage rent for the clients that I guess are now subletting? Are we subletting with clients in there now? How does it work, because they are in the space, but they are not obviously, occupying it? So you have other Federal agencies in that space, right?

Mr. FOLEY. We are working with the SEC to take that on, but we have not come to agreement on a lease and a term with them. We are still trying to figure out which agencies we might align.

I understand that they have subleased some space directly with other agencies, but we were not a party to that.

Senator BROWN. Other Federal agencies. What are you getting for rent on those?

Mr. HESLOP. I do not know what they are getting. I do know it is at a higher rent than we had originally been on the hook for.

Senator BROWN. So another Federal agency is paying a higher rent?

Mr. HESLOP. Yes. It is not a sublease. Yes, another Federal agency, as I understand it, is paying a higher rate.

Senator BROWN. So you guys are paying basically a half a billion dollars and then you are subletting it.

Mr. HESLOP. We are not subletting it, sir. We have been completely released from two-thirds of the space.

Senator BROWN. OK, so that entity is now paying the landlord a higher rent, has nothing to do with you. Another Federal agency is now paying a higher rent that you are ultimately paying; is that right?

Mr. HESLOP. That is my understanding, yes, sir.

Senator BROWN. So how does that happen? Have you been working with those other agencies if it is a higher rent?

Mr. FOLEY. We have not. As I mentioned, for large leases, we have a number of controls in place and particularly for the District of Columbia and the National Capital Region, we actually have prospectus rent caps that we put in place for all of our leasing actions to ensure that we get a good deal and we stay at or below the market.

Senator BROWN. Right. So let me just make sure I understand this. So you entered into a lease. I understand all the background. You have been released from two-thirds and now that two-thirds is now being rented to another Federal agency, at now a higher

amount than the half a billion dollars that you ultimately were paying.

Are we just repeating what we just went through with other agencies? Do we need to find out who those are? I mean, this is like Groundhog Day, you guys. I mean, really, thank you for laughing, because I do not even know how to respond. I did not even realize that in my line of questioning, but I guess if you keep digging like we are doing, we find more and more and more.

I would like to find out, Mr. Chairman, whether we do it—I do not know who to ask here. Like who is the new entity? Did they go through the process that we have been talking about here? Are we doing the same exact thing that the SEC did? I mean, I would love to have those answers, because it is just not passing the smell test today. Maybe because we are the only hearing here today that we are on top of this, because I think that is so critical.

If you are developing and you have in place appropriate leasing guidelines based on all the formulas and everything and you are entered into an MOU with the SEC, correct?

Mr. FOLEY. The MOU is for all leasing actions going forward.

Senator BROWN. Right, going forward on other things that they may want to lease?

Mr. FOLEY. Yes.

Senator BROWN. So basically I understand that.

Mr. FOLEY. Yes.

Senator BROWN. How about the entities that are now taking over; you do not even know who they are, right?

Mr. FOLEY. That was done under their own independent authorities, I believe.

Mr. HESLOP. Senator Brown, if I might. The Federal Housing Finance Agency (FHFA) and the Comptroller of the Currency (OCC), both self-funded agencies, are in that property now.

Senator BROWN. Oh.

Mr. FOLEY. So we are working with them to take, I believe, it is 350,000 square feet and we are working through our typical process to find a tenant and make sure that the rent is appropriate.

Senator BROWN. Great. Well, listen, thank you, Mr. Chairman, for holding this. Again, it is another area—I mean, every time you hold a hearing, I learn more and more about where we are wasting money and I am hopeful that the President and both houses are listening to what we are doing, because we have given them great, great things to just go and fix. Executive Order (EO) No. 1, fix it.

Senator CARPER. As I have said before, GAO gives us a to-do list and you do it through your high-risk list and it is not just a high risk for this Subcommittee or for the Senate or the House. It is a high risk for all of us, including OMB, including the President, his folks, Federal agencies and certainly all of us.

I want to just followup on Senator Brown's line of questioning and just ask, for the space that I guess the SEC is now occupying or about to occupy at Constitution Center, it sounds like they are going to be occupying about one-third as much space as was originally thought; is that correct?

Mr. HESLOP. Senator, we are on the hook for one-third of the space. We have no intent to occupy that space.

Senator CARPER. At all?

Mr. HESLOP. At all.

Senator CARPER. If you look at the—

Mr. HESLOP. Rent will be due in January 2013, and we firmly believe and are very optimistic in terms of our partnership with GSA that we will be able to find a tenant between now and January 2013.

Senator CARPER. That is good. Give us some idea what the cost per square foot of that space would be if the SEC were occupying the space on January 1, 2013; what would we be talking about?

Mr. FOLEY. At the time we were talking about cost per square foot of \$44, which would have jumped to \$47 per square foot 6 years later.

Senator CARPER. Somebody here at the table has better than—I know what \$44 and \$47 per square foot, how that would be regarded in Wilmington, Delaware. It would be pretty steep, maybe not so much here.

But give us some idea how does that number jive with the rest of the real estate industry around here, real estate, the market, particularly in this area, this area of—

Mr. FOLEY. I mean, all real estate is local and there are a number of submarkets in the Washington, DC. area and so rent is fairly extreme. But our rent cap for the District of Columbia is \$49 a square foot, so \$44 is below the prevailing market rates.

That said, there are some submarkets and locations within the District where you can get rents below that.

Senator CARPER. So for the other agencies, which OCC, what was the other one?

Mr. HESLOP. FHFA.

Senator CARPER. OK—that are going to come in and lease space at Constitution Center, if they come in at the same rate, \$44 or \$47, are you saying they would be under the overall rate for this kind of office space in D.C.?

Mr. FOLEY. For the governmentwide prospectus rent cap yes. Now, we have seen deals that are below that, as I said, in some locations, north of Massachusetts Avenue and some of the developing areas we have received better rates than that. But for that part of town, it is—

Senator CARPER. All right, a different question and one that deals with the corrective activities.

Mr. Heslop you outlined for us on the corrective activities that have taken place at the SEC in light of this, what I would say is scandalous behavior on the part of some employees there. But what, if any, is the applicability of the corrective action the SEC has taken; how does that apply potentially to other Federal agencies. Mr. Foley.

Mr. FOLEY. I mean, I think it is an example of how important it is to get the checks and balances correct. One of the advantages we have at GSA is we work with the Office of Management and Budget and so I think one of the big issues that SEC had in hearing their testimony and working with them was in developing that upfront requirement, figuring out how many people they had, what the right utilization rate for the space should be and were they going to be fully funded for all of that.

And so for all of our leasing actions, we not only work with the agency to make sure we understand that, but we also work with our budget examiner and their budget examiner, as I mentioned in my opening testimony, to make sure that the staffing levels are supported and the rental payment will be supported in the President's budget so we know that the people are going to materialize and the funding will be there to pay for it before we proceed on a acquisition like this.

Senator CARPER. Thank you. Mr. Heslop, the SEC was granted, I believe, independent leasing authority in 1990. However, as the IG has pointed out, it took the SEC 19 years to establish a centralized asset management office to handle its leasing activities; is that correct?

Mr. HESLOP. That is my understanding, yes, sir.

Senator CARPER. The SEC established a leasing branch within its Office of Administrative Service in, I believe, April 2009 and did not put into place leasing policies and procedures until August 2010.

Let me just ask you, if I could, sir, how many leases do you think might have been awarded over that 19-year period of time? You can do this with 20/20 hindsight, be a Monday morning quarterback, but why did it take the SEC so long to put a system in place that would allow the organization to effectively manage its leasing activity?

Mr. HESLOP. Yes, sir. To the first question, it is my understanding that we have entered into 32 total leases over the course of the last 20 years. I really cannot speculate as to why they would not put one in place. I suppose because 32 leases in 20 years might cause some to say "do you need a full-time leasing staff, a dedicated leasing staff?"

But again, I cannot really speculate. What I can say, sir, it is very apparent to us that this is not a core competency that the SEC needs to be engaged in, and that is exactly why we are moving into a partnership with GSA. I would say to my—

Senator CARPER. You are the master of understatement. That sure is not the—

Mr. HESLOP. The GSA, by the way, sir, has just been terrific in terms of partnering with us and helping us out of the situation, so I would like to thank them for that.

Senator CARPER. Good. That is good to hear. Mr. Heslop, do you have any idea how many leases the SEC currently manages?

Mr. HESLOP. We currently have 15 in the portfolio. We have 11 regional offices. We have the Constitution Center space that, as we know, we are still on the hook for. And we have the Station Place facility, which is where our headquarters is. We have an operation center in Northern Virginia, and then we share space with other Federal agencies in a very small COOP site. It is in Southern Virginia.

Senator CARPER. How long did you work at Capital One?

Mr. HESLOP. I worked at Capital One for approximately 12 years.

Senator CARPER. Taking your private sector experience at Capital One and then putting it sort of side by side with your—what are you in about a year or so now with the SEC?

Mr. HESLOP. It is about 14 months.

Senator CARPER. It probably seems longer. But what kind of lessons learned would you like to impart to the rest of our Federal Government given what you have seen at the SEC in terms of real property management?

Mr. HESLOP. In terms of real property management, I would say the lesson learned, I think, for small agencies, especially like ours—we are a very small agency, 3,900 people and on any given day 700 contractors in a very limited real estate footprint. But I would say it is about determining what your core competencies are and what they are not and divesting yourself of those that are not.

I was hired to be a change agent, similar to your remarks earlier today. I am a taxpayer at heart and I was brought in to try to create change and move the SEC to a more well-managed environment, and one of the things that I have tried to do is move us out of those areas that are not our core competencies and giving those to agencies that can do them better.

We are doing the same thing with our financial management reporting system, moving them to the Department of Transportation (DOT) as a Federal shared service provider, and I would say going in directions like that for small agencies, at least, I think is good advice.

Senator CARPER. Thanks for those comments. Given the size of the Constitution Center lease, both in terms of square footage and funding, why didn't the SEC seek assistance from GSA before entering into the lease? You mention they have a pretty good partnership now with GSA. Why do you suppose they did not seek the consultation or assistance from GSA in the first place?

Mr. HESLOP. Sir, I wish I could answer that. I really cannot Monday morning quarterback that one.

Senator CARPER. Mr. Wise, in your testimony, I think you indicated the roughly 36 agencies that have independent leasing authority. Generally do some of these other agencies with independent leasing authority have adequate expertise and internal controls to ensure that they are not—that they are getting the best possible terms for themselves and for their clients who they serve and for taxpayers?

Mr. WISE. Senator, we do not have a large body of work looking at exactly that question, but we did have a look at where the National Transportation Safety Board (NTSB), had some issues with a lease for its training facility out in Dulles where they mischaracterized or misconstrued a lease as an operating lease when it should have been a capital lease, which resulted in an anti-deficiency issue and caused some real issues with the agency in terms of its accounting and getting its fiscal house in order.

That leads to the larger point that Mr. Heslop has talked about, as well as what you mention in your opening remarks, is that for smaller agencies, especially that are not heavily engaged in real estate activities, as you know better than anyone, I guess, it is a very complicated environment to deal with leases and construction and if it is not a core mission or it is not even a significant one for a small agency, I think it is logical that they need to tread very carefully in this area because it is easy to fall into problems when you have capacity issues or it is a challenge for the administrative side of an agency to deal with these things.

Senator CARPER. On the one hand, agencies can purchase space. On the other hand, they can get this designation, independent designation that some have and then they can lease or they can go through GSA and lease. How prevalent is the notion of lease purchase and is that something that agencies do from time to time? Is it rare? Is it more common? Is it a smarter approach in certain instances? Anyone?

Mr. FOLEY. I will jump in with that. Lease purchase is something that GSA has done in the past, but that was prior to the Budget Enforcement Act. It is one of those things that triggers capital lease treatment if you have a bargain purchase option. So in essence, leasing to own is prohibited because all the funds get scored upfront.

That said, some of our leases done prior to 1990, like the Columbia Plaza example that I mentioned, we were able to acquire that. We had a purchase option in the lease for \$100 million. As it turned out at the time we exercised it, the building was worth about \$200 million and we are saving rent of somewhere in the ballpark of \$45 to \$50 a square foot that we are no longer going to have to pay once we take ownership of the building.

So there are a lot of advantages to being able to do something like that, but it is an area where similar to what Mr. Sullivan said, that the Budget Enforcement Act and the budget scorekeeping rules limit some of the flexibility that we have had in the past.

Senator CARPER. That is good to know. Not actually good that it exists, but it is good to know. That is helpful.

Couple more. Senator Brown, do you want to jump in here? I think you said you only had those others.

Senator BROWN. Just one more. Mr. Heslop, I do not want to beat a dead horse, but I just want to understand. So when you say we are on the hook for this space, but we are not using it, so you are not physically in the space, right?

Mr. HESLOP. That is correct; we are not in the space.

Senator BROWN. When you say we are on the hook, you mean the taxpayers are on the hook?

Mr. HESLOP. The SEC is funded by fees. However, we get our appropriation from Congress and basically there is a mixed tradeoff. So it is not direct taxpayer dollars, but—

Senator BROWN. Someone is paying.

Mr. HESLOP. There is an obligation that will come due in January 2013 if we are unable to find a tenant. However, I think our conversation with GSA is they are very optimistic that between now and then we will—

Senator BROWN. So you are not in that space, but you are already in another space which you are paying for right now, a couple of spaces you indicated, throughout the region; is that right?

Mr. HESLOP. Right. We have 11 regional offices, our headquarters.

Senator BROWN. I just want to make sure I understand that. OK, that is it, Mr. Chairman. Thank you.

Senator CARPER. Mr. Kotz, in your May 2011 report you indicated the SEC grossly overestimated the amount of office space it needed. It might have violated Federal law when it signed a \$556.8 million 10-year lease last year at Constitution Center.

Based on your findings, what internal controls did the SEC have in place to ensure that it was leasing the appropriate amount of space in the most advantageous location and at the best rate?

Mr. KOTZ. Yes, I do not think they had any significant internal controls. I think that was part of the problem. I know that they are making efforts to put controls in now.

Senator CARPER. Let me just ask, what were they thinking?

Mr. KOTZ. I do not know. I do not know exactly what they were thinking, but—

Senator CARPER. Did you ever ask? Did you ever ask—

Mr. KOTZ. Yes.

Senator CARPER [continuing]. What are you guys thinking?

Mr. KOTZ. No, we did and I think what it came down to was they had a misunderstanding of whether they needed this space. I think some folks did fall in love with the space and decided that was where they wanted to be. They wanted to make sure that they could all be in one building and they wanted to have as much of the building as possible.

It was a process that moved forward in relatively quick time without a lot of thorough review or analysis. It ended up with a very flawed process.

Senator CARPER. Let me followup to that if I could. As part of the authorization process for new leasing proposals, agencies are required to receive congressional approval for releases, I think, valued at about \$2.8 million or more.

How is the SEC able to enter into the Constitution lease without Congress being aware of the potential problems associated with the lease of this magnitude and did the SEC's independent leasing authority preclude them from having to receive congressional approval prior to executing the lease?

Mr. KOTZ. Yes, I believe that there were a couple reasons. One is the independent leasing authority. I think the other issue is the one that you have mentioned several times, the so-called scoring issue. So when you have a lease, you can sort of allocate a certain amount for each year. If you allocate a certain amount for the first year, you do not get over a particular threshold, while if you purchase, you allocate the whole thing in one year and you get over thresholds.

So by using a lease, you cannot be subject to certain notifications and I think in this case, that was a very big negative factor because had there been notifications to OMB, Congress, there have been communications with GSA, I think somebody would have looked at this more carefully and come to a different conclusion.

Senator CARPER. And two more questions, Mr. Kotz, if I could, of you. What would be the consequences if the SEC were required to go through GSA for all future lease acquisitions?

Mr. KOTZ. I think there would be someone looking at the leases who was competent, ensured that the taxpayer got the most value, I think would be a very good thing.

Senator CARPER. OK. And was the Constitution Center lease an anomaly or does the SEC lack the necessary expertise and internal controls to ensure they are getting the best possible term when it leases space? I think I know the answer to the question. You do not have to answer it.

Mr. KOTZ. OK.

Senator CARPER. Mr. Foley, when GSA acquires a leased space for many Federal agencies, as you have testified, has delegated that authority to many others, how many agencies do you think have delegated authority to enter into lease agreements, any idea?

Mr. FOLEY. Delegated from GSA?

Senator CARPER. Hmm-hmm.

Mr. FOLEY. I have that list here. Just a second. It looks like it is probably 15. The largest user is USDA and they have probably two-thirds of the lease delegations from GSA. Many of the others are much smaller in terms of one or two specific transactions.

Senator CARPER. All right. What criteria does GSA use to determine whether an agency should have delegated authority?

Mr. FOLEY. Sure. We have a number of different criteria. The first is we look at the size of the requirement and for the most part, we do not delegate anything over 20,000 square feet that comes into our agency. For the smaller requirements, we look at their management plan. We make sure that they have a warranted contracting officer, as I mentioned, who can execute the lease in the procurement. We make sure that they have a plan to follow all the appropriate procurement rules and regulations that would be under GSA's, and then we provide oversight to make sure that they are following through with that.

Senator CARPER. What type of oversight does GSA perform after agencies with delegated authority enter into lease contracts and that said, how does GSA verify that an agency did not lease more space than it needed?

Mr. FOLEY. That is an issue for us and so we do work with the agencies post-award and we look at the lease contract to make sure that it is in line with what we delegated.

Senator CARPER. One of the things I like to do when we come to the end of a hearing, sometimes and I am going to do it today—I do not always do this, but today I would like to do it—is just to ask—you have all had the opportunity to prepare for today, had the opportunity to present your testimony, to respond to our questions, to hear what your fellow panelists have to say.

Let me just ask you to take maybe a minute a piece and just give us any concluding remarks. We always ask you to do opening remarks. Sometimes I find the most valuable input that we receive is actually sort of the retrospect and concluding remarks. Let's see, if you do not mind doing this, we will just start with Mr. Wise, please.

Mr. WISE. Senator, thank you.

Senator CARPER. What I focus on around here is how do we build, how do we develop consensus? How do we develop consensus within the Executive, Legislative Branch, bipartisan, how do we do that in order to get better results for less money?

I am just interested in getting things done. I think you are as well. But keep that in mind. That is what my goal is, consensus, how do we get things done? How do we do it in a way that gets better results for less money? Please.

Mr. WISE. Senator, I would conclude with two points. One, when you talk about building consensus and bipartisanship, I think

CPRA is a promising start in that direction that will hopefully lead to some efficiencies and some cost savings for the taxpayers.

So I think that is a good start moving, or a good thought process to be developing as this moves toward—the legislation moves forward and the differences are reconciled between the sort of three different versions.

And the second point is that we think it is very important that in terms of looking at the whole issue of leasing, purchasing and score keeping that OMB continues to work toward developing and implementing the strategy that will help rationalize this process.

Senator CARPER. OK, thanks. Mr. Heslop.

Mr. HESLOP. Thank you, Senator, for the opportunity. I would say two things. One, as a taxpayer, I would certainly be supportive of the CPRA type approach as well. As a previous former Army officer, I can tell you, I have seen BRAC work its way through and seen the benefit that has added. I also would come back to the comments I made earlier, at least for small agencies, determining what your core competencies are and what they are not and finding a home for those things that are not and hopefully that would hit your agenda about savings tax dollars.

Senator CARPER. Good. What did you do in the Army?

Mr. HESLOP. I had a variety of assignments. I had an eclectic career as an Army officer. It ranged from a troop leader through an operations research analyst through working as the chief of staff to the chief of staff for the Army at one time, so I had a wide variety.

Senator CARPER. How long did you serve?

Mr. HESLOP. Twenty-two years.

Senator CARPER. Twenty-two. Thanks for that service as well. Mr. Kotz.

Mr. KOTZ. Yes, I think the one thing that struck me was what you, Mr. Chairman, were saying about disincentives in the beginning of the hearing. There should not be an incentive in place to lease versus purchasing. The incentives should be with respect to maximizing value for the taxpayer. I mean, that is where the incentive needs to be, whether it is purchasing or leasing, and perhaps we have gone away from that by focusing on one particular type of effort.

So if something was done to put the appropriate incentives in place, I think we would all be in better shape.

Senator CARPER. Good. There might be an exception when leasing actually does make more sense. And a classic example Census need a lot of space every 10 years, but not before 10 years.

Mr. KOTZ. Right. So if the incentive was to maximum value, the incentive in that case would be to lease. In other cases it would be to buy.

Senator CARPER. All right, thanks. Mr. Sullivan, please.

Mr. SULLIVAN. Sure. A couple items, Mr. Chairman. No. 1, I think we heard today is the critical nature, having good internal controls on a professionally groomed, if you will, contracting and project management staff. VA is spending significant amount of effort, time and resources to make sure our leasing staff is fully trained, meets all the requirements and also has strict internal controls.

Every lease at VA more than 10,000 square feet is reviewed by numerous offices, including our general counsel, including our secretary personally signs them all. I can assure you that if anything, at VA most of the folks think there is too much review. I do not agree with that, but that is the groundswell. We have strict internal controls.

The other item is in terms of leasing for providing medical services, is very different from providing office space. Medical leases really work well because No. 1, the population may shift of who we provide services to. And No. 2, which has become more apparent over time is the technology of providing medical services changes.

So if we do a 10-year lease, the way we provided magnetic resonance imaging (MRIs) 10 years ago, radiology, oncology treatment, all of those things have changed. The building needs to be updated for the latest medical technology and radiology and other telemedicine, teleradiology as well. Leasing works well for that.

And No. 3, I think is the key to this in the end is to find some way to incentivize the scoring process to be more rational on leases, but also to help us disinvest where we need to disinvest.

Senator CARPER. OK, thanks. Mr. Foley, you get the last word, well the next to last.

Mr. FOLEY. Thank you, Senator. I appreciate your comments about consensus. And like the VA, GSA has a well-trained professional staff of leasing folks across the country.

I think the area where everyone seems to be in agreement, there is a little—varying approaches on how to deal with this, but it is clear there needs to be some reform in terms of real property. I think we need to give agencies the tools to manage their property effectively. The Administration's proposal for CPRA, we estimate as much as \$15 billion in potential savings that could be achieved.

So by giving agencies an incentive to get rid of property they do not need by finding a way to help them fund some of those upfront costs to better utilize existing space or dispose of property they do not need, and by creating an independent panel that sort of offsets some of those competing stakeholder interests that you yourself mentioned and that we spoke about here in the hearing today, I think there are ways to streamline the process and make it much more effective for the taxpayers and help save those billions of dollars.

Senator CARPER. All right, thanks. Let me ask a question of our staff over here. How long do Members have to submit questions for our witnesses? Two weeks, all right. And what period of time is there for submitting additional like statements or materials for the record? All right, maybe 2 weeks. We will double check that.

All right, let me say to our Republican staff, anything else you guys have for our witnesses? How did they do? Pretty good, huh? These guys grade on a curve; so do we. Anything else here?

All right, well, on behalf of Senator Brown and myself and those who have fled our Nation's Capital and did not join us today, were unable to, we appreciate your testimony.

I was talking with our staff yesterday about this hearing. We actually were talking on Tuesday about whether actually to go forward with the hearing since a lot of Members, House Members,

Senators had left. I think the House left us on Monday. Some Senators are still around, but a lot are gone.

But the questions, this is not the sexiest topic to be holding a hearing on. We are delighted to have the kind of media coverage that is demonstrated here today, appreciate that. We are talking about a lot of money here. We are talking about a lot of money that is not being spent wisely.

And going forward, we are going to have to—and almost everything we do in this government of ours, we got to find ways to get better results for less money. And whether in this case the leases are paid for by user fees or whether they are paid by appropriated dollars, we just got to find ways to do almost everything, whether it is defense or non-defense, discretionary, entitlements, all that stuff, got to find ways to get better results for less money.

And this is an area that has cried out to be addressed for years. And for one reason or the other, we have not risen to the occasion and addressed it. Maybe we talk about being on watch and I am on watch here for at least until the end of next year as the Chairman of this Subcommittee that a number of colleagues serve on.

But on my watch, we are going to fix this. We are going to fix this problem. We are going to put in place a comprehensive solution to fixing this problem. And we appreciate your help today toward maybe getting us heading in the right direction. We appreciate your willingness to help us going forward to make sure we get to the destination the taxpayers would have us arrive at.

And with that having been said, thank you all for joining us today, for your testimony, for your preparation, for your responses and for your willingness to help make sure we get that ship headed to the right port. And that is what we are going to do. Thanks so much.

[Whereupon, at 4:24 p.m., the Subcommittee was adjourned.]

APPENDIX



FOR RELEASE: August 4, 2011
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U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT
INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

HEARING: "Federal Leased Property: Is the Federal Government Getting a Bad Deal"

Opening Statement of Senator Tom Carper, Chairman
As prepared for delivery

"Today we will examine the challenges the federal government faces in managing its real property and, in particular, its reliance on space leased from the private sector to satisfy long-term real estate needs.

"There is general consensus that the federal government has to 'get smarter' about the way it manages the buildings and land it owns. Presidents past and present and both parties have made this issue a top priority. With concerns over the implications of our deficit and national debt mounting, eliminating waste and achieving cost savings in this area must remain a primary concern.

"Between 2001 and 2009, we ran up as much debt as we did in the first 208 years of our nation's history. Last year, we ran up what may be the largest budget deficit in our nation's history. While most of us here in Washington are united in our desire to find a solution to our country's fiscal problems, we're still facing an ocean of red ink for as far as the eye can see, even after enactment this week of the spending cuts included in the legislation to raise our country's debt limit.

"A wide variety of ideas have been put forward on how to reduce our budget deficit and begin whittling down our debt. Last fall, a majority of the bipartisan deficit commission appointed by President Obama provided us with a roadmap to reduce the cumulative federal deficits over the next decade by some \$4 trillion. A group of my colleagues – the "Gang of Six" – came out with similar proposal more recently. Unfortunately, Congress and the President did not follow their lead.

"As a result, we settled this week for a bill that reins in discretionary spending but does little to tackle our long-term financial challenges. In short, it was a deal; it was not a solution. It only addressed the symptoms of our nation's fiscal ailments, specifically the debt ceiling, but failed to cure our serious disease of debt and deficits. It put off until tomorrow what we should be doing today.

"As I've said before a number of times, many Americans believe that those of us here in Washington aren't capable of taking the difficult steps that will be necessary to put our country back on the right fiscal track. They don't think we can do the hard work we were hired to do – that is to effectively



“Fortunately, both Congress and the Obama administration are united in their commitment to address these issues. The President’s latest budget included a recommendation to form a Civilian Property Realignment Board to review the government’s property portfolio and dispose of those deemed excess in an expedited manner. This is a proposal that my colleagues and I on the Homeland Security and Governmental Affairs Committee had an opportunity to examine at our June 9 real property hearing.

“While the proposal focuses primarily on assisting agencies in the disposal of excess and underutilized buildings, it does provide for opportunities to consolidate or co-locate operations, which could ultimately help reduce the government’s leasing portfolio. I have concerns about the cost and effectiveness of the President’s approach, but I look forward to taking what works in his proposal along with other ideas and introducing a bill in the fall that will help right size the government’s portfolio in a way that is advantageous for federal agencies, community stakeholders, and the clientele served by those agencies.

“Clearly, the momentum is building to address a widely recognized problem. Yet, in all our zeal to save, we must be intelligent in our approach. Rome was not built in a day. The federal government’s bloated property portfolio cannot be ‘unbuilt’ in a day. We have an opportunity to do this right and change the way the government manages its hundreds of billions of dollars worth of assets.

“That said, agencies shouldn’t be waiting for a civilian BRAC to solve their property management problems. In an era of shrinking budgets and scarce resources, it’s critical that agencies come up with innovative property management tools that will identify opportunities to right the size of our real estate portfolio, reduce costs, and achieve savings by eliminating unneeded assets and expensive long-term leases.

“I look forward to hearing from our witnesses as they share their thoughts on ways to transform our asset portfolio in a way that generates significant and lasting savings to the public.”

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Opening Statement by Senator Scott P. Brown

August 4, 2011

Subcommittee on Federal Financial Management, Government Information, Federal Services,
and International Security

U.S. Senate Homeland Security & Governmental Affairs Committee

"Federal Leased Property: Are Federal Agencies Getting a Bad Deal?"

Thank you, Chairman Carper, for holding this important hearing. As we all know, our political system has been paralyzed for the past several months over the debt ceiling. At a time when our country expects us to work together to make the difficult decisions necessary to address our nation's fiscal challenges we seem more divided than ever before. You often talk about changing the spending culture in Washington. It is through public hearings like this today that change begins.

That is why I am proud to put party politics aside to work with the President and Congressman Denham on the Civilian Property Realignment Act or CPRA. This bipartisan legislation I introduced will bring private-sector discipline to the management of federal real estate. It will empower an independent commission to break through longstanding barriers created by red tape and politics to facilitate the efficient disposal, and realignment of unneeded federal property. This bipartisan approach will address a problem GAO has designated as a high-risk area and would achieve savings OMB estimates at \$15 Billion.

Time and again government agencies have proven they cannot properly manage their own real estate. Today we will hear about a particularly egregious case of property mismanagement -- the case of the SEC's Constitution Center lease. This 900,000 square foot lease is a classic example of how the government blows taxpayer money. The federal agency responsible for protecting investors and preserving market integrity dropped nearly \$557 million on office space it will never use. This lease underscores the urgent need to reform the federal government's real property management.

Not only did the SEC knowingly enter into a wasteful lease, but they did it so that they could spend their work days in the lavish Constitution Center, complete with panoramic views of the city, limestone floors, marble walls, and a landscaped courtyard that was transformed into a one-acre private garden. The SEC, and the taxpayers, are now stuck in a building they cannot come close to filling, wasting millions of precious dollars.

I came to Washington to address our nation's fiscal challenges so that we do not leave young Americans with a tab that they cannot afford to pay. The time is now to start making these difficult decisions and I welcome the opportunity work across party lines to find solutions to this difficult problem.

I would like to thank the witnesses for being here today and I look forward to hearing their views on this important topic.



U.S. General Services
Administration

David Foley
Deputy Commissioner
Public Buildings Service

Committee on Homeland Security & Governmental Affairs
Subcommittee on Federal Financial Management, Government
Information, Federal Services, and International Security
Federal Leased Property: Are Federal Agencies Getting a Bad Deal?
August 4, 2011

U.S. General Services Administration | August 2011

Good afternoon Chairman Carper, Ranking Member Brown, and members of the Subcommittee. My name is David Foley and I am the Deputy Commissioner of the U.S. General Services Administration's Public Building Service. I appreciate being invited here today to discuss the U.S. General Services Administration's (GSA) efforts to reduce our reliance on leased space, our approach to the acquisition of leased space, as well as how we manage delegations of our authority.

Pursuing Federally Owned Space -

GSA searches for the most effective ways to provide space for Federal agencies that help them achieve their missions, while protecting the public's interest.

Ideally, this means satisfying long-term requirements, especially those with special use inherent to the government, in cost-effective and highly utilized government-owned space. GSA, along with this Administration, has prioritized finding ways to maximize utilization of the current inventory and avoid costly leases, particularly ones that result in build-to-suit or lease construct buildings.

Capital from the American Recovery and Reinvestment Act of 2009 (ARRA) allowed GSA to make smarter asset management decisions, converting several projects that were slated for costly lease construction to Federal construction and avoiding millions in future lease costs.

In our annual capital project submissions, GSA and the Administration have also taken strides to find ownership solutions. For instance, in GSA's FY12 program, GSA and the Federal Bureau of Investigation (FBI) worked together to find a solution that would convert an existing building, the Philip Burton Federal Building in San Francisco, CA, to satisfy the requirements of the FBI and avoid a previously authorized lease construction solution, saving taxpayers millions of dollars.

GSA has also been moving to dramatically improve utilization of our current inventory, with the benefit of consolidating leases into owned space. We are showcasing that effort in our own headquarters, where, with only a modest amount of expansion space, we intend to turn a building that previously served approximately 2,500 personnel and modernize it into a building that will serve 6,000. This will allow us to consolidate costly leases in the metropolitan area and save millions of dollars.

GSA intends to continue these efforts moving forward.

Managing Leases -

Where a Federal construction solution is not possible, or not preferable, GSA implements a deliberate and comprehensive process that ensures adequate competition and takes into account other public interests, including placement in central business districts or facilities which are close to public transportation. Additionally, GSA has the authority to grant lease delegation requests for other Federal agencies, and we grant such requests in a responsible manner and with appropriate oversight.

GSA currently has an inventory of over 370 million square feet of space, approximately half of which is spread among nearly 9,000 leases across the country. GSA effectively manages its leased space. In FY2010, leased space vacancy was only 0.8 percent. GSA leases space for most Federal agencies including, but not limited to, offices, laboratories, warehouses, and clinics. Leases are located according to the client agency's mission requirements in urban, suburban, and rural areas and in accordance with established location laws and policies.

Space Planning with Agencies -

A potential leasing action begins when a Federal agency brings a space request to GSA. These requests can range from replacement leases, expansion space, or more effective space for an agency's mission. In all cases, we first determine if federally owned or leased space is already available that could meet the agency's requirements. If unavailable, GSA evaluates the appropriateness of a potential leasing action.

GSA tailors its approach to space requests based on the size and complexity of the identified need. Leases under the current prospectus threshold (i.e., a net annual rent less than \$2.79 million for FY2011) represent approximately 98 percent of our leases and 73 percent of the leased square footage. Prospectus-level leases with annual rent exceeding \$2.79 million represent 2 percent of leases transacted.

The requirements-development, review, and evaluation process of prospectus-level leases is more extensive due to the size and cost of these leases. Consistent with broader Administration policy for real property, GSA strives to ensure that prospectus level lease actions reflect the best and most cost effective approach to providing the Federal government with necessary space, particularly by encouraging mobile workforce planning that can reduce the overall need for space. Specifically, GSA seeks to ensure that space is efficiently utilized, including the emerging approaches for office space configurations, identification of specialized space necessary to meet mission requirements, and availability

U.S. General Services Administration | August 2011

of space in subject markets. Additionally, these large leases require review and clearance by both GSA's Central Office and the Office of Management and Budget (OMB) prior to submission to Congress. While ensuring that proposed leases comply with all criteria governing lease scoring treatment under OMB Circular A-11, OMB also reviews the leases to ensure that the proposed action is consistent with personnel and resource estimates in the President's budget.

The lease prospectus discussion involving GSA, the customer agency, and OMB is the opportunity for the three parties to discuss the relationships among requirements, costs, and availability of resources leading to sound decisions that meet Government needs in a manner consistent with taxpayer interests.

GSA's Leasing Process -

Once GSA has worked with an agency to carefully define and scope their requirements and ensure that the space they need is based on accurate projections and reflects available funds, GSA's lease acquisition process runs through a carefully sequenced set of steps to obtain adequate competition and a fair rental rate for taxpayers.

One of GSA's fundamental, key strategies is to promote competition by attempting to maximize the number of potential qualified offerors for a lease solicitation. By improving communication with the commercial real estate sector, GSA's presence in the market is strengthened and a sense of partnership with leasing industry practitioners emerges, resulting in increased competition for GSA leases.

GSA follows a sequenced and efficient leasing acquisition process, which includes market advertising and surveying, assessments, evaluations, negotiations, and contract execution. The details of this process are highlighted below.

Advertisement: If the space requirement is greater than 10,000 square feet, GSA advertises requirements for space on the Federal Business Opportunities website at www.fedbizopps.gov, or in the local newspaper where appropriate, in order to obtain maximum competition from the private sector. While advertising is not required for smaller space requirements, GSA often does so in order to promote competition.

Market Survey: Based on agency requirements, GSA conducts a market survey with agency representatives to identify properties that meet the agency's requirements. This is a critical step in the procurement process. If GSA determines during the market survey that there is insufficient competition in the area, GSA will work with the client agency to expand the area of consideration or refine their space requirements before soliciting the local commercial real estate market.

U.S. General Services Administration | August 2011

The Request for Lease Proposal (RLP): GSA develops the RLP package (previously known as a Solicitation for Offers (SFO)), a standard document tailored to the requirements of each particular solicitation, and sends it to all prospective offerors identified during the market survey. The RLP is available upon request to any party.

Negotiations and Evaluation: Once offers are received and evaluated, GSA begins negotiations. GSA internally establishes negotiation objectives (acceptable ranges for rental rates, costs for tenant improvements, and cost ranges for additional requirements) and conducts discussions with potential lessors in the competitive range.

Final Proposal Revisions: Once negotiations are completed, GSA requests Final Proposal Revisions, where offerors are requested to submit their "best and final offer" to the Government.

Final Evaluation and Award: After submission of final revisions, GSA reviews and evaluates offers and makes an award determination. Award is made based on price or price and other factors explained in the RLP. Most leases are awarded to the offeror who meets the Government's minimum requirements at the lowest price. For more complex requirements, such as prospectus level leases, GSA may conduct "best value" procurements, which allows for a balance between the technical merits of the proposal and the cost.

Contract Execution: GSA compiles and sends an executable lease document with all negotiated terms and conditions to the apparent successful offeror for signature. Upon return of the signed lease from the apparent successful offeror, the GSA Lease Contracting Officer awards the lease by executing the lease contract.

Build-out and Acceptance: The lessor completes the build-out of the space in accordance with the requirements of the lease and GSA inspects and accepts the space when completed. Following GSA's acceptance of space as substantially complete, the Government starts payment of rent to the lessor.

Move-in: Concurrent with GSA's acceptance of space from the lessor, we assist our tenants in occupying the space, at which time their payment of rent to GSA begins pursuant to an Occupancy Agreement between GSA and the tenant agency which sets forth the terms and conditions related to their occupancy. This step completes the lease acquisition process.

Agencies with Independent Authority and Delegation of Authority for Lease Acquisition -

Several agencies, commissions, and other Executive agencies have their own authority to hold land and acquire leasehold interests on behalf of the Federal government. Their

U.S. General Services Administration | August 2011

authority to do so is outlined in the U.S. Code, or in annual appropriation acts. GSA maintains standing delegations for special purpose space and a list of categorical delegations in the Federal Management Regulation.

Agencies that do not have authority or that do not want to exercise their independent authority may apply to GSA for a Delegation of Lease Authority on a lease-by-lease basis. Agencies must abide by the same laws and controls that govern GSA and certify that they have a properly warranted Leasing Contracting Officer to conduct the procurement and execute the lease.

Since the modification of delegation authority in late 2007, GSA has processed 1,803 lease delegation request applications, comprising roughly 8.5 million rentable square feet. Any delegated lease in excess of 19,999 rentable square feet requires approval from the Administrator of GSA.

The following agencies have requested and been granted lease delegation authority: Department of Commerce, Army Corps of Engineers, Department of Homeland Security, Department of Health and Human Services, Department of Interior, Department of the Treasury, Department of Justice, Department of Agriculture, and the Department of Veterans Affairs.

Improving and Streamlining the Leasing Process -

While these controls are important, GSA constantly looks for ways to streamline, standardize, and simplify our leasing processes to minimize the costs associated with acquiring a lease. We also continually assess our performance against other rental rates in the same or similar markets through a Lease Cost Relative to Market measure. GSA is committed to adapting its internal processes to mirror leasing in the private sector, and to fully utilize the market leverage that results from the Federal government being a reliable tenant.

Consultation with the private sector leasing and lending community inspired GSA to undertake many improvements, such as aligning our simplified lease acquisition threshold and our space terminology with private sector practices, introducing a succeeding lease model for situations where relocation is not cost-effective, streamlining the acquisition process by creating a nationwide standardized template for use by GSA's regional offices, and redeveloping FedBizOpps advertisements for greater consistency and easier accessibility. GSA also supports the creation of the President's proposed Civilian Property Realignment Board, which would facilitate more lease consolidations across the government.

U.S. General Services Administration | August 2011

Conclusion -

GSA's approach to leasing Federal space allows agencies to achieve their mission effectively and works to protect the public's interest by acquiring space at a fair rate, while focusing the highest levels of control on the largest potential leasing actions. Where we grant delegations on our authority, we require that those same controls are in place. In addition, we aim to constantly improve our processes to attract further competition from the private sector and minimize costs to taxpayers.

Thank you for inviting me to appear before you today. I appreciate the opportunity to discuss GSA's leasing practices and expertise, and I welcome your questions.

**Statement of James M. Sullivan, Director, Asset Enterprise Management
U.S. Department of Veterans Affairs
before the
Subcommittee on Federal Financial Management, Government Information,
Federal Services, and International Security
Senate Homeland Security and Government Affairs Committee**

Federal Leased Property: Are Federal Agencies Getting a Bad Deal?

August 4, 2011

Chairman Carper, Ranking Member Brown and members of the Subcommittee, thank you for the opportunity to appear today to discuss the Department of Veterans Affairs (VA) management of its leased property portfolio, with particular focus on the process VA uses to make decisions of whether to lease or build; and on its selection and execution of capital investments to serve our Nation's Veterans and their families.

VA is the owner, tenant and operator of one of the largest health care real estate portfolios in the United States. In addition to health-care related real estate, the Department maintains facilities for the Veterans Benefits Administration (VBA) and most of the Nation's national cemeteries under management of VA's National Cemetery Administration (NCA). Leasing has been and continues to be an essential part of VA's capital portfolio management. Overall, VA maintains approximately 159 million square feet in 7,200 owned and leased buildings and more than 33,000 acres of land. At the end of fiscal year (FY) 2010, approximately 17 million square feet of this space had been acquired through over 1,629 leases for the Department -- ranging in term length from a few months to 20 years.

VA is authorized to acquire land or interests in land for medical and non-medical related purposes, which includes hospitals, community based outpatient clinics, cemeteries, medical research space, and medical-related needs such as space to support the Department's health information functions. VA enters into lease agreements for medically-related space or capacity needs in locales across the Nation. One of VA's primary goals is providing access points for service where Veterans are located. In

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many cases, leasing provides more flexibility, in lieu of constructing an owned asset, to meet the constant demographic shifts and changing service demands of our Nation's Veterans.

VA's mission drives the use of VA's leasing authority. Leasing enables VA to relocate underlying services depending on changes in medical technology, workload, new programs, and demographic data. Veterans are not only mobile, but require different methods of healthcare and service delivery, especially when the Nation is at war and VA must respond quickly when and where a need arises.

The need for space to support VA's mission is identified through the Strategic Capital Investment Planning (SCIP) process. The SCIP process was initiated for the 2012 budget formulation process. VA made enhancements to its strategic capital planning and investment decision-making processes by providing a more comprehensive approach to capital investment planning. SCIP builds upon previous capital investment processes by capturing, for the first time, the full extent of our infrastructure inventory (including underutilized and vacant properties), identifying gaps in the provision of service to our Veterans and their families, and developing a 10-year strategic capital plan, employing both capital and non-capital solutions, to address these gaps. VA's first-ever Department-wide integrated and prioritized list of 2012 capital projects is an important outcome of the SCIP process. Through SCIP, VA evaluates each capital investment proposal based on its contribution to six key criteria – "Safety and Security," "Department Major Initiatives," "Fixes What We Have," "Increases Access," "Right-Sizing Inventory," and "Ensuring Value of Investment."

As an integral part of the SCIP process, VA systematically evaluates all proposed capital investments based on how well they address identified performance gaps (e.g., safety, security, workload-driven capacity shortage, right-sizing, and access for Veterans.) These gaps specify where current infrastructure or services need to be enhanced to meet the location and demand of current and future Veteran demographics

or when VA may have excess capacity. Only those capital investment projects that have scored well in addressing identified performance gaps are proposed for funding in VA's budget.

VA evaluates the decision of whether to build or lease. Projects considered for major construction and/or leasing are required to provide an "alternatives analysis" that considers the status quo, new construction and/or renovation, leasing, and contracting out for services. Review of the alternative analysis is a critical part of the decision-making process and assists in ensuring the most efficient and effective use of taxpayer's dollars. The major construction and lease prospectuses found in VA's budget submission provide the alternatives considered (major construction versus leasing) as well as justification for the chosen alternative.

VA considers the size and mission criticality of a project when deciding between building/purchasing or leasing a new facility. New construction of large inpatient, and specialty care projects, in most cases, is more cost effective to build versus lease over a 30-year building lifecycle. Outpatient and ambulatory services in many cases can be done more efficiently using leasing, as they provide more flexibility in occupancy terms and in executing an exit strategy. The ability to provide services as close as possible to the Veteran population is the key driver in all capital decisions.

VA leases medical space under its own statutory authority codified at 38 U.S.C. §§ 8101 and 8103, and can lease up to 2,500 SF of non-medical space through its current delegation from the General Services Administration (GSA). VA obtains its other lease space needs through GSA.

VA follows GSA regulations and complies with the Competition in Contracting Act, as well as the Federal Acquisition Regulation, in conducting its direct lease procurements. Leases in excess of \$1,000,000 in annual unserviced rent cannot be awarded without prior Congressional authorization. VA's Real Property Service has years of experience

in managing the Department's robust leasing program, employing a skilled workforce comprised of highly trained realty specialists and contracting officers.

All contracting officers assigned to lease procurements have completed lease training courses recommended by GSA, and all contracting officers for major lease procurements have level III Federal Acquisition Certification in Contracting (FAC-C). Contracting officers for lower-value leases have an appropriate level of FAC-C certification. All major lease project managers have had all five lease training courses GSA recommends, and are on the way to completion of Federal Acquisition Certification for Program and Project Managers (FAC-P/PM). To ensure compliance with applicable law and regulation, VA direct leases are reviewed by VA's Office of General Counsel prior to award. VA lease acquisitions keep pace with the latest Federal guidelines on physical security, sustainability, and energy efficiency. VA direct leases achieve rents at or below fair market value as determined by independent appraisals.

In addition to these traditional leasing programs, VA has been granted by Congress enhanced-use leasing (EUL) authority. This unique multi-purpose tool provides VA with an innovative process to partner with public or private sector entities for up to 75 years. In return, VA receives negotiated monetary and/or in-kind consideration. The leased property is developed, used, and maintained for agreed-upon uses that directly or indirectly support VA's mission.

The Department's EUL authority allows VA to leverage our underutilized and vacant buildings through public/private ventures through third-party development, financing, and supportive services. EULs allow VA to reuse properties in various ways to meet mission-related needs such as Veteran's housing. EUL program results have included significant cost savings compared to construction and leasing, substantial private investment in the Department's capital facilities and infrastructure, and new long-term sources of revenues.

The Department's authority to enter into additional EUL agreements will expire on December 31, 2011. Without a reinstatement of the EUL authority, VA will no longer have the mechanism in place to acquire third-party investment for new facilities, space, services or revenue to serve Veterans.

VA has a rigorous capital planning process that quantifies and prioritizes the need to repair, upgrade, dispose of, or replace VA's aging infrastructure and address the current and future needs of America's Veterans within the context of prudent capital investment decision making. VA strives to maintain the optimal mix of investments – owned and leased assets – to achieve strategic goals and ensure a high level of performance for our assets while minimizing risk and maximizing cost effectiveness.

Mr. Chairman, this concludes my opening statement and I would be pleased to answer any questions you or the members of the Committee may have.

**Written Testimony of H. David Kotz
Inspector General of the
Securities and Exchange Commission**



**Before the Federal Financial Management, Government
Information, Federal Services, and International Security
Subcommittee of the U.S. Senate Committee on
Homeland Security and Government Affairs
Thursday, August 4, 2011
2:30 p.m.**

Introduction

Thank you for the opportunity to testify before this Subcommittee on the subject of “Federal Leased Property: Are Federal Agencies Getting a Bad Deal?” as the Inspector General of the U.S. Securities and Exchange Commission (SEC or Commission). I appreciate the interest of the Chairman, the Ranking Member, and the other members of the Subcommittee, in the SEC and the Office of Inspector General (OIG). In my testimony, I am representing the OIG, and the views that I express are those of my Office, and do not necessarily reflect the views of the Commission or any Commissioners.

I would like to begin my remarks by briefly discussing the role of my Office and the oversight efforts we have undertaken during the past few years. The mission of the OIG is to promote the integrity, efficiency and effectiveness of the critical programs and operations of the SEC. The SEC OIG includes the positions of the Inspector General, Deputy Inspector General, Counsel to the Inspector General, and has staff in two major areas: Audits and Investigations.

Our audit unit conducts, coordinates, and supervises independent audits and evaluations related to the Commission’s internal programs and operations. The primary purpose of conducting an audit is to review past events with a view toward ensuring compliance with applicable laws, rules, and regulations and improving future performance. Upon completion of an audit or evaluation, the OIG issues an independent report that identifies any deficiencies in Commission operations, programs, activities, or functions and makes recommendations for improvements in existing controls and procedures.

The Office's investigations unit responds to allegations of violations of statutes, rules, and regulations, and other misconduct by Commission staff and contractors. We carefully review and analyze the complaints we receive and, if warranted, conduct a preliminary inquiry or full investigation into a matter. The misconduct investigated ranges from fraud and other types of criminal conduct to violations of Commission rules and policies and the Government-wide conduct standards. The investigations unit conducts thorough and independent investigations in accordance with the applicable Quality Standards for Investigations. Where allegations of criminal conduct are involved, we notify and work with the Department of Justice and the Federal Bureau of Investigation, as appropriate.

Audit Reports

Over the past three and one-half years since I became the Inspector General of the SEC, our audit unit has issued numerous reports involving matters critical to SEC programs and operations and the investing public. These reports have included an examination of the Commission's oversight of the Bear Stearns Companies, Inc. and the factors that led to its collapse, an audit of the Division of Enforcement's (Enforcement) practices related to naked short selling complaints and referrals, a review of the SEC's bounty program for whistleblowers, an analysis of the SEC's oversight of credit rating agencies, and audits of the SEC's compliance with Homeland Security Presidential Directive 12 and its oversight of the Securities Investment Protection Corporation's activities. In addition, in March 2009, we conducted a review of an agency restacking project in which over \$3 million was expended to relocate approximately 1,750 SEC

employees in its headquarters building and, in September 2010, we completed an audit of the SEC's real property and leasing procurement process.

Investigative Reports

The Office's investigations unit has conducted numerous comprehensive investigations into significant failures by the SEC in accomplishing its regulatory mission, as well as investigations of allegations of violations of statutes, rules, and regulations, and other misconduct by Commission staff members and contractors. Several of these investigations involved senior-level Commission staff and represent matters of great concern to the Commission, Members of Congress, and the general public. Where appropriate, we have reported evidence of improper conduct and made recommendations for disciplinary actions, including removal of employees from the federal service, as well as recommendations for improvements in agency policies, procedures, and practices.

Specifically, we have issued investigative reports regarding a myriad of allegations, including claims of failures by Enforcement to pursue investigations vigorously or in a timely manner, improper securities trading by Commission employees, conflicts of interest by Commission staff members, post-employment violations, unauthorized disclosure of nonpublic information, procurement violations, preferential treatment given to prominent persons, retaliatory termination, perjury by supervisory Commission attorneys, failure of SEC attorneys to maintain active bar status, falsification of federal documents and compensatory time for travel, abusive conduct, and the misuse of official position and government resources.

In August 2009, we issued a 457-page report of investigation analyzing the reasons why the SEC failed to uncover Bernard Madoff's \$50 billion Ponzi scheme. In March 2010, we issued a 151-page report of investigation regarding the history of the SEC's examinations and investigations of Robert Allen Stanford's \$8 billion alleged Ponzi scheme. Most recently, on May 16, 2011, we issued a comprehensive and thorough report of investigation into the circumstances surrounding the SEC's decision to lease approximately 900,000 square feet of office space at a newly-renovated office building known as Constitution Center, which is the subject of this hearing.

Commencement and Conduct of the OIG's Leasing Investigation

On November 16, 2010, the OIG opened an investigation as a result of receiving numerous written complaints concerning the SEC's decisions and actions relating to the leasing of office space at the Constitution Center office building in Washington, D.C. These complaints alleged that the decision to lease space at Constitution Center was ill-conceived, resulted from poor management practices, and was made without Congressional funding for the significant projected growth necessary to support the decision.

As part of our investigative efforts, we took the sworn testimony of 18 witnesses in the investigation and interviewed 11 other individuals with knowledge of facts or circumstances surrounding the SEC's leasing of this space.

We made numerous requests to the SEC's Office of Information Technology (OIT) for the e-mails of current and former SEC employees for various periods of time pertinent to the investigation. The e-mails were received, loaded onto computers with specialized search tools, and searched on a continuous basis throughout the course of our

investigation. In all, OIT provided e-mails for a total of 27 current and former SEC employees for various time periods pertinent to the investigation. We estimate that we obtained and searched over 1.5 million e-mails during the course of the investigation.

We also made several requests to the SEC's Office of Administrative Services (OAS), which oversees the SEC's leasing function, for documents relating to its leasing practices. We carefully reviewed and analyzed the information we received as a result of our document requests. These documents included all records relating to the Constitution Center lease, as well as documents relating to the leasing of additional office space by the SEC for the past several years.

Issuance of Comprehensive Report of Investigation in Leasing Matter

On May 16, 2011, we issued to the Chairman of the SEC a comprehensive report of our investigation in the leasing matter that contained over 90 pages of analysis and more than 150 exhibits. The report of investigation detailed all of the SEC's recent leasing-related decisions and analyzed all of the facts and circumstances that led to the SEC's decision to lease space at Constitution Center.

Results of the OIG's Leasing Investigation

The OIG investigation found that the circumstances surrounding the SEC's entering into a lease for 900,000 square feet of space at the Constitution Center facility in July 2010 were part of a long history of missteps and misguided leasing decisions made by the SEC since it was granted independent leasing authority by Congress in 1990. The OIG investigation further found that based upon estimates of increased funding, primarily to meet the anticipated requirements of financial reform legislation that was enacted on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-

Frank), between June and July 2010, OAS conducted a deeply flawed and unsound analysis to justify the need for the SEC to lease 900,000 square feet of space at the Constitution Center facility. We found that OAS grossly overestimated (by more than 300 percent) the amount of space needed for the SEC's projected expansion and used these groundless and unsupportable figures to justify the SEC's commitment to an expenditure of approximately \$557 million over 10 years.

The OIG investigation also found that OAS prepared a faulty Justification and Approval document to support entering into the lease for the Constitution Center facility without competition. This Justification and Approval document was prepared after the SEC had already signed the contract to lease the Constitution Center facility. Further, OAS backdated the Justification and Approval, thereby creating the false impression that it had been prepared only a few days after the SEC entered into the lease. In actuality, the Justification and Approval was not finalized until a month later.

A brief summary of our specific findings is set forth as follows. In 1990, Congress provided the SEC with independent leasing authority, which exempted the SEC from General Services Administration (GSA) regulations and directives. See 15 U.S.C. § 78d(b)(3). The House Conference Report for this legislation expressed the clear intention that "the authority granted the Commission to lease its own office space directly will be exercised vigorously by the Commission to achieve actual cost savings and to increase the Commission's productivity and efficiency." H.R. Conf. Rep. 101-924, 101st Cong, 2d Sess. 1990 at 20.

Subsequent to Congress's granting of independent leasing authority to the SEC, several expensive missteps related to the SEC's leasing actions and management of its

space have occurred. For example, in May 2005, the SEC disclosed to a House Subcommittee that it had identified unbudgeted costs of approximately \$48 million attributable to misestimates and omissions of costs associated with the construction of its headquarters facilities near Union Station, known as Station Place One and Two. In 2007, merely a year after moving into its new headquarters, the SEC embarked on a major “restacking” project pursuant to which various SEC employees were shuffled to different office spaces in the same buildings at a cost of over \$3 million. An OIG audit of that project found that there was no record of a cost-benefit analysis having been conducted before this undertaking. An OIG survey found that an overwhelming majority of Commission staff affected by the restacking project had been satisfied with the location of their workspace before that project was initiated, and did not believe the project’s benefits were worth the cost and time of construction, packing, moving, and unpacking.

The OIG investigation further found that, as a result of a mistaken belief that the SEC would receive significant additional funding, OAS made grandiose plans to lease the upscale facility at Constitution Center. On May 14, 2010, the SEC submitted an authorization request to the Chairman of the U.S. Senate Committee on Banking, Housing, and Urban Affairs, requesting \$1.507 billion for Fiscal Year (FY) 2012 to fund an increase of 800 new staff positions. On May 20, 2010, the U.S. Senate passed a version of the financial regulatory reform bill that eventually became Dodd-Frank (the U.S. House of Representatives had passed a version of the legislation on December 11, 2009). The SEC estimated that it would need to add another 800 positions in FY 2011 and FY 2012 to implement Dodd-Frank. After the reconciliation process between the

two versions of the financial regulatory reform bills, Dodd-Frank became law on July 21, 2010.

Authorization of funding for an executive agency like the SEC does not guarantee that the agency will be appropriated the funds. An authorization request is the first step in the SEC's lengthy budget process. Under that process, an authorization request is submitted to Congress in May of the fiscal year two years prior to the fiscal year for which the authorization is requested (*e.g.*, the FY 2012 authorization request takes place in May 2010). The following September, several months after the authorization request is made, the SEC submits a proposed budget request to the Office of Management and Budget (OMB). In November, the next step of the budget request process takes place: OMB replies to the SEC with a "pass-back," and the SEC and OMB then usually negotiate the amount of the budget request. Several months later, the President formally submits a budget proposal to Congress. Once the President makes the budget request to Congress, Congress then begins the decision-making process as to how much money to appropriate to the SEC and other agencies. SEC employees interviewed in connection with the OIG's leasing investigation acknowledged that an authorization may indicate an intention for Congress to provide funding, but circumstances frequently change and, therefore, federal agencies understand that until funds are appropriated, they cannot count on receiving those funds.

Notwithstanding the uncertainty of actually being appropriated the amount requested through the budget process, in May 2010, OAS began planning for an expansion at SEC Headquarters based on the agency's FY 2012 budget request. Initially, the SEC's Associate Executive Director of OAS, Sharon Sheehan, and the former Chief

of OAS's Leasing Branch decided that the agency needed to lease approximately 300,000 square feet of space to accommodate the SEC's needs through FY 2012. As of May 2010, the Chief of the Leasing Branch's plan was to solicit offers from three properties within walking distance of Station Place to meet the SEC's additional space needs. However, on June 2, 2010, the Chief of the Leasing Branch received an e-mail from the real estate broker for a facility at Constitution Center, located on 7th and D Streets, SW, approximately two miles from the SEC's Station Place facility near Union Station, regarding Constitution Center's availability and some of its features.

The 1.4 million square foot Constitution Center had just been renovated in "one of the largest office redevelopment projects in Washington, DC," according to promotional literature. One of the more attractive features of the Constitution Center facility was its 5,000 square foot lobby with spacious accommodations for a guard desk(s), security screening room, shuttle elevator lobby, and display space, as well as Jerusalem limestone floors, marble walls, wood and metal paneling, decorative lighting and a floor-to-ceiling glass wall facing the landscaped courtyard. The facility promised abundant daylighting, panoramic views of the city and surrounding region, and an open plaza area that contained a one-acre private garden.

Almost immediately after being contacted by the broker for Constitution Center, OAS decided to expand the previous delineated locality of consideration to add Constitution Center to the other three buildings that would be included in the solicitation for offers for approximately 300,000 square feet of space.

On June 17, 2010, OAS briefed SEC Chairman Mary Schapiro on its immediate expansion plans at SEC Headquarters. At that briefing, the Chief of the Leasing Branch

informed the Chairman that the SEC needed to lease immediately 280,000 to 315,000 square feet of office space in Washington, D.C., and identified on a map specific locations for that expansion, including Constitution Center. Both Chairman Schapiro and her former Deputy Chief of Staff, Kayla Gillan, recalled the Chairman expressing clear preference for the locations that were within walking distance of Station Place, as opposed to the Constitution Center facility. Chairman Schapiro also questioned whether the SEC needed 300,000 additional square feet, given that she believed the SEC should concentrate its growth in the agency's regional offices.

The OIG investigation found notwithstanding Chairman Schapiro's expressions in mid-June 2010 of her preference for a facility closer to Station Place and her questioning of why the SEC needed as much as 300,000 square feet of space, by mid-July, OAS came back to the Chairman with an urgent recommendation that the SEC immediately lease 900,000 square feet of space with the only available option being the Constitution Center facility. The OIG investigation found that the analysis OAS performed to justify the need for three times its original estimate of necessary square footage, and its determination that the Constitution Center facility was the only available option, was deeply flawed and based on unfounded and unsupported projections. We found that, as a consequence of its flawed analysis, OAS grossly overestimated the amount of space needed at SEC Headquarters for the SEC's projected expansion.

Specifically, the OIG investigation found that OAS erroneously assumed that all of the new positions projected for FY 2011 and FY 2012 would be allocated to SEC Headquarters and that none of those new positions would be allocated to the SEC's regional offices. This assumption was contrary to the position the Chairman had

communicated to OAS at the June 17, 2010 meeting that as much as possible of the SEC's future growth should occur in the regional offices, not at Headquarters. We found that although the need for a calculation reflecting the allocation of a number of the new positions to the regions was discussed, none was ever prepared. Sheehan testified that "OAS had difficulty getting the breakout," and acknowledged that, assuming all of the new positions would be located at Headquarters would "inflate the number."

We also found that OAS conducted its analysis of the SEC's space needs by using a standard of 400 square feet per person when calculating how much space would be needed for the additional positions it believed it would gain as a result of Dodd-Frank and associated increases in the SEC's budget. A Realty Specialist in OAS explained to the OIG that the Chief of the Leasing Branch and she developed the 400 square feet standard by dividing the square footage of office space by the number of people the SEC had authority to hire for the offices in that space at Headquarters and several of the SEC's regional offices. The Realty Specialist described the standard as a "WAG" (wild-assed guess) and a "back of the envelope" calculation, and acknowledged in her OIG testimony that OAS "didn't do this scientifically." OAS's 400 square feet per-person standard was an "all-inclusive number" that included common spaces and amenities. It also included an additional 10 percent for contractors, 10 percent for interns and temporary staff, and five percent for future growth. Notwithstanding this "all-inclusive" number, we found that when OAS later performed its calculations to justify the Constitution Center lease, it added even more unnecessary space by double-counting contractors, interns and temporary staff and by improperly incorporating future growth into the projections of

space needed. We also found that each one of these estimates was wildly inflated and unsupported by the data being used by OAS.

The OIG investigation found that OAS inflated its estimate of new positions that would require space by including an estimate of the number of contractors who would be hired in addition to the number of SEC employees. In early June 2010, OAS Associate Executive Director Sheehan asked the OAS Branch Chief for Space Management & Mail Operations to obtain information about the number of contractors in the agency. On June 12, 2010, the Branch Chief reported back, "Right now, based on the Contractor numbers I have at [Station Place], I can justify us using a 10% Contractor to Position, factor." The Branch Chief later learned that OAS needed the numbers to be larger. He testified as follows regarding his understanding of why the Chief of the Leasing Branch needed the number to be larger: "[W]hat I understand she was trying to do was to make sure that whatever size lease she entered into was enough to meet our needs. And I think that in this case, if we were going to take the whole building, the numbers needed to be larger." Ultimately, OAS ignored the data that had been gathered during the first two weeks of June 2010, which indicated the correct contractor ratio was 10 percent, and inflated its calculation of space by adding contractors using a completely arbitrary 20 percent ratio.

In addition, we found that OAS's estimate of new positions that would need space included an estimate of the number of interns and temporary staff who would be hired, in addition to new employees. OAS's estimate of interns and temporary staff to be hired assumed a ratio of 16.5 percent (9 percent for interns and 7.5 percent for temporary staff). However, the OIG found that OAS's estimate of intern and temporary staff positions was significantly higher than the estimate in the data it had received. On July 16, 2010, a

management program analyst in the SEC's Office of Human Resources provided OAS with "the [peak] numbers [for interns and temporary staff]," which ranged from approximately 4 to 7 percent for the six fiscal years of data analyzed.

Further, the OIG investigation found that OAS's calculations increased the amount of space required for every person to be hired in FY 2011 and FY 2012 by 10 percent for "inventory" representing "vacant offices you have for expansion and unanticipated growth, that kind of thing," according to an OAS Assistant Director. However, as was the case with the estimate for contractors, temporary staff and interns, an inventory factor had already been incorporated into the calculation of the 400 square foot standard. Moreover, the 10 percent inventory factor added was double the 5 percent factor previously determined to be appropriate.

We also found that OAS's estimate of new positions that would need space included an assumption not only about FY 2011 and FY 2012, but also reflected an assumption that, in FY 2013, Congress would increase the SEC's appropriation by 50 percent of the assumed FY 2012 increase. We found that the assumption of 50 percent growth in 2013 was arbitrary and unsupported. Based on the assumed FY 2013 growth, OAS calculated that the SEC would add another 295 positions in that year and again assumed that all of those positions would be allocated to SEC Headquarters. We found that this estimate was not based upon any firm numbers or projections and was contrary to the SEC's planning and budget process, which does not project growth more than two years into the future.

The OIG investigation found that OAS used the above-described overinflated estimates to calculate a space need of 934,000 square feet. On Friday, July 23, 2010,

Executive Director Diego Ruiz met with Chairman Schapiro, Chief of Staff Didem Nisanci, and then-Deputy Chief of Staff Gillan to recommend that the SEC lease 900,000 square feet of space at Constitution Center. Gillan recalled the July 23, 2010 meeting with Ruiz, and stated that Ruiz had come to her “and said that he needed to see Mary [Schapiro] quickly because he needed to make a quick decision on Constitution Center. That the other possible space opportunities had evaporated, gone to others, were no longer available. And that this one was really all that was left and that we needed to act quickly.”

Chairman Schapiro testified as follows regarding the July 23rd meeting with Ruiz:

I remember explicitly being told there really wasn't any other space available that could fulfill our needs and that there was a time – a sense of we were about to lose this. We had lost other space that we had apparently indicated an interest in and that we were about to lose this. So there was a sense of urgency on their part.

Gillan testified that Ruiz did not explain in the July 23, 2010 meeting, or at any other time, that the assertion that SEC Headquarters needed an additional 900,000 square feet was predicated, in part, on the assumption that all of the agency's new positions in FY 2011 and FY 2012 would be allocated to Headquarters. Gillan testified, “[I]n fact, that's inconsistent with what I had understood, because ... [Chairman Schapiro] specifically said that, to the extent possible, she wanted new hires to go to the regions.” Gillan also testified that Ruiz did not explain in the July 23, 2010 meeting, or at any other time, that the assertion that SEC Headquarters needed an additional 900,000 square feet was predicated, in part, on OAS's projections of significant growth in FY 2013.

On July 23, 2010, Ruiz sent an e-mail to Sheehan and others stating, “Met with Chairman this morning, and we have her approval to move forward.” The OIG

investigation found that the SEC negotiated the contract for 900,000 square feet at Constitution Center in three business days, signing the contract on July 28, 2010. On July 27, 2010, the SEC staff involved in that negotiation discussed the fact that they had “no bargaining power” because “Sharon [Sheehan] wants this signed tomorrow.” Internal e-mails show that OAS feared losing the building to the National Aeronautics and Space Administration, which had also expressed an interest in the facility.

On July 28, 2010, the SEC executed a Letter Contract committing the SEC to lease approximately 900,000 square feet of space at Constitution Center. The contract established a multiphase delivery schedule, in which Phase 1, approximately 350,000 square feet, would be delivered no later than September 2011, and Phase 2, approximately 550,000 square feet, would be delivered no later than September 2012. The contract stated that “the SEC’s interests require that [the owner] be given a binding commitment so that the space required will be committed to the SEC and initial build out for the Phase 1 space can commence immediately” The lease term in the contract was ten years. The Chief of the Leasing Branch estimated the costs associated with the SEC’s leasing and occupying Constitution Center would be \$556,811,589.

The Letter Contract also granted the SEC the right of first refusal for the remaining approximately 500,000 square feet of space at Constitution Center until December 15, 2010. If the SEC had exercised this option, it would have leased the entire 1.4 million square feet of space at Constitution Center. The Chief of the Leasing Branch testified that OAS wanted a right of first refusal on all of the remaining space at Constitution Center “because the Congress was throwing money at us” and “Sharon

[Sheehan] was always hoping that we wouldn't have anybody else in the building. That we would be able to ultimately justify the need for the whole building or something.”

After the SEC committed itself to the ten-year lease term at a cost of \$556,811,589, it entered into a Justification and Approval for Other than Full and Open Competition, which is required by the Federal Acquisition Regulation (FAR) when an agency decides not to allow for full and open competition on a procurement or lease. The FAR permits other than full and open competition “when the agency’s need for the supplies or services is of such an unusual and compelling urgency that the Government would be **seriously injured** unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.” 48 C.F.R. § 6.302-2 (emphasis added).

The OIG investigation found that the Justification and Approval to lease space at Constitution Center without competition was inadequate, not properly reviewed, and backdated. The Justification and Approval provided as follows:

To fulfill these new responsibilities it is necessary to significantly increase full-time staff and supporting contractors by approximately 2,335 personnel to be located at the SEC’s headquarters in Washington, DC. However, the SEC’s current headquarters is full. Accordingly the SEC has a requirement of an unusual and compelling urgency to obtain approximately 900,000 rentable square feet (r.s.f.) of additional headquarters space in the Washington, D.C. Central Business District, as this is the amount of space required to accommodate the approximately 2,335 new staff and contractors in headquarters.

The Justification and Approval asserted that the 900,000 square feet “must be in a single building or integrated facility to support the SEC’s functional requirements and operational efficiency.”

An OAS Management and Program Analyst signed the Justification and Approval as the SEC's Competition Advocate. She testified that she did not take any steps to verify that the information in the Justification and Approval was accurate, "[o]ther than asking the contracting officer, you know, just general questions, 'Is this indeed urgent and compelling[?]'". She further testified that when she signed the Justification and Approval, she was not aware that funding for the projected growth had not been appropriated. She also did not have an understanding of when the projected 2,335 personnel were expected to be hired. Further, she acknowledged in testimony that the SEC would, in fact, not be "seriously injured" if it lost the opportunity to rent one contiguous building and had to rent multiple buildings to fill its space needs.

The FAR also requires that a Justification and Approval for Other than Full and Open Competition be posted publicly "within 30 days after contract award." The Letter Contract was signed on July 28, 2010. Accordingly, the deadline for publication of the Justification and Approval was August 27, 2010. However, the SEC did not publicly post the Justification and Approval on the Federal Business Opportunities website until September 3, 2010. The document was signed by four individuals, with all four signatures dated August 2, 2010.

However, the OIG investigation found that the Justification and Approval was not finalized until September 2, 2010, and substantial revisions were being made up to that date. We found that three of the four signatories executed the signature page on August 2, 2010, before a draft even remotely close to the final version existed. The OIG found that the SEC's Competition Advocate executed the signature page on August 31, 2010, and initially backdated her signature to August 27, 2010, but subsequently whited-out the

“7” on the date to make it appear that she also had signed the document on August 2, 2010. The actions of the signatories to the Justification and Approval gave the public the false impression that the document was finalized a few days after the Letter Contract was signed, and that there was only a delay in its publication.

The OIG investigation also found that there is significant uncertainty among the SEC staff regarding important requirements in connection with government leasing and there are serious questions as to whether the SEC complied with several of those requirements in connection with its leasing of Constitution Center. Appendix B of OMB Circular No. A-11 states, “Agencies are required to submit to OMB representatives the following types of leasing and other non-routine financing proposals for review of the scoring impact: Any proposed lease of a capital asset where total Government payments over the full term of the lease would exceed \$50 million.” Although the evidence showed the SEC initially contemplated providing OMB with the written notification and senior agency officials believed that OMB had been formally notified, no written notification to OMB was provided.

In addition, we found that there is a possibility that the SEC violated the Antideficiency Act in connection with its lease of Constitution Center. The Antideficiency Act prohibits officers or employees of the government from involving the government “in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.” 31 U.S.C. § 1341(a)(1)(B). The incurring of an obligation in excess or advance of appropriations violates the Antideficiency Act. Notwithstanding its July 28, 2010 commitment to a ten-year lease at Constitution Center, the SEC did not obligate the entire amount of rent payments due

under the lease. Although the SEC has been granted independent leasing authority statutorily and is generally granted authority to enter into multiyear leases in its annual appropriations, the U.S. Government Accountability Office (GAO) has found that “[t]he existence of multiyear leasing authority by itself does not necessarily tell [an agency] how to record obligations under a lease.” GAO has distinguished agencies that have “specific statutory direction” to obligate funds for multiyear leases one year a time, such as the GSA, from agencies such as the Federal Emergency Management Agency (FEMA), which do not have such explicit direction. Because the SEC, like FEMA, does not have specific statutory direction to obligate funds for its multiyear leases on an annual basis, its lease obligations may have to be obligated in their entirety at the time they are incurred. Thus, SEC may have violated the Antideficiency Act in connection with its commitment to lease space at Constitution Center.

In early October 2010, the SEC informed the owner of the building that it could not use approximately 600,000 of the 900,000 square feet of space it had contracted for at Constitution Center and asked for the owner’s assistance in finding other tenants for that space. In November 2010, the owner of the building began negotiations with the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency (OCC) to lease portions of Constitution Center. In January 2011, OCC and FHFA entered into contracts for space at Constitution Center, leaving approximately 350,000 square feet to which the SEC remains committed. On January 18, 2011, counsel for the building owner sent a demand letter to the SEC, asserting that the SEC’s actions had caused him to incur \$93,979,493 in costs at Constitution Center.

The OIG investigation further found that a “closed” and “rigid” atmosphere within OAS may have contributed to the irresponsible decisions made with respect to the Constitution Center lease. In the course of this OIG investigation, several witnesses who sought to remain anonymous came forward to the OIG to provide information concerning the environment and the decision-making processes within OAS. These witnesses described an environment in which inexperienced senior management make unwise decisions without any input from employees who have significant knowledge and experience. We found that questioning of upper management decisions by the staff is “not allowed” and that OAS Executive Director Sheehan surrounds herself with “yes-men” and “does not want to hear what [experienced staff] will tell her.” These individuals testified that upon learning of the SEC’s decision to lease 900,000 square feet of space at Constitution Center, they “just couldn’t understand how [OAS] could justify that amount of space ...” and were “flabbergasted” by the decisions. One experienced employee testified that OAS management had “grandiose plans” and was significantly influenced by the upscale nature of the facility.

Recommendations of the OIG’s Leasing Investigation

Our Report of Investigation made numerous recommendations designed to ensure that the requisite improvements to policies and procedures are made and that appropriate disciplinary action is taken. Specifically, we recommended that the Chief Operating Officer carefully review the report’s findings and conduct a thorough and comprehensive review and assessment of all matters currently under the purview of OAS including, but not limited to:

- (1) The adequacy of written policies and procedures currently in place for all aspects of the SEC's leasing program, including, but not limited to, putting in place written procedures for leasing approvals;
- (2) The methods and processes utilized to accurately project spacing needs based on concrete and supportable data;
- (3) The determination to employ a standard of 400 square feet per person for planning agency space needs;
- (4) The necessity of retaining architects, furniture brokers, or other consultants to assist in the work generally performed by OAS officials; and
- (5) All pending decisions in which OAS is committing the SEC to expend funds, including decisions relating to regional office lease renewals.

We further recommended that the Chief Operating Officer, upon conclusion of this review and assessment, determine the appropriate disciplinary and/or performance-based action to be taken for matters related to subject of this report of investigation, as well as other issues identified during the review and assessment. We specified that such disciplinary action should include, at a minimum, consideration of disciplinary action, up to and including dismissal, against two senior individuals, and consideration of disciplinary action against a third individual, for their actions in connection with the gross overestimation of the amount of space needed at SEC Headquarters for the SEC's projected expansion, failures to provide complete and accurate information to the Chairman's office, and the preparation of a faulty and back-dated Justification and Approval to support eliminating competition.

Finally, we recommended that the Office of Financial Management, in consultation with the Office of General Counsel, request a formal opinion from the

Comptroller General as to whether the Commission violated the Antideficiency Act, by failing to obligate appropriate funds for the Constitution Center lease.

Follow-Up Efforts

My Office is committed to following up with respect to all of the recommendations we made in our Report of Investigation to ensure that appropriate changes and improvements are made in the SEC's leasing operations as a result of our findings.

Subsequent to the issuance of our Report of Investigation on May 16, 2011, my Office received a corrective action plan with regard to the substantive recommendations we made for improvements in the operations of the Office of Administrative Services. We are also monitoring the planned activities carefully to ensure that the necessary improvements have been made. We have communicated with the SEC's Office of General Counsel with regard to its review of the evidentiary record to determine appropriate disciplinary action, and have provided the Office of General Counsel with records requested to assist in those efforts. We are monitoring the disciplinary process to ensure that the individuals who we identified as being responsible for the failures and improprieties described in our report are held appropriately accountable for their actions.

We understand that the Chief Operating Officer, under the direction of Chairman Schapiro, has already begun to implement the improvements needed in the SEC's leasing functions. We are confident that under Chairman Schapiro's leadership, the SEC will continue to review our report and take appropriate steps to implement our recommendations and ensure that fundamental changes are made in the SEC's leasing

operations so the errors and failings we found in our investigation are remedied and not repeated in the future.

Conclusion

In conclusion, I appreciate the interest of the Chairman, the Ranking Member, and the Subcommittee in the SEC and my Office and, in particular, in the facts and circumstances pertinent to our leasing report. I believe that the Subcommittee's and Congress's continued involvement with the SEC is helpful to strengthen the accountability and effectiveness of the Commission. Thank you.

Testimony on “Federal Leased Property: Are Federal Agencies Getting a Bad Deal?”
by
Jeffrey Heslop
Chief Operating Officer, U.S. Securities and Exchange Commission

**Before the Senate Committee on Homeland Security and Governmental Affairs
Subcommittee of Federal Financial Management, Government Information, Federal
Services and International Security
August 4, 2011**

Chairman Carper, Ranking Member Brown, Members of the Subcommittee:

Thank you for the opportunity to testify on behalf of the Chairman of the Securities and Exchange Commission¹ regarding the Commission’s lease of office space at the Constitution Center building in Washington, D.C.

The report by the Commission’s Office of Inspector General (OIG) concerning Constitution Center identified a number of significant flaws in the SEC’s leasing processes. The fact that the SEC has not paid any rent to date for this property and that the bulk of the space has been leased to other tenants does not adequately address a situation that never should have occurred. The only appropriate response by the SEC is to take all necessary steps to resolve the remaining space issues, to correct the obvious deficiencies in our leasing processes, to ensure accountability for the events surrounding this lease, and to work with the General Services Administration (GSA) with regard to future space needs.

The Chairman of the SEC has pledged to address the issues identified by the OIG aggressively and transparently. My testimony today will outline for the Subcommittee how we intend to make certain that resources are used prudently, that the agency implements the recommendations of the OIG, and that future leasing activity is managed properly.

¹ The views expressed in this testimony do not necessarily represent the views of the full Commission.

I. Factual Background Leading To The OIG Report

The SEC currently employs approximately 3,900 permanent staff and more than 700 contractors. Approximately 60 percent of the permanent staff work out of the agency's headquarters, principally the Station Place buildings adjacent to Union Station in Washington, DC. The agency's remaining 1,500 employees (mainly enforcement and examination staff) work in our 11 regional offices. The SEC does not own any of its facilities, all of which are leased. In addition to office space, these leases include space for public meeting rooms, hearing and testimony rooms, files and records storage, and information technology (including the agency's data center and alternate data center). The SEC currently maintains about 2.5 million square feet of leased space. In the current fiscal year, the lease payments total approximately \$100 million, which is about 8 percent of the agency's annual budget. The Commission's Office of Administrative Services (OAS), through its Real Property and Leasing Branch, has been responsible for managing the leasing program for the agency.

My understanding of what transpired in the Spring of 2010 is as follows:²

- In the Spring of 2010, the SEC anticipated the need not only to expand its longstanding core responsibilities but also to implement the substantial new obligations it was likely to be assigned under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Because these efforts would require the hiring of additional staff and space for expansion was limited under existing leases, OAS started to consider options for additional office space.
- In June 2010, at a meeting regarding leasing issues with the then-Executive Director of the SEC as well as staff from OAS, Chairman Schapiro indicated her preference for hiring new staff in the regional offices rather than at headquarters, as well as a preference that new space in Washington be within walking distance of our headquarters at the Station Place buildings to eliminate the need for expensive shuttle services.
- Approximately one month later, just after the Dodd Frank Act had passed and assigned the SEC significant new responsibilities, on July 23, 2010, the then-Executive Director informed Chairman Schapiro's staff that he urgently needed to discuss obtaining space at

² My understanding is based both on my review of the OIG report and recent testimony of Chairman Schapiro.

Constitution Center, a building located at 400 Seventh Street in southwest Washington, DC. She was told that our other leasing options in Washington, DC no longer existed, that the space at Constitution Center was our only option given our space needs, that the pricing was advantageous, and that they had to move quickly as there was competition for the space. Given her previous discussions, Chairman Schapiro assumed the proposal was consistent both with the then existing budget projections for future employee growth and her preference for staff to be housed where possible in the regions, and concurred with the proposal.

- According to the OIG report, the budget projections for future employee growth were improperly increased by OAS staff, and staff also assumed – contrary to the Chairman’s communicated position – that all new positions would be in the SEC headquarters. These facts, according to the OIG report, were used to justify an increase in the amount of space needed at SEC headquarters for the SEC’s projected expansion, an increase that the OIG report concluded was improper.
- Shortly thereafter, on July 28, 2010, the SEC, through its leasing group, entered into an agreement for 900,000 square feet at Constitution Center, with an ability to assign or sublet the entirety of the space. The agreement was for a 10-year term, with the space to be delivered to the SEC in phases and the first space available at the start of fiscal year 2012 with rent payments to commence in January 2012.
- Within weeks, Chairman Schapiro became concerned that the previously anticipated increase in funding for the SEC (both for existing programs and the new Dodd-Frank Act responsibilities) would not come to pass, despite the Dodd Frank Act’s authorization to double the SEC budget over five years. The Continuing Resolution, which would ultimately remain in place for the first six months of fiscal year 2011, would limit the Commission’s ability to hire new staff and thus limit our need for additional space. In light of these budgetary concerns, Chairman Schapiro met during the Fall of 2010 on multiple occasions with members of the SEC’s leasing group to discuss options for Constitution Center that would limit the SEC’s exposure for space it likely would not fill. The SEC worked with two non-appropriated financial regulatory agencies (the Office of the Comptroller of the Currency and the Federal Housing Finance Agency) that wanted to occupy the majority of the space allotted to the SEC (558,000 square feet). The SEC then released that space, permitting the landlord at Constitution Center to lease the space to these other federal tenants. The releases were conditioned on the SEC being released from all obligations for the 558,000 square feet. The other agencies entered into leases for the Constitution Center space in January 2011. As described in more detail below, the SEC has since been working with the GSA regarding the remaining space.

The SEC’s OIG recently reviewed the agency’s leasing process for Constitution Center, issuing a report on May 16, 2011. The report provides a thorough review of the OIG’s findings and recommendations, and reveals significant flaws in our leasing processes. We are promptly

implementing the OIG's recommendations, and, as described in more detail below, recently submitted to the OIG a written corrective action plan. Specifically, the Chairman has directed me to implement the OIG's recommendations and to address the deficiencies in our leasing processes. In addition, the employees recommended for possible disciplinary action by the OIG have been reassigned to other duties pending resolution of the disciplinary process, which we are moving forward on quickly.

II. The SEC's Obligations Regarding The Remaining Space At Constitution Center

As noted above, growing budget uncertainties led the SEC to seek ways to undo or limit the obligations imposed by the Constitution Center agreement. After successfully identifying two new lessees for the majority of the space, the SEC retains approximately 300,000 square feet at Constitution Center.

Chairman Schapiro, I and others at the SEC recently met with the head of GSA to discuss, among other things, the remaining Constitution Center space. Both this and multiple subsequent conversations between our staffs have been very productive. GSA has informed us that it has prospective tenants with leasing needs that may align with the available Constitution Center space. More recently, Commission staff, working with GSA, has been seeking to finalize the terms concerning the remaining space to move this process forward so that the space may be used by another federal tenant. We are urgently addressing any remaining issues regarding this lease, and will continue to work closely with GSA. Because of the timing of the lease, the SEC has not been required to make any lease payments to date.

III. The Inspector General's Recommendations

The OIG report provides a thorough discussion of the OIG's findings and recommendations, and clearly reveals significant flaws in the process by which SEC leasing decisions were made. On June 30, the SEC provided the OIG with a written corrective action plan. While work is underway to implement the corrective actions described below, they may be revised or expanded as a result of the ongoing discussions with GSA. Currently the corrective action plan includes the following:

- As an interim action, the Chairman revoked designations of authority that previously permitted the SEC to enter into real estate leases without her approval. As described in more detail below, an arrangement with GSA recently was finalized, and as such, the agency will update any other delegations and designations of authority to ensure proper controls are in place.
- In response to the recommendation that the SEC conduct a comprehensive assessment of OAS operations, the SEC retained the services of outside consultants to assess OAS's organizational structure, including decision-making processes, reporting relationships, and quality controls.
- All leasing operations now report to me as Chief Operating Officer.
- A senior executive-level facilities management oversight committee is being created to provide oversight and guidance to the SEC leasing process and serve as a forum for executive-level discussion of the agency's leasing decisions.
- The directors of our national enforcement and examination programs are leading a review of the SEC's regional office presence, which will include an assessment of the agency's location strategy and associated office space needs.
- A new leasing project approval process is being developed that will address, among other things: coordination with GSA; estimation accuracy; the approval process for non-competitive leasing acquisitions; cost/benefit and business case analysis; funding availability; clear identification of hiring needs with the requisite geographic match; and external government agency requirements.

Although the SEC is engaged in the implementation of the corrective action plan, additional requirements and details are likely to be established consistent with the relationship established with GSA.

IV. The Commission's Leasing Efforts Going Forward

In light of the problems identified the SEC recognizes the benefits of having GSA manage the Commission's future lease acquisitions. Leasing is not part of the Commission's core mission and we cannot allow it to impede that mission. GSA, by contrast, has long experience and expertise in leasing.

In her recent meeting at GSA, in addition to discussing the Constitution Center space, Chairman Schapiro discussed with the GSA Administrator ways in which GSA could assist the Commission on our leasing efforts going forward. GSA indicated it was open to playing a significant role in those efforts. Following that meeting, Commission staff has had multiple further discussions with GSA staff. On August 1, 2011, the SEC and GSA entered into a Memorandum of Understanding (MOU) with each other that contemplates an immediate role for GSA in managing upcoming SEC leasing activities, as well as all other future leasing needs as they arise. Ultimately, we anticipate that GSA will be responsible for, among other things, assessing the space needs of the Commission including requirements development; planning for the acquisitions, including preparing preliminary cost estimates; drafting information lease prospectuses, conducting market surveys, and establishing negotiation goals and objectives; soliciting, receiving, assessing and negotiating the offers, which will cover the competition process; executing all required lease documents; and administering the lease, including responsibility for tenant improvements, construction, and any necessary moves. The

arrangement with GSA also should permit the SEC to pare down its leasing program solely to function as liaison to GSA. In addition to the leasing activities at the core of the MOU, we will be exploring other avenues of administrative services that GSA may be able to assist us with that will permit us to scale back further our administrative functions in the relevant areas.

V. Status Of The Disciplinary Proceedings Recommended By The OIG

The OIG report recommended that the SEC initiate disciplinary proceedings for three individuals involved in the Constitution Center leasing process. Accountability is critical because, without it, there is neither fairness nor reform. This process has begun, and Chairman Schapiro has expressed a desire for this process to move as quickly as the laws and regulations permit, consistent with fundamental fairness, to assess and implement remedial measures and discipline as appropriate. In the meantime, the individuals for whom the OIG report recommended a disciplinary review have been reassigned. Their current duties do not involve leasing or any other authority that could bind the Commission, nor do they involve activities that relate to the expenditure of appropriated funds.

VI. Conclusion

There is no doubt that the OIG report identified substantial failures in the SEC's leasing process, and we are making every effort to address those failures and ensure no reoccurrence in the future. These efforts include items specific to Constitution Center, including actions to eliminate the remaining space obligations and to conduct the disciplinary process for the relevant individuals. In addition, we are moving quickly to make more programmatic reforms that are incorporating GSA into our future SEC leasing needs.

I would be happy to answer any questions you may have.

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Government Affairs, U.S. Senate

For Release on Delivery
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**FEDERAL REAL
PROPERTY**

**Overreliance on Leasing
Contributed to High-Risk
Designation**

Statement of David J. Wise, Director
Physical Infrastructure Issues



GAO-11-879T



Highlights of GAO-11-879T, a testimony before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

The federal government's real property portfolio includes more than 900,000 buildings and structures worth hundreds of billions of dollars. Many of these properties are leased from private-sector owners, often at total costs that would exceed what the government would pay for ownership. Overreliance on costly leased space was one of several factors that contributed to GAO's designation of federal real property management as a governmentwide high-risk issue. The administration's proposed Civilian Property Realignment Act (CPRA) would reform federal real property management and disposal. For this subcommittee, GAO is currently examining opportunities for consolidating federal operations and moving them from leased space to federally owned sites.

This statement identifies (1) the factors that contribute to the government's reliance on costly leasing, (2) how CPRA may provide an opportunity to reduce reliance on leasing, and (3) federal agencies' independent leasing authorities and General Services Administration's (GSA) delegations of leasing authorities. To do this work, GAO relied on its prior work and reviewed CPRA and other relevant reports.

View GAO-11-879T or key components. For more information, contact David Wise at (202) 512-2834 or wised@gao.gov.

August 4, 2011

FEDERAL REAL PROPERTY

Overreliance on Leasing Contributed to High-Risk Designation

What GAO Found

The decision to lease rather than own space for federal operations is often influenced by factors other than cost-effectiveness, including budget issues and operational requirements. Over the years, GAO's work has shown federal building ownership often costs less than operating leases, particularly for long-term space needs, and increasing ownership in these cases could save millions of dollars. Starting in 2008, GSA, the central leasing agent for most agencies, has leased more space than it owns. As GAO has reported, though, federal budget scoring rules can create challenges for new construction. Specifically, budget authority for ownership options must be recorded fully up front in the budget to appropriately reflect the government's commitment. For GSA operating leases, however, only the budget authority needed to cover the annual lease payments is required. This reduces the upfront funding commitment but generally costs the federal government more over time. Federal agencies' decisions to lease rather than own space may also be driven by factors such as cost, security requirements, the need for flexibility, and smaller space needs. In such instances, leasing may be practicable. Although GSA's goal is to cover the administrative costs of private sector leases with fees it charges the tenant agencies, it has been unable to do so in recent years—losing more than \$100 million in fiscal year 2009—raising concerns about the agency's management of its leased properties.

CPRA may provide an opportunity to reduce the government's overreliance on leasing. CPRA does not explicitly address the government's overreliance on leasing, but one of CPRA's purposes—to realign civilian real property by consolidating or colocalizing operations and reconfiguring space to increase efficiency—could help to reduce the governments' overreliance on leasing. For example, CPRA could identify opportunities for federal civilian agencies—many of which currently are located in leased space—to colocate on U.S. Postal Service property.

Through legislation, many agencies have received independent leasing authority through their enabling legislation or in appropriations acts. Other agencies have received leasing authority through a GSA delegation. GSA may delegate to agencies leasing authority for general purpose, categorical and special purpose space. In November 2007, GSA amended its delegations of leasing authority to increase oversight and facilitate compliance with all applicable laws and regulations governing the acquisition of leases after audits found instances in which agencies failed to meet the conditions of their leasing delegations.

United States Government Accountability Office

Chairman Carper, Ranking Member Brown, and Members of the Subcommittee:

Thank you for the opportunity to testify today on our work related to real property leasing among civilian federal agencies. The federal real property portfolio is vast and diverse, totaling more than 900,000 buildings and structures—including office buildings, warehouses, laboratories, hospitals, and family housing—worth hundreds of billions of dollars. As we have reported, the federal government leases more property than is cost-efficient, resulting in millions of dollars of additional costs to the federal government.¹ Starting in 2008, the General Services Administration (GSA), the central leasing agent for most agencies, has leased more space than it owns;² at the end of fiscal year 2010, leased square footage exceeded owned 191 million to 179 million. Because of this and other issues, we have designated the management of federal real property as a high-risk area.³ On May 4, 2011, the administration proposed legislation, referred to as the Civilian Property Realignment Act (CPRA), to reform federal real property management and disposal.⁴ Different CPRA legislation has also been introduced in the U.S. House of Representatives. Throughout this statement, any reference to CPRA is to the administration's proposed legislation. In addition to our recent high-risk report, at the request of this subcommittee, we have recently begun a new engagement to examine federal real property leasing.

My testimony today addresses (1) the factors that contribute to the government's reliance on costly leasing, (2) how CPRA may provide an opportunity to reduce reliance on leasing, and (3) federal agencies' independent leasing authorities and GSA delegations of leasing authorities. To address these objectives, we reviewed our previous work, reports by the interagency Federal Real Property Council and GSA, and

¹GAO, *Federal Real Property: Proposed Civilian Board Could Address Disposal of Unneeded Facilities*, GAO-11-704T (Washington, D.C.: June 9, 2011).

²In this testimony, we refer to property that is owned by the federal government and under the control and custody of GSA as GSA-owned property.

³GAO, *High-Risk Series: An Update*, GAO-11-278 (Washington, D.C.: Feb. 16, 2011).

⁴Letter from Jacob J. Lew, Director, Office of Management and Budget, to The Honorable Joseph R. Biden, President of the Senate (May 4, 2011), available at www.whitehouse.gov/omb/financial_fia_asset (last visited July 26, 2011).

CPRA. We shared the relevant information in this statement with the Office of Management and Budget (OMB) and GSA.

We performed this work from July 2011 to August 2011 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Leasing Decisions Are Often Driven by Factors Other than Cost-Effectiveness

One of the primary reasons we designated federal real property management as high risk was the federal government's overreliance on costly leased space to meet new space needs. Our work over the years has shown that, over the long-term, operating leases often cost more than federal building ownership, especially if they are used to meet long-term space needs. As such, increasing ownership, when appropriate, could save millions of dollars over the long-term. Federal agencies rely extensively on leasing and leased buildings covering 634.5 million square feet of space in fiscal year 2009, the most current year for which data were available. GSA leases more than 8,000 assets and now leases more space than it owns. Building ownership through construction or purchase is often one of the least expensive ways to meet agencies' long-term requirements. Alternatively, operating leases—in which periodic lease payments are made over the specified length of the lease—are often the most expensive way to meet long-term space needs. However, we have reported that over time GSA has relied heavily on operating leases to meet new long-term needs because it lacks funds to pursue ownership.⁵ For example, in 2008, we reported that if the federal government had pursued ownership instead of an operating lease for the FBI building in Chicago, Illinois, it could have saved \$40.3 million over 30 years.⁶ While federal ownership is less expensive than leasing in many

⁵See, for example, GAO, *General Services Administration: Comparison of Space Acquisition Alternatives—Leasing to Lease-Purchase and Leasing to Construction*, GAO/GGD-99-49R (Washington, D.C.: Mar. 12, 1999) and *General Services Administration: Opportunities for Cost Savings in the Public Buildings Area*, GAO/T-GGD-95-149 (Washington, D.C.: July 13, 1995).

⁶GAO, *Federal Real Property: Strategy Needed to Address Agencies' Long-standing Reliance on Leasing*, GAO-08-197 (Washington, D.C.: Jan. 24, 2008).

cases, in certain situations it is not. For example, the Department of Commerce's cyclical growth in leased space is due to the short-term needs of the Census.

**GSA's and Agencies'
Decisions to Lease Are Not
Always Driven by Cost-
Effectiveness
Considerations**

The decision to lease rather than own space for federal operations is often influenced by factors other than cost-effectiveness, including budget issues and operational requirements. Pursuant to the budget scoring rules adopted as a result of the Budget Enforcement Act of 1990, the budget authority to meet the government's real property needs is to be scored—meaning recorded in the budget—in an amount equal to the government's total legal commitment. For construction, purchase, or capital leases, the budget authority for the full cost must be recorded fully upfront in the budget to appropriately reflect the government's commitment.⁷ However, for operating leases, GSA is only required to record the government's commitment for an annual lease payment.⁸ This reduces the upfront funding commitment but generally costs the federal government more over time.

Agency operational requirements, such as immediate space needs, security requirements, or a desire for flexibility, as well as short-term or small space needs, are among the reasons why leasing is often preferred by agencies and may be more economically advantageous than ownership. From an operational standpoint, GSA and U.S. Postal Service officials cited agency mission requirements as a reason they chose leasing rather than building ownership for certain projects. For instance, postal service officials said they strive to locate buildings in areas that will optimize the efficiency of mail delivery. Thus, when deciding between leasing and constructing a building, they may consider operational factors such as the size of a facility, traffic routes, access to parking, and convenience for the customer. Other factors, such as short-term space

⁷According to scorekeeping guidelines, a lease is classified as either operating or capital, based on six criteria. If a lease meets all six criteria, then it qualifies as an operating lease; otherwise, it must be treated as a capital lease for purposes of budget scoring. For a capital lease, budget authority is required for the net present value of the total cost of the lease and property taxes (but not for imputed interest costs and identifiable annual operating expenses).

⁸Generally, for operating leases for agencies other than GSA, budget authority is required up front for the full cost of the lease or the annual lease payment plus costs associated with cancellation.

needs or the need for a small space, also may influence agencies' decisions to lease space. For instance, GSA officials said that more than 200 GSA-owned and leased buildings were damaged by Hurricane Katrina, necessitating the relocation of 2,600 federal employees from 28 federal agencies, many of which were GSA tenant agencies. To meet this emergency need, GSA expanded its use of leases to house agencies in temporary space to fulfill a short-term need.

We have raised the scorekeeping issue as a challenge in several reports and testimonies over the past 20 years⁹ and believe that if it is not addressed, reliance on leasing at a potentially high cost will persist over the long-term. To that end, in April 2007 and January 2008, we recommended that OMB, as the agency responsible for reviewing agencies' progress on real property management, develop a strategy to reduce agencies' reliance on costly leasing where ownership would result in long-term savings.¹⁰ Such a strategy could identify the conditions under which leasing is an acceptable alternative, include an analysis of real property budget scoring issues, and provide an assessment of viable alternatives. OMB agreed with the need for a strategy to optimize agencies' use of and spending on leased space that addresses how to identify those instances where agencies are relying on costly leasing.

GSA Has Faced Operational Losses Related to Leasing in Recent Years

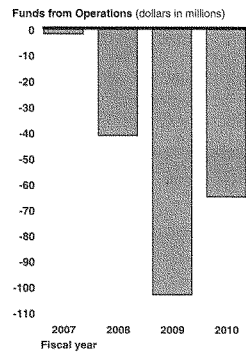
Although GSA's goal is to break even on the administrative costs of the facilities it leases from private sector owners, recent years have seen significant losses, raising concerns about the management of its leases. Tenant agencies pass lease payments plus a fee to GSA, which retains the fee and then passes the lease payment on to the private sector

⁹See, for example, GAO, *Federal Real Property: Progress Made toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349 (Washington, D.C.: Apr. 13, 2007); *Federal Real Property: Reliance on Costly Leasing to Meet New Space Needs is an Ongoing Problem*, GAO-06-136T (Washington, D.C.: Oct. 6, 2005); *General Services Administration: Factors Affecting the Construction and Operating Costs of Federal Buildings*, GAO-03-609T (Washington, D.C.: Apr. 2, 2003); *Supporting Congressional Oversight: Budgetary Implications of Selected GAO Work for Fiscal Year 2003*, GAO-02-576 (Washington, D.C.: Apr. 26, 2002); GAO/T-GGD-95-149; *Public Buildings Budget Scorekeeping Prompts Difficult Decisions*, GAO/T-AIMD-GGD-94-43 (Washington, D.C.: Oct. 28, 1993); and *Federal Office Space Increased Ownership Would Result in Significant Savings*, GAO/GGD-90-11 (Washington, D.C.: Dec. 22, 1989).

¹⁰GAO-08-197 and GAO-07-349.

owner. However, GSA income statement losses within the leased inventory, as measured by Funds from Operations,¹¹ increased dramatically in recent years to \$102.9 million in fiscal year 2009 before falling to \$64.8 million in fiscal year 2010 (see fig. 1). According to GSA, losses in leased inventory are partially attributable to the accounting treatment of different rent payments and fees in accordance with financial statement reporting requirements, but that it should still be able to cover all the extra costs with the fee it charges tenant agencies. We plan to review this issue further for this subcommittee.

Figure 1: Income Statement Losses in Funds from Operations for GSA's Leased Inventory, Fiscal Years 2007-2010



Source: GSA State of the Portfolio Report, fiscal year 2010.

¹¹Funds from Operations is derived by calculating the amount of revenue remaining after deducting all direct and indirect expenses (excluding depreciation) associated with operating a building, and provides the Federal Buildings Fund with contributions to capital towards future investments in renovations, repairs, and new construction.

CPRA May Provide an Opportunity to Reduce Overreliance on Leasing

In May 2011, the administration proposed legislation, CPRA, which may provide an opportunity to reduce overreliance on leasing. While CPRA does not explicitly address the government's overreliance on leasing, one of CPRA's purposes—to realign civilian real property by consolidating, collocating, and reconfiguring space to increase efficiency—could help to reduce the government's overreliance on leasing. CPRA would, among other things, establish a legislative framework for disposing of and consolidating civilian real property. CPRA provides for the establishment of an independent board that would recommend federal properties for disposal, transfer, consolidation, collocation, and reconfiguration after receiving recommendations from civilian landholding agencies and independently reviewing the agencies' recommendations. CPRA also provides for the independent board to recommend, with the Postmaster General's agreement, collocations of federal civilian offices into postal properties, many of which are owned by the Postal Service. Additionally, the CPRA framework could help limit stakeholder influence in real property decision making. Grouping all disposal and consolidation decisions into one set of proposals that Congress would consider in its entirety could help to balance local stakeholder influences at any individual location. We are currently examining the potential for consolidating leased facilities onto federally owned sites in the same geographic area for this Subcommittee.

Many Agencies Have Their Own Independent Statutory Leasing Authority or Have Been Delegated Leasing Authority

Many agencies have received their own independent statutory leasing authority, which authorizes them to acquire leased space. Congress provided these agencies with independent leasing authority either through their enabling legislation or through an appropriations act. The authority may be for a particular type of space or for general leasing authority. For example, the Commodity Credit Corporation of the Department of Agriculture has leasing authority for office space and storage space, while other agencies, such as the Patent and Trademark Office, have general leasing authority. Agencies with independent statutory leasing authority and their respective authorities are listed in appendix I.

GSA also has the authority to delegate leasing authority to agencies and delegates the following types of leases:

- *Categorical space delegation.* This is a standing delegation of authority from the Administrator of General Services to a federal agency to acquire a type of space, such as antennas, depots, piers, and greenhouses. All agencies are authorized to use the categorical space delegations.

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- *Special purpose space delegation.* This is a standing delegation of authority from the Administrator of General Services to specific federal agencies to lease their own special purpose space. Thirteen specifically identified agencies have special purpose leasing delegations for special types of space, subject to additional limitations. For example, the Department of Commerce is delegated authority to lease space for the Census Bureau; laboratories for testing materials; classified and ordnance devices; calibration of instruments; and atmospheric and oceanic research, maritime training stations, and radio stations.
 - *Provider of choice authority delegation.* This occurs when the Administrator of General Services has issued a standing delegation of authority to the heads of all federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years. Since 2007, GSA has limited the use of this type of delegation to lease transactions of less than 20,000 square feet. Additionally, according to GSA guidance, federal agencies must acquire and use the space in accordance with all applicable laws, Executive Orders, regulations, and OMB Circulars that apply to federal space acquisition activities.

In November 2007, GSA modified the delegation process to amend its delegations of leasing authority to acquire general purpose office space and special purpose office space. Federal agencies must now demonstrate the organizational capacity to acquire and administer the lease and establish that it is cost-effective for GSA to authorize the leasing delegation. GSA said it amended these delegations of authority to increase oversight and to facilitate compliance with all applicable laws and regulations governing the acquisition of leases, since several recent audits of its delegation program had found instances in which agencies failed to meet the conditions of their leasing delegations. For example, agencies have failed to notify GSA before conducting a specific leasing action and have used unauthorized contracting personnel to execute contracts on behalf of the federal government.

In closing, the government has made some progress toward strategically managing its real property, but the issue remains high risk due, in part, to an overreliance on costly long-term operating leases. However, the administration's proposed CPRA legislation may provide an opportunity to reduce leased properties by consolidating federal operations onto government owned sites where appropriate.

Chairman Carper, Ranking Member Brown, and Members of the Subcommittee, this concludes our prepared statement. We will be pleased to answer any questions that you may have at this time.

**GAO Contact and
Staff
Acknowledgments**

For further information on this testimony, please contact David Wise at (202) 512-2834 or wised@gao.gov regarding federal real property. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement. In addition to the contact named above, Keith Cunningham, Assistant Director; Elizabeth Eisenstadt; Jessica A. Evans; Hannah Laufe; Susan Michal-Smith; and Susan Sachs made important contributions to this statement.

Appendix I: Independent Statutory Leasing Authority

Table 1: Agencies That Have Independent Statutory Leasing Authority

Agency	Type of independent statutory leasing authority	Statute
Appalachian Regional Commission	General leasing authority	40 U.S.C. § 14306(a)(7)
Bonneville Power Administration	General leasing authority	16 U.S.C. § 832a(c)
Central Intelligence Agency	General leasing authority for lease with a maximum 15-year term	50 U.S.C. § 403f(a)(7)
Coast Guard	General leasing authority	14 U.S.C. § 92(f)
Corporation for the Promotion of Rifle Practice	General leasing authority	36 U.S.C. § 40703
Department of Agriculture, Commodity Credit Corporation	Leasing authority for office space and storage space	15 U.S.C. § 714b(h)
Department of Agriculture	Authority to acquire land, or interests therein for water conservation and soil erosion purposes	16 U.S.C. § 590a
Department of Agriculture	Grants the Secretary of Agriculture authority to establish a pilot program at the Beltsville Agricultural Research Center and the National Agricultural Library enhanced used leasing authority to enhance the use of real property by leasing nonexcess property to an individual or entity	Food Conservation and Energy Act of 2008, P. L. No. 110-246, Section 7409
Department of Defense	Lease-purchase authority for offices, troop housing, and other purposes on military bases. May not exceed 32 years and shall provide that at the end of the term title shall vest in the United States.	10 U.S.C. § 2812
Department of Homeland Security, Transportation Safety Administration	Authority to lease real property or any interest therein	49 U.S.C. § 114(i)(1)
Department of Homeland Security	Authority to acquire land, including temporary use rights, adjacent to or in the vicinity of an international land border when the Secretary deems the land essential to control and guard the boundaries and borders of the United States	8 U.S.C. § 1103(b)
Department of Homeland Security, Immigration and Customs Enforcement	Authority to lease any existing prison, jail, detention center, or other comparable facility suitable for such use	8 U.S.C. § 1231
Department of Interior	Leasing for National Park System buildings and leasing in connection with the Fish and Wildlife Service's duties relating to marine mammals	16 U.S.C. § 1a-2(k) and 16 U.S.C. § 1382(c)
Department Of Justice, Federal Bureau of Investigation, Drug Enforcement Administration, and Federal Bureau of Prisons	General authority to acquire buildings by purchase or otherwise	P. L. No. 106-113, Appendix, Title I (Nov. 29, 1999)
Department of Labor, Job Corps	General leasing authority in furtherance of workforce investments	29 U.S.C. § 2939(b)
Department of the Treasury	Secretary's authority to lease customs warehouses	19 U.S.C. § 1560
Department of Veterans Affairs	Leasing authority for medical facilities	38 U.S.C. § 8103

Appendix I: Independent Statutory Leasing Authority

Agency	Type of independent statutory leasing authority	Statute
Federal Aviation Administration	Leasing office space and other special-use space; general leasing authority and authority to lease airspace adjacent to airports or other facilities not to exceed 20 years	49 U.S.C. § 106 and 49 U.S.C. § 40110
National Aeronautics and Space Administration	Leasing authority for laboratories, research, and testing sites and facilities	51 U.S.C. § 20113(c)
National Cancer Institute	General leasing authority exclusive of Washington, D.C., or adjacent areas	42 U.S.C. § 285a-2
National Institute of Health	Leasing authority for buildings in Washington, D.C., area	42 U.S.C. § 282(b)(14)(B)
National Institute of Standards and Technology	Leasing authority for rental of field sites and laboratory, office, and warehouse space	15 U.S.C. § 278e(c)
National Science Foundation	General leasing authority	42 U.S.C. § 1870(e)
National Transportation Safety Board	General leasing authority	49 U.S.C. § 1113(b)(1)(B)
Panama Canal Commission	General leasing authority for office space in the United States	22 U.S.C. § 3712a
Patent and Trademark Office	General leasing authority	35 U.S.C. § 2(b)(3)
Public Health Service, National Research Institute, National Heart, Lung, and Blood Institute	General leasing authority exclusive of Washington, D.C., or adjacent areas	42 U.S.C. § 285b-3
Rural Electrification and Telephone Service, Rural Telephone Bank	General leasing authority	7 U.S.C. § 942
Securities and Exchange Commission	General leasing authority	15 U.S.C. § 78d(b)(3)
Tennessee Valley Authority	General leasing authority	16 U.S.C. § 831(f)
United States Postal Service	General leasing authority	39 U.S.C. § 401(5) and (6)
United States Trade Representative	General leasing authority	19 U.S.C. § 2171
Commodities Future Trading Commission	General leasing authority	7 U.S.C. § 16
Office of the Comptroller of the Currency	Authorizes the Office of the Comptroller of the Currency authority to acquire real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of the Office of the Comptroller of the Currency	Dodd Frank Reform and Consumer Protection Act, P.L. No. 111-203, codified at 12 U.S.C. § 5416

Source: General Services Administration.

Note: This list of agencies with independent authority dated April 9, 2009, was prepared by the General Services Administration. It is not intended to be a complete list of all agencies that have independent leasing authority because agencies may have acquired authority since the list was initially compiled either through enabling legislation or through their annual appropriations acts. While the list was updated since 2009 to add two agencies, this update was not part of a major effort to update the list. The General Services Administration, through the Public Building Service, is authorized to lease office space on behalf of federal agencies pursuant to the Federal Property and Administrative Services Act of 1949, as amended § 40 U.S.C. 585. The statute provides that such leases may be for a duration of up to 20 years. A variety of other agencies and executive branch entities, including independent establishments, government corporations, and commissions, have been vested with separate authority to enter into leases for office space or general-use space.