ASSESSING VA'S CAPITAL INVESTMENT OPTIONS TO PROVIDE VETERANS' CARE

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
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Thursday, June 27, 2013

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [Chairman of the Committee] presiding.

Present: Representatives Bilirakis, Roe, Flores, Runyan, Benishek, Huelskamp, Coffman, Walorski, Michaud, Brownley, Kirkpatrick, Negrete McLeod, O'Rourke, Walz.

Also Present: Representatives Boustany, Neugebauer.

OPENING STATEMENT OF HON. BILL FLORES

Mr. FLORES. The Committee will come to order.

Chairman Miller has a scheduling conflict for the opening of this meeting and perhaps more of it than that, and he has asked me to step in and chair the meeting until such time as he gets here.

By the way, for what it is worth, today is Chairman Miller's birthday, so when you see him, you might want to give a hardy congratulations on being 49 plus one or two.

Before we begin, I would like to ask unanimous consent for our colleagues, Charles Boustany from Louisiana and Randy Neugebauer from Texas, to sit at the dais and participate in today's proceedings when they get here. Hearing no objection, so ordered.

Good morning and welcome to today's Full Committee hearing, Assessing VA's Capital Investment Options to Provide Veterans' Care.

As today is National Post-traumatic Stress Disorder Awareness Day, I would like to take a brief moment to address those veterans experiencing post-traumatic stress disorder who may be in attendance or listening.

Hope and healing are possible and I encourage you and all of those suffering to reach out for help. You can call 1–800–273–TALK. That's 1–800–273–8255 and press one for veterans.

Now, turning our attention to what we are gathered here today to discuss—the potential for a new paradigm of care for our veterans through the Department of Veterans Affairs' (VA's) capital investment programs.

As many of you know, when this Committee was considering legislation to authorize VA's major medical facility projects and leases last year, the Congressional Budget Office, or CBO as we call it, raised concerns about how to properly account for VA's lease authorizations.

CBO after soliciting and receiving additional information from VA about the lease contracts determined that such leases should be classified as capital leases rather than as operating leases as CBO had done in the past.

This new scoring criteria resulted in new challenges to our ability to authorize VA's leases as under CBO's new scoring construct they now constitute significant direct spending costs that must be offset under statutory PAYGO requirements and House and Senate budget rules.

For the 27 pending leases, that means finding more than $2.3 billion in up-front savings from other government programs.

This issue is not one of politics or party nor is it one that pits one body of Congress or one branch of government against another. Rather, this is an issue that all of us who are tasked with providing high-quality care and services for our veterans are facing together and it is one that will take our collective effort to resolve.

VA has proposed 27 major medical facility leases, most of them for community-based outpatient clinics in the current budget. Of these, 21 are expansions or consolidations of existing lease facilities and six are new leases.

Let me be clear. The needs of our veterans in those areas are going to be met, but how those needs will be met in light of CBO's reclassification of VA's lease authorization request is what we will discuss today.

Information VA has circulated to Members of Congress about the status of the pending lease request includes a statement that says, I quote, "Until last year, enactment of these leases has been a fairly routine annual exercise," unquote.

I do not take that as a compliment and neither should the department. Expending our hard-working taxpayer dollars on authorizing costly capital investment projects should never be a matter of routine. Rather, it should be a responsibility that is taken seriously, evaluated carefully, and scrutinized constantly to ensure that the capital investments we are undertaking are expanding our veterans' access to care and not just expanding VA's bureaucratic reach.

Last year, Chairman Miller committed to working closely with VA, CBO, and our colleagues in the Senate to find a way forward for VA's major medical facility lease program to provide high-quality care and services for our veterans. That commitment remains today for Chairman Miller as well as the rest of this Committee.

However, we can no longer afford to invest our time arguing about the merits of CBO's scoring determinations. That does not get our veterans closer to the care they need which is the goal that we all share and that we must achieve.

Absent a way forward to either adhere to CBO's ruling and pay for these leases or collectively decide to waive our budget rules, we must take a hard look outside the box to assess our options for developing these projects.

Those options include new constructs for public-private partnerships, joint collaborations, and other avenues of care. That is what I look forward to discussing here today.

I now yield to our Ranking Member, Mr. Michaud, for any opening statement he may have.

OPENING STATEMENT OF HON. MICHAEL MICHAUD

Mr. MICHAUD. Thank you very much, Mr. Chairman, for having this very important hearing today.

Ensuring that the Department of Veterans Affairs has the proper infrastructure and facilities to provide safe, effective, quality health care to our veterans is a priority of mine and a priority of this Committee to make sure that that happens.

Some of the ways in which VA provides this care is through construction programs, sharing agreements, collaboration, and other Federal agency and leasing authority. This is an important hearing and an important step in our ongoing discussion regarding how we can best meet these infrastructure and facility needs of the VA this year and in the years and decades to come.

The VA has an ever-increasing backlog of construction requests. Along with this backlog, they are facing an environment of constrained Federal spending and uncertainty regarding where our veterans will live and how in the decades to follow will medicine be provided to our veterans.

The VA has an inventory of many facilities that are over 50 years old and that were built to provide medicine in a way that it was provided following World War II. We must ensure that the facilities we build today will meet the needs of the future and that we build or acquire them at a reasonable cost.

One way VA meets its infrastructure needs today is through seeking authorization for major medical facility leases as required in statutes. In light of recent events regarding a change in the way that the Congressional Budget Office treats VA medical facility lease authority for scoring purposes, the time has come to look for an alternative solution. This hearing is an important step to begin that discussion.

Last year, the CBO has determined that VA leases were similar to contracts for acquiring facilities and, thus, a form of third-party financing as compared to operating leases. CBO's decision decided that in the views that this third-party financing was equivalent to a government purchase of the asset and, therefore, the cost should be recorded up front as compared to spread out annually over the duration of the lease as in the practices of operating leases and how VA medical facilities' lease requirements were scored in the past.

For 20 years, CBO has been scoring VA's facility leases as operating leases. However, in preparing the cost-estimate for the construction authorization for fiscal year 2012, CBO received additional information from VA that caused CBO to determine that facility leases were executed more like capital leases and, therefore, the cost of these leases should be recorded up front for budgetary purposes.

This determination led to CBO's score of $1.2 billion in direct spending for the leases originally contained in the fiscal year 2012 construction bill. Because offsets could not be found for the lease, the leases were stripped out of that bill.

For over a year now, we have been unable to come to a solution or put forth alternative ideas to solve this problem. In all honesty, it has been disappointing and I hope that this hearing will provide some open discussion from all parties involved.

I would like to hear from our witnesses today whether there was a change in VA's policy regarding the types of leases it is undertaking. I want to hear from both panels on what they have done together to try to solve this issue.

Is it a matter of disagreeing on definitions or terms or does it need a legislative fix to solve the problem? Has VA looked at alternative ways besides the major medical facility lease program as it is currently operating to provide services to our veterans? I have many more questions without answers.

What I do know is if we do not find a way forward, over 340,000 veterans, 340,000 veterans in 20 states could be negatively affected by this. That is simply unacceptable and we must find a way forward.

In short, I would like to learn from our witnesses where we go from here not just in terms of VA's medical facility lease program but where do we go from here in terms of providing the infrastructure needed to provide a world-class health care system for our veterans this year and 20 years from now.

So I look forward to hearing the witnesses today. And I want to thank all the panelists today as well.

And I want to thank you, Mr. Chairman, and I yield back the balance of my time.

[THE PREPARED STATEMENT OF HON. MICHAUD APPEARS IN THE APPENDIX]

Mr. FLORES. Thank you, Mr. Michaud.

I would now like to welcome our first panel to the witness table. With us today from the CBO is Mr. Robert A. Sunshine, the Deputy Director of that organization.

Sir, thank you for being here today. You may now proceed with your testimony. We have five minutes allotted for that.

STATEMENT OF ROBERT A. SUNSHINE

Mr. SUNSHINE. Thank you, Mr. Chairman.

Mr. Chairman, Congress Michaud, Members of the Committee, thank you for inviting me here today to discuss the budgetary treatment of VA's leases of medical facilities.

I should note that veterans' medical centers are important to our Nation and to our veterans and we are not questioning their value or their importance.

What we address, what our job is to address, is how transactions are treated in the budget. And so that is what I will talk about today.

So let me begin by describing CBO's role in the process. Our job is to provide the Congress with the best possible information about the nature and magnitude of the government's financial commitments that would result from any particular legislative proposal.

CBO does not determine what kinds of purchases agencies can make or what kinds of leases they may enter into nor does CBO determine how agencies record those transactions in their budgets. That is up to the agencies and the Office of Management and Budget. Our job is to score legislation.

How do we analyze proposed purchases or leases of property? CBO assesses the government's financial commitment by taking

into account both the form and the substance of a transaction. We do that because over the years, we have encountered a number of transactions that were structured to appear one way but fundamentally were something very different.

The most vivid example that I recall occurred several years ago when the air force wanted to replace the aging fleet of tanker aircraft that it uses to refuel other aircraft in the air. It presented a very complicated financial plan whereby Boeing would build the aircraft to the government's specifications and the air force would rent them for 20 years.

CBO determined that under that plan, the air force was essentially buying the aircraft but in a way that it hoped would avoid the need for a large up-front appropriation to pay for them. That plan was also more expensive than a straightforward purchase would have been.

That was an example of what we call third-party financing. That is, rather than using its resources to acquire a capital asset, the government structures a transaction so that a private entity borrows the money to build the asset and the government through a stream of future payments pays off most or all of that debt.

My written statement describes other examples of such financing including energy savings performance contracts, enhanced use leases, lease-back ventures, and military housing privatization.

Although projects that use third-party financing employ a variety of contractual arrangements and can result in the acquisition of many kinds of assets, they generally have several features in common. In most cases, the government initiates the project, selects the developer, and specifies the project's parameters.

It has significant economic interest and retains substantial control, and it serves as the sole or primary source of capital backing the project's financing.

By seeking to spread acquisition costs over many years, those transactions aim to achieve a budgetary treatment that is at odds with the established principles of Federal budgeting which require agencies to record the costs of government investments when they are made.

Under that treatment, third-party arrangements may be subject to less scrutiny in the appropriation process and they may skew decisions about how to allocate budgetary resources by giving preferential treatment to investment projects on the basis of how they are financed rather than on their merits.

Moreover, because private entities pay more to borrow than the government does, third-party financing is more expensive than straightforward government financing. Although VA classifies its leases of medical facilities as operating leases, most of them in CBO's judgment are akin to government purchases, facilities built specifically for VA's use, but instead of being financed by the Treasury, they rely on third-party financing.

These leases have many of the following key features that lead to that conclusion. They are designed and constructed at the government's request. The contractual agreements are long-term and match the private partner's financing instrument for constructing the facility. The Federal Government commits to make fixed annual payments sufficient to service much or all of the debt incurred

to construct the facility and payments from the Federal Government are the only or the primary source of income for facilities and are sufficient to retire most or all of the debt over the life of the lease.

Entering into an operating lease is similar to renting an apartment. A renter can move out after a short period with no further commitment. But VA's built-to-lease contracts are similar to obtaining a mortgage to buy a house. The agency acquires an asset along with the liability to pay for, but then gives it back after it has paid for it.

Because those transactions are essentially governmental purchases, CBO has determined that budget authority for most leases of VA medical facilities should be recorded up front when leases are initiated in amounts equal to the development and construction cost of the facilities. That is, the cost should be recorded when the acquisition occurs, when the government is actually buying a facility as is done for most other purchases that the government makes, not when the debt is repaid.

Thank you again for the opportunity to explain our analysis and I would be happy to answer any questions you may have.

[THE PREPARED STATEMENT OF ROBERT A. SUNSHINE APPEARS IN THE APPENDIX]

Mr. FLORES. Thank you, Mr. Sunshine.

I will now yield myself five minutes for questions.

The first question is, what would need to change about how VA contracts for build-to-suit medical facility leases for CBO to consider them operating leases rather than capital leases?

Mr. SUNSHINE. I think the key question is, is the facility being built for the government and largely paid for by the government. If the facility is being built for general such that the government is maybe committing for three years or five years and the builder may then have—the government may or may not renew it and the builder is at risk for who may occupy the building after that.

I mean, that is just like if the government enters into a lease for an office, general office space for a few years. The government is not on the hook for that space.

And I think the key question is, is the space being built for the government and is the government essentially paying for it by the commitment that it makes up front. If it is not paying for it by the commitment that it makes up front, then that is, I think, a different situation.

The question is, can you get someone to build it when the government is only on the hook for three years or five years or something like that.

Mr. FLORES. As I understand it, CBO's scoring of VA's 20-year leases, is based on the assumption that these lease agreements will extinguish the full debt of the third-party developer or builder during the lease term of the clinic. But some developers have said that that is not necessarily the case.

Now, in such a situation, if CBO were provided with information that the debt is not retired in full by the VA lease payments on that development project, would this affect how CBO scores that arrangement?

Mr. SUNSHINE. I think the question is not whether the debt is a hundred percent or 99 percent. The question is, is the government paying for most or all of the building. And we have not defined some specific cut-off point. If the government is paying for 30 percent of the building, I think that is very different from when the government is paying for 90 or a hundred percent of the building.

Mr. FLORES. Okay. Please respond to the statement that came from the Office of Management and Budget that they put in a letter to Senator Mary Landrieu that says, and I quote, "In contrast to CBO, OMB does not score the legislative authorization of leases with a PAYGO budgetary cost. Instead, OMB's view is an authorization bill is like any other authorization that must be funded through separate legislation before the agency can use the leasing authority. In the cases of leases for VA medical facilities, the funding will be provided in annual appropriations bills," unquote.

Mr. SUNSHINE. I think the problem that has been created that you are facing is that the law requires congressional approval of leases that involve payments of more than a million dollars a year. The authorization of those leases creates the authority for the agency to enter into them.

And the way they are being treated, they actually enter into them without sufficient appropriations to cover them. They do not have 20 years worth of appropriations. They do not have the appropriations to cover, that is the problem, they do not have the appropriations to cover the cost of the facility which is why we are scoring the legislation approving the leases as creating contract authority, giving them the authority to making that financial commitment which is actually not being charged against appropriations because they do not have sufficient appropriations to do it.

Mr. FLORES. I have got one final question in my allotted time. VA major medical facility community-based outpatient clinics' leases can fall into several categories, one being a contracted CBOC where the space and the staff are not VA personnel.

Does the CBO's current scoring impact these existing privatized CBOCs or VA's ability to use service arrangements for future privatized facilities? Can you explain that?

Mr. SUNSHINE. I think if I understand correctly, the agency has the authority now to enter into service contracts and they are doing some of that. And, in fact, if there is no legislation required for them to do that, then we are not involved because our job is to estimate the impact of legislation.

And if they have the authority to do it without legislation, then there is no role for us to play. And if there were legislation needed, we would have to look at that and think about what consequences that would have. But I think a service contract is very different from a building of a building.

Mr. FLORES. Okay. Thank you.

I now yield Mr. Michaud five minutes for his questions.

Mr. MICHAUD. Thank you very much, Mr. Chairman.

Thank you very much, Mr. Sunshine, for being here this morning.

For budgetary scoring purposes, how would CBO treat a mixed-use facility such as when VHA and VBA collocate in the same building?

Mr. SUNSHINE. Mixed use like multiple government agencies?

Mr. MICHAUD. Yes.

Mr. SUNSHINE. I do not think that would make any difference. As long it is all the government, I think that is what we would look at.

Mr. MICHAUD. So you would not treat that differently?

Mr. SUNSHINE. No.

Mr. MICHAUD. Okay. I would like to follow-up also on the same letter that the Chairman mentioned from Senator Landrieu and Representative Boustany that was sent to the congressional services.

CRS said that if Congress effectively leaves it to the Office of Management and Budget to determine the cost of the legislation and OMB determines that the legislation does not increase direct spending, then no budgetary effects would be recorded on the PAYGO score card.

Is that accurate?

Mr. SUNSHINE. Well, there are multiple rules that you are grappling with. One is the statutory PAYGO score card and OMB determines unless directed otherwise by the Congress what goes on that score card.

There are also congressional PAYGO rules that in general, the budget committees rely on us for the scoring. So, yes, the statutory PAYGO would be dependent on how OMB scores things. Congressional budget enforcement generally relies on CBO's estimates.

Mr. MICHAUD. So that statement is accurate then?

Mr. SUNSHINE. Yes, I believe. Yes.

Mr. MICHAUD. Okay. You know, after 20 years of scoring VA major medical facility leases as operating leases, can you explain the difference in what you looked at during preparation for the scoring for the fiscal year 2012 construction facility lease as opposed to prior years? What was the difference?

Mr. SUNSHINE. I looked at an estimate that we wrote, I think in 2004 and 2005, and we said, well, we are assuming these are operating leases, but we are not quite sure what they are like. I mean, agencies do not send us their leases. They do not ask us to approve them or review them.

So in the course of doing the bill in 2012, we actually started learning things that we did not know before. And we learned and we actually have seen copies of lease agreements and some of the contracts that have been entered into.

So we learned a lot that we did not know. And, I mean, we should have known it earlier and we should have informed the Congress earlier about the nature of these transactions, but we did not. And we got much more information last year and that caused us to rethink how we should treat these in our estimates.

Mr. MICHAUD. You said much more information you got last year. What is that much more information?

Mr. SUNSHINE. Well, we got information mostly from VA about the nature of the leases and we actually have some of the specific lease contracts and some of the agreements with builders and some of the actual documents that are involved in these transactions.

Mr. MICHAUD. Okay.

Mr. SUNSHINE. And we had not seen those before because that is not a routine kind of thing that we would ordinarily have.

Mr. MICHAUD. Can you explain the difference between special purpose improvements and special purpose assets?

Mr. SUNSHINE. No. I am sorry.

Mr. MICHAUD. And so you do not know where those definitions come from and——

Mr. SUNSHINE. No. Those terms are not terms that I am familiar with.

Mr. MICHAUD. Do the Department of Veterans Affairs and the CBO, when you said you got more information which determined why you made the different decision that you did.

Have you worked with the VHA or the department to try to work out the differences in the leases, language so that it would not have to be scored up front?

Mr. SUNSHINE. I think we have gotten information from the department as to how the leases work. They may have asked our staff questions about how they could change them, but I do not know that for sure.

Mr. MICHAUD. So it could be the reason why you are doing it differently this time around is because your agency saw more information and the definitions—you are interpreting a little bit differently because you saw that information?

Mr. SUNSHINE. Yes. We got a lot more information last year than we had previously had about how many of these leases are structured. And we had not known that before.

Mr. MICHAUD. Thank you, Mr. Chairman.

Mr. FLORES. The gentleman's time has expired.

Mr. Benishek, you are recognized for five minutes.

Mr. BENISHEK. Thank you, Mr. Chairman.

People enter into leases for a lot of different reasons and I do not understand how you can just say that a lease is the same as a purchase. I mean, I do not understand that. It is not the same as a purchase.

I mean, people conduct leases all the time that they end up paying for the construction of the building. Otherwise, the building would never get built. That happens in the private sector, you know, all the time, you know, a build-to-suit situation. So I just do not understand why that you would treat this as a purchase.

Can you explain that to me and maybe make it easier for me to understand?

Mr. SUNSHINE. Yeah. I mean, I guess our view is——

Mr. BENISHEK. You do not end up with the property at the end, so it is not a purchase. You keep calling it a purchase, this is essentially a purchase, but it is not a purchase. It is a lease. There is a difference.

Mr. SUNSHINE. But essentially the government is specifying where it wants the building, what kind of building it wants, and it is paying for most or all of it by entering into a long-term commitment. And we view that as fundamentally equivalent to a purchase. It is not structured like a purchase. It does not look like a purchase. And, again, I mean, we could wind up with——

Mr. BENISHEK. Is that a——

Mr. SUNSHINE. —it at the end or not wind up with it at the end. But from our perspective, it is almost the same thing as the government building the building itself except we are paying someone else to do it and someone else is borrowing the money and we are paying it off over time.

Mr. BENISHEK. Let me ask——

Mr. SUNSHINE. I mean, if we were only paying for 20 percent or 30 percent or leasing it for five years, I think that would be a whole different thing as opposed to a really long-term lease where we are basically paying for most or all of the cost of building the building.

Mr. BENISHEK. Well, your argument to me does not hold any water at all. Okay. I mean, it just does not make sense to me. I can understand your argument of saying there is not appropriations for the 20 years of lease. Okay. That argument I can accept.

But the fact that you just seem to be able to have the authority to call it a purchase when it is not, I do not see how you give that any authority.

When the Federal Government leases a building, does that property owner pay local taxes?

Mr. SUNSHINE. I assume so.

Mr. BENISHEK. Does the government pay local taxes when they own the building?

Mr. SUNSHINE. I do not think so.

Mr. BENISHEK. That is what my thoughts are as well. You know, so taking property off the local tax role is a significant issue, I think, in many small communities where these CBOCs are because I have got them in my communities. And, you know, they are offset with Federal land and there are communities that do not pay any taxes to support their schools and that.

And the other thing is that when the government builds something, I do not know that they manage it the same as somebody else building something and then leasing it to the government. I think that the overall cost of the lease is actually much less than the overall cost of the purchase.

Have you done any actual comparisons of similar things in your analysis?

Mr. SUNSHINE. Our staff thinks that the additional cost both in terms of financing and various fees that are associated with these private sector kinds of transactions are greater, in cases noticeably greater——

Mr. BENISHEK. But construction management——

Mr. SUNSHINE. —than if——

Mr. BENISHEK. —of the Federal Government——

Mr. SUNSHINE. —the government just went and built it. Now, the government does not always build things so well.

Mr. BENISHEK. That is my impression is that the Federal Government construction costs are, you know, head and shoulders above private sector construction costs. And it would be my thought that a lease is overall much cheaper for the government and provides a local tax base for the local community as well.

And, you know, it seems to me that you have an argument here that argues the opposite way without any evidence of that.

Mr. SUNSHINE. I mean, our concern is making sure that the nature of the government's commitment is accurately reflected in the budget and whether the government should be leasing things or buying things is a choice that the Congress and the agencies should make based on their best analysis of the details that we cannot get into.

Mr. BENISHEK. Right. But, I mean, I understand that argument.

Mr. SUNSHINE. Our objective is just to try to capture in the budget numbers the nature of the government's commitment.

Mr. BENISHEK. Right. Well, that portion that you said, the money is not appropriated for the 20 years, I mean, that is a valid argument. But if the money is appropriated, for example, to hire you, the money to keep you on staff for the next ten years is not appropriated at this time, you know, that is not a good argument to me.

Thank you.

Mr. FLORES. The gentleman's time is expired.

Mr. O'Rourke, you are recognized for five minutes.

Mr. O'ROURKE. Thank you, Mr. Chair.

I find the decision that the CBO has made frustrating and inconvenient, especially for the constituents I represent. We have nearly 80,000 veterans. We are not served by a full-service medical facility which means many of them have to travel ten hours round trip to Albuquerque, New Mexico to receive treatment. And the decision that CBO has made narrows our options.

But having said that, it is hard for me to argue with the logic behind the conclusion that you have reached. I can understand that. And I think that we have to be honest with ourselves about the purchases and obligations that we make. We have to be honest with the taxpayer and we have to be consistent in the rulings and how we score these things for all agencies and departments.

And so my first question is, and you hit on this in your opening statement, is this how we score every facility lease or purchase across every department and agency in the Federal Government, DoD, HHS, et cetera, et cetera?

Mr. SUNSHINE. Well, for the most part, agencies do not need legislative authorization to enter into leases which is, I think, an unusual factor that relates to VA. But in terms of how things are recorded in the budget, the answer is yes.

The circular A-11 that governs, OMB's circular A-11 that governs how these kinds of things are treated in the budget specifies that the cost of capital leases and, in fact, the cost of operating leases that are multi-year are supposed to be charged up front in the budget in the year that the commitment was made.

So when we build dams or roads or prisons or space shuttles or aircraft carriers, yes, the funding is required up front in order to pay for them.

Mr. O'ROURKE. And you said for the most part, other agencies and departments do not require legislation for these kind of capital investments, these facility investments.

Except for the most part, what are those agencies or departments that have——

Mr. SUNSHINE. I am not sure. I mean, I am not sure. I do not know if anyone knows. I am not sure there is any other situation

where we are involved in assessing legislation that authorizes leases. There may be, but I am not aware of it. It is pretty unusual.

Mr. O'ROURKE. Okay. And then to ask another scenario based on this decision, if there is a third party, say a private hospital or another public entity hospital at some other level of government that has space and leases that space to the Federal Government and that space was not constructed with the specific intent of providing that space for the VA, that would be treated as an operating lease under this logic and——

Mr. SUNSHINE. It sounds to me if it were for a few years and the space already exists, yes.

Mr. O'ROURKE. And is there a time limit? What if the lease is for 20 years to use the example that we have been using today?

Mr. SUNSHINE. There are limits on the length of leases that agencies can enter into. I think for the most part, I think operating leases are not supposed to be more than five years. I am not a complete expert on all these rules. But I think if they were for three years or five years or something like that, that would be generally considered an operating lease.

Mr. O'ROURKE. And I saw you looking back to your staff to see if there were other comparable agencies or departments or scenarios like the one that we are talking about with the VA.

I would like to follow-up with you and your office and explore different scenarios based on this ruling, assuming it stands, to find out how we get the job done for El Paso and communities like ours that desperately need these facilities and need to be creative and innovative in how they finance and construct them.

And with our options now being limited, it really means that we have got to be creative and fully understand how these kinds of rulings are applied across all Federal departments or agencies. So look forward to your responsiveness to those questions as they come forward.

Mr. SUNSHINE. We would be delighted to work with the Committee to try and figure out ways to address the issue.

Mr. O'ROURKE. Thank you.

Thank you, Mr. Chair.

Mr. FLORES. The gentleman yields back.

Mr. Huelskamp, you are recognized for five minutes.

Mr. HUELSKAMP. Thank you, Mr. Chairman.

Mr. Sunshine, just a couple questions. You do make reference to the requirement of specific authorization for leases in excess of $1 million.

Any of these that we have been provided by the Committee, do they exceed that million dollars per year lease ceiling?

Mr. SUNSHINE. The leases that are being proposed, I believe at least many of them do.

Mr. HUELSKAMP. Many of them do?

Mr. SUNSHINE. Yeah, many of them do.

Mr. HUELSKAMP. Okay. And curious as well, do you have that, and I am sure the department does, do you have information on the cost per square foot on these leases? Do you all see that?

Mr. SUNSHINE. I do not have that. I am sure the department can give you that.

Mr. HUELSKAMP. All right. And more specifically, I do understand, as my colleague has indicated, you know, the issues here, I think, as far as accounting and the budget and requirements for transparency and obligations.

And what is the solution here? What would you recommend Congress do as a solution here?

Mr. SUNSHINE. CBO is not supposed to make recommendations. But, I mean, the options are limited. I mean, one way is, okay, we fund these things the way we fund other construction in the government. We provide however much money we need to build whatever it is that we want. And we make the tradeoffs between those costs and other costs in the budget.

You know, we have the caps on discretionary funding and the Congress has to make the tradeoffs between different things. And so one option is, all right, these are important, we will have to provide funding for them and we will have to have less funding for something else. That is one solution.

Another solution is I think the service contract idea which I have seen may be an option that works. And I think that may, in fact, not even require legislation. And if there are ways to enter into actual real short-term operating leases, that is another way to approach it.

Mr. HUELSKAMP. So aside from your thoughts that perhaps this approach for the department was more expensive than other alternatives, simply approving them in a similar manner that we do in most other departments would solve the problem for the CBO?

Mr. SUNSHINE. Well, yeah. I mean, the reason that there is an issue is simply because these are being funded and arranged in ways that are different than the way other construction projects are generally done.

In general, the government goes out and builds things or buys things and it pays for them. And the appropriation committees provide the money to do that.

This is a different kind of arrangement and the way it has been working is the appropriators actually have not been providing the money up front to do it.

Mr. HUELSKAMP. And if I understood your comments earlier, this is unusual in terms of other agencies across the Federal Government?

Mr. SUNSHINE. Yeah. I mean, in our written statement, we noted that there are a number of other occasions where we have encountered proposals for third-party financing, but it is not widespread.

Mr. HUELSKAMP. Uh-huh. Are there other agencies you would say that you know of that are using this as well or is this the only one that is significant?

Mr. SUNSHINE. I do not know that we are aware of that there are lots of other things like this around.

Mr. HUELSKAMP. Okay. All right. Thank you.

I yield back, Mr. Chairman.

Mr. FLORES. The gentleman yields back.

Ms. Negrete McLeod, you are recognized for five minutes. No questions? Okay.

Mr. Bilirakis, I believe you are next. You are recognized for five minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it.

And thank you, Mr. Sunshine, for coming and testifying and I appreciate the CBO's explanation of the recent changes regarding VA leases.

Could you address, I know this was touched upon, but it is worth asking again, could you address why CBO has decided now to change the way they score the VA leases? What was the catalyst for this reexamination?

Mr. SUNSHINE. The catalyst was when we were working on the authorizing legislation last year and we asked perhaps more than we had asked before about the details of what kinds of leases the VA was entering into.

And it has been doing these kinds of leases for a long time, but we actually learned, I think for the first time last year, and got much more detail information than we had had previously as to the nature of the leases. And we have actual copies of some of them and other background information about them. We got it last year when we were working on the authorization bill.

So we have not changed our theory as to how these things should be scored, but we learned enough about them to learn that they are different than what we had—they had always been called operating leases and, okay, there are ways one treats operating leases. And it was only last year that we realized that they really did not fall in that category.

Mr. BILIRAKIS. Okay. Thank you.

Mr. Chairman, I plan to ask more questions in the second round. Thank you.

Mr. FLORES. For the second panel?

Mr. BILIRAKIS. Second panel.

Mr. FLORES. Okay. The gentleman yields back.

Ms. Brownley, you are recognized for five minutes.

Ms. BROWNLEY. Thank you, Mr. Chair.

And thank you, Mr. Sunshine. I think we were all hoping that you could bring a little bit more sunshine to the problem here, but appreciate your testimony.

And I am just curious within the CBO how a decision like this is made. Is it your decision? Is it a group of experts that get together to evaluate this? Who is the final decision-maker?

Mr. SUNSHINE. The final decision-maker at CBO is always the director. But the way we do it is we have a staff of very talented analysts and we have unit chiefs and we have a general counsel. And on difficult, complicated questions, we would probably gather four or five or six people together and exchange emails, have a meeting, and discuss exactly what the appropriate approach was.

So there were numerous people involved in making this judgment.

Ms. BROWNLEY. So that is what you described is what happened when this bill, you said last year's bill was the catalyst——

Mr. SUNSHINE. Uh-huh.

Ms. BROWNLEY. —to all of this? That is what happened?

Mr. SUNSHINE. And a number of those very smart people are here this morning.

Ms. BROWNLEY. Okay. And so you had also mentioned that, you know, it is not CBO's role to make recommendations toward solu-

tions, strictly, you know, doing what is right from an accounting perspective.

So if you are analyzing all of this and looking at it deeply, you also mentioned that you have learned a lot from these leases. You have looked at other agencies and their leases. So you have gathered all of this information but not necessarily in a position of recommending solutions.

Who would we go to to recommend solutions? Clearly, you know, the end result of all of this is not a good one because we desperately need the facilities and we have great demand to provide the health needs for our returning veterans.

And so where would we go to get recommendations on this? We know that we cannot have the facilities, but the end goal here is to have the facilities.

Mr. SUNSHINE. I would imagine that VA has some interesting ideas as to how to approach it. The folks at OMB may have some thoughts. And we are happy to work with the Committee and explore, if people come up with some ideas that perhaps we have not thought of, to explore what kind of legislation would be necessary and how we would score such legislation. We would be happy to work with you on that.

Ms. BROWNLEY. So in your opinion, is legislation really the only option here in terms of fixing the problem?

Mr. SUNSHINE. I do not know that that is necessarily true.

Ms. BROWNLEY. Okay.

Mr. SUNSHINE. As I said, we have heard mention of the service contract concept. And as I understand it, I do not have great expertise in this, my understanding is that the department may not need legislation to do those kinds of things. And if so, then we are really not involved. There is nothing for us to do or say about it.

Ms. BROWNLEY. Thank you.

I yield back.

Mr. BENISHEK. Will the gentleman yield for a moment? Would you yield me a minute?

Another question came to mind. What exactly was the new information that you got that made you determine that you had to change the way you did the lease? I mean, didn't you know that it was a 20-year lease before?

Mr. SUNSHINE. No.

Mr. BENISHEK. Oh, you did not know that?

Mr. SUNSHINE. No.

Mr. BENISHEK. But that had been going on for——

Mr. SUNSHINE. I mean, it is not our role to delve deeply into the intricacies of how agencies operate and what they do. It is not——

Mr. BENISHEK. Well, I——

Mr. SUNSHINE. And we probably should have known that sooner, but we did not.

Mr. BENISHEK. Was that the only piece of information then?

Mr. SUNSHINE. Well, I think we learned not only about the length of the leases but the nature, the detailed nature of the transactions and how the financing——

Mr. BENISHEK. What was the nature of the transaction that you learned that made it——

Mr. SUNSHINE. Pardon me?

Mr. BENISHEK. What was the difference besides the term of the lease, what was the other detailed information——

Mr. SUNSHINE. We got clear information about what the government's payments, what kind of payments the government was making, how much they were, when they had to be made.

Mr. BENISHEK. You never looked before as to how much the payments were? I mean, I am just trying to find out what exactly that the new information is.

Mr. SUNSHINE. I mean, if a bill says an agency is authorized to enter into operating leases for whatever, unless we learn something else, there is nothing much, and it is subject to appropriations, then from our perspective——

Mr. BENISHEK. Well, the only thing that I——

Mr. SUNSHINE. —all that is fine. So what we learned was——

Mr. BENISHEK. Let me just stop you there.

Mr. SUNSHINE. —that they were not really operating leases.

Mr. BENISHEK. The only thing I got from this——

Mr. FLORES. The gentleman's time has expired.

And in fairness to the CBO, they were scoring the VA cost of the VA leases based on the information that was given to them at the time. When they were given more information, I think they made a decision based on more fulsome information.

And I think that is the correct characterization of this. I do not think there was any intent to try to hurt VA by the CBO scoring decision. I just think they had better information.

With that, Ms. Brownley, did you want any more of your time back?

Ms. BROWNLEY. No. I yield back.

Mr. FLORES. Okay. Because he took all of it, I just wanted to make sure.

All right. I now recognize the gentle lady from Indiana, Ms. Walorski, for five minutes.

Mrs. WALORSKI. Thank you, Mr. Chair.

I just have a follow-up question to my colleague's questions. So on this additional information, is this information that, you said you discovered, was this information that the VA just happened to drop and bring to you or was this information that you made additional inquiries and the CBO——

Mr. SUNSHINE. Yeah, I think we made some inquiries, and I do not know, I think we probably inquired more than perhaps we had or maybe somebody said something to us when we were talking to them that prompted more questions and we asked more questions——

Mrs. WALORSKI. Sure.

Mr. SUNSHINE. —and got more information. They were very helpful to us in giving us information and——

Mrs. WALORSKI. I guess my other question would be, in the process of the inquiries, was there any reason given from the VA why that information was never divulged to the CBO before?

Mr. SUNSHINE. I mean, we are not an investigatory agency.

Mrs. WALORSKI. Yeah.

Mr. SUNSHINE. So, I mean, they were under no obligation to ship over to us copies of their leases. I do not know whether we had asked for them previously and had not gotten them. I have not

gone back in the history to determine what happened in previous years.

Mrs. WALORSKI. Sure. I appreciate it. Thank you.

I yield back my time, Mr. Chairman.

Mr. FLORES. The gentle lady yields back her time.

Ms. Kirkpatrick, you are recognized for five minutes.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman.

Mr. Sunshine, in my private law practice over the years, I would review government leases with cities, towns, counties, state government. And because they were subject to appropriations, it was well known that if the appropriations were not there, the lease would terminate. And there was a clause there that said that actually in the lease agreement or the contract because they were subject to appropriations.

Now that you have looked at these leases and contracts, do they have something similar?

Mr. SUNSHINE. Maybe I will ask someone. Anyone know the answer? Do they have a contingency in the event that appropriations are not available?

Mr. NEWMAN. There is a fixed payment required. It comes from a lump sum appropriation. So unless there was no appropriation for VA medical facilities, there would be appropriations available. It would be difficult to get out of that fixed obligation lease even with that clause because of the lump sum nature of the appropriation.

Mrs. KIRKPATRICK. Suppose the appropriation is not there, then what you are saying is that obligation continues to accrue?

Mr. NEWMAN. Well, then I believe that would be taken——

Mrs. KIRKPATRICK. I am sorry. Would you step to the microphone so we can make this part of the record. And let me just explain. The principle behind this——

Mr. SUNSHINE. This is David Newman.

Mrs. KIRKPATRICK. Hi, David. Thank you for being here.

But the principle behind this is that you cannot obligate taxpayer dollars beyond the appropriate appropriation. So I would like to know. Suppose the appropriation is not made, do taxpayer dollars continue to accrue on an obligation that is no longer legal?

Mr. NEWMAN. I believe it would. If the obligation has been incurred and if a discretionary appropriation is not provided, it would have to come from somewhere.

If the facility had been built and the government had committed to making the payment and it was liquidating that from a discretionary appropriation, but the discretionary appropriation was not provided, then the cost of paying that would have to come from somewhere else.

I think that that would only happen in this case if there were——

Mrs. KIRKPATRICK. Well, I am sorry to disagree with you because taxpayer dollars are involved here. And it seems to me that you cannot—this principle that you can obligate taxpayer dollars for the long term when you have nothing in return is just simply not legal.

I mean, can you tell me why that is legal? I mean, why would I pay for Tim Walz's house for 30 years when I have no opportunity to use it?

Mr. SUNSHINE. I mean, that is one of our concerns about the way the transactions are currently being treated in that there is not the money provided in appropriations up front to cover the costs. But the government is committed to making those payments and has signed contracts that requires it to make those payments.

Mrs. KIRKPATRICK. Well, then your theory is that the government is guaranteeing the developer that they are going to be able to pay for their development?

Mr. SUNSHINE. Yes.

Mrs. KIRKPATRICK. Can you tell me of any other governmental entity that does that, where the government acts as the loan guarantee for the development?

Mr. SUNSHINE. Well, again, I think that may well be in cases where the government is paying to build——

Mrs. KIRKPATRICK. Purchasing. Let's not mix apples and oranges here. You know, leases, we are talking about leases where the government at the end of the lease does not own the property.

Can you tell me of any other governmental agency that enters into leases or contracts like that where they are obligating taxpayer dollars for something that they are never going to own?

Mr. SUNSHINE. I do not know. We have not explored all the government's leasing practices. The GSA, the General Services Administration has the authority by law to enter into, I think, 20-year leases without having the money up front.

Mrs. KIRKPATRICK. I understand that. I understand that. Here is the difference though. With the other governmental contracts I have looked at, there is a clause so that everybody understands that these are subject to appropriations, to the appropriation budgetary process. And if that does not happen, they can be terminated.

And I want to know if that clause is in these leases.

Mr. SUNSHINE. Have you seen that clause in the leases?

Mr. NEWMAN. No. I have seen a requirement to make a series of fixed payments whether the agency occupies the facility or not.

Mrs. KIRKPATRICK. Well, would you do this for me. Go back and look at those and maybe we can do a follow-up.

Mr. SUNSHINE. I mean, the folks from VA who are obviously more intimately familiar with the details of leases can probably answer that question as well. But we would be happy to look into that more.

Mrs. KIRKPATRICK. Well, I just want to tell you I thank you for being here. I would like some more investigation into this because I find it very troubling that your policy would commit taxpayer dollars before they are actually appropriated.

And with that, I yield back. Thank you, Mr. Chairman.

Mr. FLORES. Thank you, Ms. Kirkpatrick.

For the sake of order, I would recommend that you ask that question of the VA, the question you just asked.

Mr. Neugebauer, you are recognized for five minutes.

Mr. Neugebauer represents Texas Tech University. He and I are working on a joint project that is directly affected by this matter.

Mr. NEUGEBAUER. Well, thank you, Mr. Chairman.

And on behalf of the veterans all across the country and particularly the veterans in the 19th district, this is a very important hearing and I am very proud that you had that. And I appreciate you allowing me to participate in this.

Good morning, Mr. Sunshine. How are you?

Just a question. Mr. Sunshine, did you major in accounting?

Mr. SUNSHINE. No.

Mr. NEUGEBAUER. Okay. I was looking at your resume and I did not see that anywhere. So you were not an accounting major?

Mr. SUNSHINE. Oh, no. No. I was math and economics. And I did go to Harvard Business School for all that.

Mr. NEUGEBAUER. Yeah. Okay. So are you familiar with GAAP accounting?

Mr. SUNSHINE. A bit.

Mr. NEUGEBAUER. Huh?

Mr. SUNSHINE. A bit.

Mr. NEUGEBAUER. A bit?

Mr. SUNSHINE. Yeah.

Mr. NEUGEBAUER. So am I.

Mr. SUNSHINE. I am not an expert on accounting.

Mr. NEUGEBAUER. Yeah.

Mr. SUNSHINE. I am supposed to be an expert on government budgeting hopefully.

Mr. NEUGEBAUER. Yeah. But you are making a fairly important determination here of what is a purchase and what is a lease, aren't you?

Mr. SUNSHINE. Yes.

Mr. NEUGEBAUER. And so do you think you are following generally accepted accounting principles on that?

Mr. SUNSHINE. I think we are following the principles that apply to the——

Mr. NEUGEBAUER. No, I did not ask——

Mr. SUNSHINE. —Federal budgeting.

Mr. NEUGEBAUER. Yeah. No. Well——

Mr. SUNSHINE. But I cannot, no, but I cannot answer the generally accounting——

Mr. NEUGEBAUER. Okay. So you do not know whether you are or not?

Mr. SUNSHINE. No.

Mr. NEUGEBAUER. Do you think baseline budgeting is a good thing?

Mr. SUNSHINE. I am not sure what you mean by baseline budgeting. Could you——

Mr. NEUGEBAUER. Well, it is the budgeting we use here.

Mr. SUNSHINE. I mean, I think we do ten-year projections of what we think the budget would look like if current laws remained in place. I think that is a useful—and we actually do longer-term projections. I think those are useful to get a sense of what the budgetary situation is.

Mr. NEUGEBAUER. So some of these proposals that are out there are facilities that had a 20-year lease and now they are either being rolled over or they are going over to a new facility.

Are you aware of that?

Mr. SUNSHINE. Yes.

Mr. NEUGEBAUER. Yeah. So the question is, are we netting then that liability because basically if you go back and treat those leases the way they were—if you took that principle and gone back and applied them to those leases, so basically there is a netting here of what the new liability is based on what the previous liability was, are you taking that into account?

Mr. SUNSHINE. Well, I think the objective of the budget is to take into account new obligations of the government when it enters into them.

Mr. NEUGEBAUER. Yeah. But remember that there is an obligation rolling off and so the question is, when you are looking at this, are you netting that out?

Mr. SUNSHINE. Well, I think, for example, that——

Mr. NEUGEBAUER. You know, I am not asking you what you think. Are you netting it out?

Mr. SUNSHINE. I am not sure there is a netting that needs to be done.

Mr. NEUGEBAUER. Well, if you are going to treat——

Mr. SUNSHINE. I mean, if a facility was built, the government leased it for 20 years, made all its payments and now is extending the lease for three years or five years or something like that, then the only question is, what is the new government obligation that it is entering into and is that just an operating lease or is that something else.

Mr. NEUGEBAUER. So is a 19-year lease a capital lease?

Mr. SUNSHINE. It could be.

Mr. NEUGEBAUER. Is an 18?

Mr. SUNSHINE. It could be. We do not have a magic formula for that. We——

Mr. NEUGEBAUER. You have some formula.

Mr. SUNSHINE. We try to look at the underlying substance of the transactions.

Mr. NEUGEBAUER. Yeah.

Mr. SUNSHINE. You know, I think——

Mr. NEUGEBAUER. So here is another question. So if I have a five-year lease with three options for five years, is that a purchase lease or is that an operating lease?

Mr. SUNSHINE. Well, I think if the five-year lease does not involve payment for most of the cost of the building say in the first five years, then it is probably an operating lease.

Mr. NEUGEBAUER. So if you have a five-year with three five-year options, that would be an operating lease under the way you treat that?

Mr. SUNSHINE. I think that would probably be true.

Mr. NEUGEBAUER. Yeah. So what about if they had a ten-year with one ten-year option?

Mr. SUNSHINE. I am sorry. Two-year with——

Mr. NEUGEBAUER. No. A ten-year and then another ten-year option if the——

Mr. SUNSHINE. I think it would not be wise for me to try to delineate very specific numbers and combinations because there are infinite numbers of combinations. And we would be happy to look at, you know, specific kinds of proposals.

But as I said, we do not have a specific formula that says X number of years with X number of options is an operating lease and Y number of years is essentially a purchase. We try to look at the substance and the nature of the transactions and the nature of the government's financial commitment.

Mr. NEUGEBAUER. The IRS does not treat a 20-year lease as a purchase.

Mr. SUNSHINE. Pardon me?

Mr. NEUGEBAUER. The IRS does not treat a 20-year lease as a purchase. So I think the concern here with all of us is there is a huge inconsistency here. And, unfortunately, the people that are going to pay the ultimate price here are the veterans of this country which to me is a great injustice.

Thank you, Mr. Chair.

Mr. FLORES. Thank you. The gentleman's time is expired.

Mr. Walz, you are recognized for five minutes.

Mr. WALZ. Thank you, Mr. Chairman. Thanks for holding this hearing.

I think my colleagues are highlighting what I see to be a pattern of happening.

You mentioned there is a lot of smart people at CBO. I will not deny that. Were any of them elected by the people? Anyone at CBO elected by the people?

Mr. SUNSHINE. Not a one.

Mr. WALZ. Anyone have statutory authority to write law?

Mr. SUNSHINE. Not a one.

Mr. WALZ. Anyone have statutory authority to interpret law?

Mr. SUNSHINE. Statutory——

Mr. WALZ. To interpret laws?

Mr. SUNSHINE. Well, we interpret law all the time in terms of estimating budgetary things, but——

Mr. WALZ. And that has——

Mr. SUNSHINE. —we are not courts.

Mr. WALZ. You are not the courts. All right. The reason I ask this is I am going to ramble a little story here.

On your Web site, it says analysts write quick turnaround cost estimates for legislation that is headed to the floor for a vote.

Mr. Denham and I have a piece of legislation, H.R. 975, that we have been working on for years, for years. The Committee has requested a score on the bill. We have requested a score on the bill. We requested it again because we knew the NDA was coming up. I went out and built a coalition amongst democrats and republicans. It is supported by most major veteran service organizations.

It is to correct a wrong of 31,000 veterans who were discharged, some like Liz Loris who had three rapes against her, was discharged from the military with a personality disorder. We are trying to correct that wrong.

And the speaker allowed us to come up there. I went up to the Rules Committee and it was thrown out. You know why it was thrown out? Can you make a guess, Mr. Sunshine?

Mr. SUNSHINE. You are probably going to tell me because it did not have a CBO cost estimate.

Mr. WALZ. That is correct. It did not have a score. Not only did it not have a score, someone made the interpretation, someone who

is not elected, and I do not know their name, and I went to Chadron State, not Harvard, but I know that they made a determination that did not allow that thing to be heard because they said there will be a cost associated. Every other expert said there would not be in this. So it was nixed from coming to the floor.

Now, my question is, I certainly value the work that CBO does. It is important for us to get this right. But it appeared to me like an arbitrary decision was made with no evidence of why it was made, who made it, or what it was being determined on, crushed a bill that had its one opportunity to go forward. Thousands of veterans who are not only denied their rights, they were denied the right to be heard.

It is not your determination whether the law was good, bad, or indifferent. But because of that decision, the hands of the majority were tied because they said there would be a cost associated. I still do not know what that cost will be. No one has given it to me. Apparently I can only see that it was not prioritized on there.

So now we hear it with the leases. I have got a CBOC I have been waiting four years for in Albert Lea, Minnesota. The city council down there just appropriated $50,000 of tax dollars, hard-earned tax dollars to try and speed this process up.

And now what I am going to go back and tell them is I am not sure. Somebody who knows more than us made this decision.

So how would you respond?

And I have got to be honest with you. I try, and I have said in here for years, try and be as fair as possible. This fire that is lit under me is a bonfire now of the arbitrariness of this decision. And I see it starting to seep into others.

Assure me that that is not the case. Tell me how H.R. 975 was not heard. Can you tell me that?

Mr. SUNSHINE. Yeah, I am not familiar with the details of the specific bill. I know that, for example, when bills are being considered or amendments are being considered by the Rules Committee, we often get calls and——

Mr. WALZ. This is a stand-alone bill I requested months ago.

Mr. SUNSHINE. Okay. I mean, we do not have the resources or the staff to cost out every single bill. What we do is we take guidance from Committee Chairmen and Ranking Members and give priority to those requests.

So I do not know what happened with——

Mr. WALZ. Both of them are co-sponsored.

Mr. SUNSHINE. But I would be happy to look into it some more and be happy to explain to you exactly what our analysis was and what we concluded.

Mr. WALZ. What are our recourse? What is my recourse to go back to say how this could be fixed? I do not understand how someone, I do not know, sitting in office, I do not know where it is at can trump the will of 650,000 southern Minnesotans, thousands of veterans, veteran service organizations, the Chairman, the Ranking Member. How can that happen?

Mr. SUNSHINE. I mean, our job is to tell you and your colleagues what we think the budgetary impact of legislation is. We do the best we can. We get as much information as we can. We often do not have much time to do it and we make those judgments.

If you think we made a bad judgment, then we ought to talk some more about it. You or your staff, you can call Doug or myself, Doug Elmendorf or myself, or your staff can call. And let's go over. Let's——

Mr. WALZ. I tried that, but I know now if I come and I make a stink about it, someone gets me. That is wrong. That is wrong.

And I do not know what this lease situation is. I do not know how this decision was made. I still have set here and listened for an hour. I have no clue. And I listened to Mr. Neugebauer's questions. I did not think I got an answer there how that was being done.

And I am just at a loss and I think it is really unfortunate because I do believe in the work you do. It is important. But I think we have got a problem of trust that is building. I would say not building. It is festering.

You have done something amazing here. You have united republicans and democrats.

So I yield back.

Mr. FLORES. The gentleman's time is expired.

Mr. Sunshine, thank you for your testimony today. You are now excused.

Mr. SUNSHINE. Thank you.

Mr. FLORES. I would now like to invite our second and final panel to the witness table. Joining us today from the VA is the Honorable Dr. Robert A. Petzel, Under Secretary for Health.

Dr. Petzel is accompanied by Mr. Philip Matkovsky, Assistant Deputy Under Secretary for Health and Administrative Operations, and Mr. Jim Sullivan, Director of the Office of Enterprise Management.

I thank all of you for being here this morning.

And you may proceed with your testimony after you get seated. Our primary witness will be back in a moment.

Dr. Petzel, thank you and your team for joining us today. You are now recognized for five minutes.

STATEMENT OF ROBERT A. PETZEL, UNDER SECRETARY FOR HEALTH, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY PHILIP MATKOVSKY, ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH FOR ADMINISTRATIVE OPERATIONS, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; JIM SULLIVAN, DIRECTOR, OFFICE OF ASSET ENTERPRISE MANAGEMENT, U.S. DEPARTMENT OF VETERANS AFFAIRS

Dr. PETZEL. Good morning, Mr. Chairman, Ranking Member Michaud, and Members of the Committee.

Thank you for the opportunity to provide information about VA's major medical facility and lease program that supports VA's mission to provide quality and accessible health care to America's veterans.

I am accompanied today by Mr. Philip Matkovsky, Assistant Deputy Under Secretary for Administrative Operations, and Mr. James Sullivan, Director of the Office of Asset Enterprise Management.

At VA, we must anticipate and meet the needs of current and newly-returning Veterans. We have many entry points for VHA health care and they include 152 medical centers, 821 community-based outpatient clinics, 300 Vet centers, and 70 mobile Vet vans.

In response to increased demand, VA has enhanced its capacity to deliver needed care so that veterans can more readily access their care.

We acknowledge a growing list of facility replacement and modernization projects. However, our greatest immediate concern is the unexpected development last September on the proposed "capital leases" budgetary scoring for all future VA major medical leases. This threatens to disrupt one of our most important and fundamental tools to deploy medical care for veterans.

The goal of VA's capital asset and leasing programs is to ensure that there are safe, secure, state-of-the-art facilities to provide benefits and services to our Nation's Veterans.

VA owns and leases real property in hundreds of communities across the U.S. and overseas. VA has developed and continues to look for sound capital asset management strategies, to assist in maximizing the value of its portfolio.

Beginning with the fiscal year 2012 budget, VA introduced the SCIP, process to prioritize all capital investments based on identified mission needs. The SCIP process is a requirement-based planning and gathering tool which is used by the Department to address the most critical needs first. VA has a complete picture of need and a prioritized list of future capital investments.

In addition to construction, the leasing of medical facilities is essential to providing Veterans with accessible health care services. Leasing provides VA the flexibility to respond to demographic shifts, changing service demands, and improvements in technology to support projected outpatient workload increases and the addition of services.

As you are aware, the Congressional Budget Office is now recommending a change in the scoring of VA's major medical facility lease authorizations. This change precludes VA from procuring 27 medical facility leases serving more than 340,000 Veterans in 20 states in fiscal year 2013 and 2014 and it jeopardizes all future 600 leases that VA presently has.

If this situation persists, it will negatively affect Veterans. Without a resolution, six existing clinics may have to close, 14 will have to be constrained to already overpopulated facilities, and long-planned and budgeted expansions will not move forward.

There will be increased travel and increased wait times for veterans and especially those people who live in rural areas where access to health care is limited at best.

VA continues to look for ways to enhance collaborations with DoD and other Federal agencies. VA/DoD partnerships deliver benefits and services to Veterans, Servicemembers, military retirees, and other beneficiaries across the country.

VA and DoD have direct sharing agreements between VA medical centers and military treatment facilities for a range of services. In fiscal year 2012, there were 230 direct sharing agreements between 61 medical centers and 105 DoD medical treatment facilities.

Mr. Chairman, we appreciate the opportunity to address these important issues. VA must ensure that Veterans and other eligible beneficiaries receive timely, accessible, veteran-centric, high-quality medical care.

While we have a portfolio of health care delivery options, one key option is leasing. If the major medical facility leasing issues are not expeditiously resolved, I fear it will have a significant negative impact on VA's primary health care, mental health care, and specialty services for Veterans.

We need your support in resolving this challenge as we continue to care for America's Veterans. VA is committed to providing the high-quality care that our Veterans have earned and deserved. And my colleagues and I are pleased to respond to any questions you may have.

[THE PREPARED STATEMENT OF ROBERT A. PETZEL APPEARS IN THE APPENDIX]

Mr. FLORES. Thank you, Dr. Petzel.

I now yield myself five minutes for questions.

In your written testimony, you state that, quote, "Our greatest immediate concern is how applying capital lease budgetary scoring to all proposed VA major medical facility leases threatens to potentially disrupt our ability to deploy state-of-the-art medical care for Veterans," unquote.

It has been almost a year since this issue came to light and in that intervening time, what proactive steps has the VA taken to pursue work-arounds or alternatives that will ensure that the department is able to meet the care needs of our veterans?

Dr. PETZEL. Thank you, Mr. Chairman.

First and foremost, is the best solution to this problem is to find a way to continue the leasing program without having to appropriate the full 20 years of cost of the lease in the year of approval. That is unquestionably the solution we seek and that we wish to work with you in order to obtain.

We have looked at contracting. We have looked at fee basis which are the two obvious possibilities. And if time permits, I can elaborate on the difficulties that we see with those.

But primarily they are out of network care. They are care outside of the VA network. And they are care that in our experience has been uniformly more expensive than doing the care within the VA.

And third is that it is often difficult to find people that are willing to contract for that kind of extensive care.

So the best solution from our perspective is to work with Congress to find a way to deal directly with the leasing issue. The other alternatives such as contracting, fee basis, sharing with DoD and with other government agencies all, we think, fall short of that initial solution.

Mr. FLORES. One of the areas that is going to be impacted the most, and this is what VA has argued in the past, is that rural areas will be most impacted by CBO's scoring methodology.

What is the role of a fee-based care for rural areas? I think I heard you argue a little bit both ways on that particular point. What is the real downside to fee-based care in a rural area?

Dr. PETZEL. I would argue that there is not necessarily a downside issue in rural areas for fee-basis care. Fee-basis care, the intent of that legislation is to provide for periodic care. Fee-basis care is not viewed and was not intended to be something that is used to provide for the full spectrum, primary care, specialty care, et cetera.

It is supposed to be a stop gap when you cannot get the services that you need, particularly specialty care. We use it and we do use it in rural areas. If someone needs a cardiology consult and they live in a small town in Montana, we will contract on a fee-basis with a cardiologist in that community if it is available so that somebody does not have to travel 300 miles to Billings.

So we do use it and it is very effective in the rural areas. Many of these clinics, however, are not just in rural areas. They are serving large numbers of people and it would be impractical to use fee-basis care in that——

Mr. FLORES. Continuing on the question of fee-based care for a minute, is the VA, excluding the centers of excellence where the VA is really good—I mean, for PTSD, TBI, crush injuries, things like that—has VA ever done a full cost study of comparing if we treat a Veteran in a fee-for-service basis through a third-party provider on one hand versus the fully-loaded cost of the care in a VA facility including the cost of the overhead, the facility, the capital costs and so forth? Have you ever done a full comparison to see which provides better care for the Veteran and also provides the most effective arrangement for the taxpayers?

Dr. PETZEL. Mr. Chairman, with each one of these community-based outpatient clinic proposals, we require a business case be developed to look at all of the options which would include contracting, which would include building a VA owned and operated clinic, and which would include leasing as well.

So we do, yes, with every one of these clinics look at the options from the point of view of what is the best business case.

Mr. FLORES. My time is almost expired. I am going to yield to Mr. Michaud for five minutes.

Mr. MICHAUD. Thank you very much, Mr. Chairman.

Before I ask my question, is there anyone from CBO still left in the audience?

[No response.]

Mr. MICHAUD. I think it shows how much interest they really have in this issue.

Thank you, Dr. Petzel, for coming here and the panel.

My first question would be, would it be a viable alternative solution to adopting GSA's approach to leases and create a program similar to the Federal building fund where income derived from agency rental assessments would provide for a more predictable source of revenue for new construction and capital improvements?

Dr. PETZEL. I am going to turn to Mr. Sullivan to comment directly on the GSA process which I am not as familiar with as he is. Thank you.

Mr. SULLIVAN. Thank you for the question.

We believe that there is the potential and it is an option that that should and could be explored. To date, we have not, but we

know their leasing program does not have the same issues that we have here in terms of congressional authorization.

So that would be something, I think, that could be explored as a potential option or solution that we could learn something from and maybe use a portion of that as we try and find a way to deal with this.

Mr. MICHAUD. Thank you.

And during your discussions with CBO, have they offered any type of solutions as far as what you can do differently with your leases that would make it palpable so you do not have to have that money all up front?

Dr. PETZEL. Basically no, sir. They have not offered a particular solution. They have told us what the rules are or what their recommendations are. Remember their opinions are advisory. They are advice. They do not carry the force of law or rule.

And they have just presented us with this is the way we are going to score this. This is what our view is of how this should be looked at from a financial point of view. We have gotten no help particularly in other alternatives.

Mr. MICHAUD. We heard this morning from CBO they are saying because they looked at the leases, you know, more in depth and that is why they made their determination.

Has VA instituted a policy change in how you execute the major medical facility leases in the past five years or has it pretty much been consistent, just that they are looking at it differently?

Dr. PETZEL. Congressman Michaud, we have operated under the same set of rules for 21 years. These leases have been scored for the past 21 years by CBO. They have been approved by Congress for the last 21 years with the same set of rules that we have now. There has been no change.

Mr. MICHAUD. Are you aware of any other Federal agencies that is in a similar situation that the department is in where the CBO is not treating them the same as they are the Department of Veterans Administration and, if so——

Dr. PETZEL. I am going to turn that question over to Mr. Sullivan. But my knowledge is, no, there is no one else.

Mr. SULLIVAN. My understanding is there is not any other agency in town that has to go through this type of authorization process. So there would not be a role for CBO in any of those other agencies. And I think CBO alluded to that earlier this morning that VA was the only one they were aware of as well.

Mr. MICHAUD. If a resolution cannot be agreed upon, what contingency plan has the Department of Veterans Administration looked at to ensure that Veterans' health care is not adversely impacted by the change in the scoring policy of the leases?

Dr. PETZEL. Well, first of all, let me say, Congressman Michaud, that I believe that working with OMB, working with Congress that we will find a solution. If that contingency should not be met, as mentioned earlier, the things that we have looked at are, number one, maintaining services as they are now. There are many of these leases that could be renewed without having to be scored as a capital lease or at least some of them.

We would look to see if it was a viable alternative to contract. And I want to just go through what the difficulties are with contracting for care.

It is out-of-plan care, so they are not in our system. They are not subjected to and involved in the same kinds of high-quality care that we are. They do not have the same quality assurance programs that we do, although we can compel some of that in the contract. And they are not in the business of taking care of veterans which does indeed make a difference, particularly when it comes to mental health, such things as PTSD and depression.

Mr. MICHAUD. Okay. Thank you very much.

Good luck with working with the CBO. The fact that no one stayed to hear what this panel was going to present really is troubling to me because it shows that, quite frankly, my opinion, that they do not care and they are off doing their other things.

So with that, Mr. Chairman, I have no further questions.

Mr. FLORES. The gentleman's time is expired.

Mr. Benishek, you are recognized for five minutes.

Mr. BENISHEK. Thank you, Mr. Chairman.

Well, Dr. Petzel, I know that you are very disappointed over all this action here with the CBO. And I was amazed by the testimony as well, even Mr. Neugebauer's question about what is the rule then. It seemed to me it is sort of arbitrary because he could not come up with an actual rule.

So it is going to be very difficult to create a lease that would meet their rules since they could not give you an example of what rule would do it. So I can really understand the difficulty in going forward.

Is there a worst case scenario about this? I mean, and would it be different—just answer that question. What is the worst case scenario here?

Dr. PETZEL. Let me just make a comment first, Dr. Benishek, harking back to your questions with the CBO.

I share your chagrin and amazement at the fact that this is considered to be a purchase. This is something that we just have not been able to get our hands around because we do not own any of these clinics. We run through the entire leases in many instances and we do not own anything when we get finished.

Mr. BENISHEK. Right.

Dr. PETZEL. We are not buying a clinic.

Mr. BENISHEK. Well, no. I was amazed by his testimony defining a lease as a purchase where I do not see that is in the CBO's realm of decision-making.

Dr. PETZEL. The worst case, it really has to be described, I think, almost clinic by clinic. There are some clinics that will close and that means that that care is going to have to go back either to other clinics or into the medical center or we will have to purchase the care in the community.

There are other clinics who will continue to operate, but they are not going to be expanded. They are oversubscribed as it is and the space is much inadequate. And those clinics will have to continue to function with what they have.

Mr. BENISHEK. You do have some outside providers providing like CBOC clinic——

Dr. PETZEL. We do. About 20 percent of our community-based outpatient clinics are what we call contract. They are almost all in small communities.

My experience when I was the network director in Minneapolis, we had three small contract community-based outpatient clinics where it was not practical for us. There is one patient panel. So we need one primary care provider and the support people.

And when we staff that, we run the risk of somebody leaving and not being able to provide the care. When we contract for that, the contractor's obligation is to provide us with an individual.

So, yes. Again, they are mostly small, but 20 percent of our clinics are contract.

Mr. BENISHEK. Would a contract require up-front appropriations——

Dr. PETZEL. No.

Mr. BENISHEK. —other than a lease?

Dr. PETZEL. No, sir.

Mr. BENISHEK. I mean, that is the question I come up with.

Dr. PETZEL. They would not require up-front appropriations. The difficulty with contract in situations other than these small clinics is cost, is finding enough competition in the community so that we can get a good price. When you are dealing with only one provider as an example in the community, you are really at their mercy in terms of how much it would cost.

So in these large areas, and Congressman Bilirakis's clinic is an example of a pretty populous area where we are trying to consolidate a group of CBOCs, a contract would not be practical, we think, in that particular circumstance. But in some of them, it would be.

Mr. BENISHEK. Well, I am just trying to think of ways to deal with this issue and I am not sure how it is going to be dealt with at the congressional side.

Do you have any other ideas of a way to get around this apparent, other than reforming the Congressional Budget Office which——

Dr. PETZEL. Well, I think that working with OMB and with the Congress, there may be a way of re-looking at the whole leasing structure legislatively. I think the best possibility for the longer term lies in doing that, to look at how do we want to, as a government, how do we want to approach this process so that it is safeguarded but it is doable. I think that is the long-term solution, sir.

Mr. BENISHEK. Thank you.

I yield back.

Mr. FLORES. The gentleman yields back.

Mr. O'Rourke, you are recognized for five minutes.

Mr. O'ROURKE. Thank you, Mr. Chair.

And I just want to echo the Ranking Member's frustration with the fact that CBO did not remain to hear your testimony and to listen to our questions as we try to find out how we are going to do the best we can possibly under these circumstances or possibly change these circumstances to serve those veterans in our communities.

It does not build good will. It does not build trust. It does not build greater understanding and it does not help us form the basis for a positive resolution to this problem.

With that being said, I want to understand more from your perspective the legitimacy of this ruling or illegitimacy of this ruling that the CBO has made. And I am still trying to get to an apples-to-apples comparison.

When the DoD builds a facility or HHS or IRS or Social Security, from what you and the CBO have said, they do not require legislation to do that and that is the key difference between the VA and these other departments and agencies?

Dr. PETZEL. They do not require congressional authorization.

Mr. O'ROURKE. Congressional authorization.

Dr. PETZEL. That is what I understand to be the key difference.

Mr. O'ROURKE. And——

Mr. FLORES. And can you turn your mike on.

Mr. SULLIVAN. Congressman, there is not an individual authorization of individual leases.

Mr. O'ROURKE. Okay. And why is that unique to the VA? Why does that situation exist?

Dr. PETZEL. Mr. Matkovsky.

Mr. MATKOVSKY. It is in our statute. It is in Title 38, Section 8104. It explicitly calls out our requirement for leases above a certain threshold. It used to be $300,000. Then it was raised to $600,000. It was recently raised to a million. But for those leases, that subset, we require explicit congressional authorization.

Mr. O'ROURKE. And what was the intent behind that unique requirement for the VA?

Mr. MATKOVSKY. I do not know. It has been around for decades.

Mr. SULLIVAN. Right. The requirement prior to that was a Committee resolution by this Committee that would authorize the leases just at the Committee level and there was no statutory authorization. I think back in 1991, that was changed to have a specific statutory authorization. And I cannot comment on the rationale for that at the time.

Mr. O'ROURKE. I wonder following this hearing if you could help us find the legislative intent behind that and what they were hoping to achieve, again unique as compared to other departments and agencies.

And, again, to hopefully use our specific case in El Paso to illustrate the larger issue. You heard me say earlier the population of veterans that we are trying to serve through a clinic today that is collocated with a DoD facility at Fort Bliss which ultimately means that many veterans, far too many have to travel far too many hours to get care at a full-service VA facility in Albuquerque, New Mexico.

And so we are urgently exploring options to build a full-service acute care facility in the El Paso region to serve those 80,000 plus veterans.

With this ruling or with the terms as you understand them today, I would like to know what our options are. You know, we have a brand new DoD facility being built, a full-service, active-duty facility being built at Fort Bliss East which will vacate the existing active-duty hospital. And then we also have an opportunity with a state university to collocate.

So in those three scenarios, does this ruling prohibit the VA from moving forward with a full-service veterans' hospital in that re-

gion? And obviously your answer would apply to all other regions that face those same options.

Dr. PETZEL. I am familiar, Congressman, with the discussions and plans about El Paso. It does not involve any leasing. And what we are discussing here should not have any impact on what is going on in El Paso.

Mr. O'ROURKE. So even in that third scenario of partnering with a state university, if we enter into an agreement, if you, if the VA enters into an agreement with the state university to build to suit a facility that will serve Veterans, it seems like we get into some of this scoring quandary and I want to know how that may be different than other scenarios that have been raised today.

Dr. PETZEL. It might. The difference often is that the land would be donated and that may or may not involve leasing it. I think we would have to look very carefully and specifically at that. And I was not familiar with that particular scenario.

But in terms of our general approach to El Paso, as I understand it now, it should not.

Mr. O'ROURKE. Great. I look forward to resolving this issue with you. Thanks.

Thank you, Mr. Chair.

Mr. FLORES. The gentleman yields back.

Mr. Bilirakis, you are recognized for five minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it.

Thank you, Dr. Petzel, for your testimony.

I also express a lot of frustration that CBO is not here. That means they are not serious about the issue. We need to do everything we can for our true American heroes. I am very disappointed that they are not here.

The challenges that have been laid out so far are very troubling, Doctor, especially with regards to the 27 leases that are currently pending. I know that my colleagues and I will continue to work, this is a top priority for us, to find a solution in order to ensure that our veterans continue to receive the high-quality care that they are currently receiving and they certainly deserve.

As you know, the VA recently approved a plan in my district, you referred to it, Doctor, that would take five existing clinics and consolidate them into one large facility which would be wonderful. This would allow them to better meet the growing needs of my Veterans' community with its diverse health status. My intention is to do everything I can to allow this building to go forward.

We have talked about this, Doctor, and I have also talked to the director at Haley and things are looking really good that we can renegotiate and extend for the future, but we must stay on this.

Now I would like to focus on the five existing leases. Could you please elaborate on the VA's option for maintaining the CBOCs in my district and then others too? Can you speak to that? We seem to be in pretty good shape, but what about the others, and do you have the legal authority without congressional authorization to extend the existing leases?

Dr. PETZEL. Congressman Bilirakis, I will briefly answer that and then I am going to turn to Mr. Matkovsky or Mr. Sullivan for the details.

But some of these leases can be extended. Most of them cannot. And so, again, as I was saying earlier in an answer——

Mr. BILIRAKIS. Excuse me. Why can they not be extended?

Dr. PETZEL. If the extension of them required authorization, et cetera, we would have difficulty doing it.

But, Mr. Matkovsky.

Mr. MATKOVSKY. Congressman Bilirakis, I do not know the exact number of leases in your district. But in VISN 8 in Florida, there are 122 leases that are below the $300,000 annual rent amount. All of those can be, you know, renewed, extended, competed, recompeted, et cetera, because they are not above the authorization threshold. It is those that are above the authorization threshold.

So for New Port Richey, the consolidation would not be able to move forward and you would still have the disparate leases that exist today. It is not optimal. Referrals require somebody to get in their car and drive far away. Those smaller leases, though, would still continue.

Mr. BILIRAKIS. Yes. Yeah, that is what I understand. The five existing leases should be fine. But we have got to get this done.

As you said, Doctor, the contracting is not an option in my area and most areas. So thank you very much and I look forward to working with you. We have got to get it done and I know it is a priority of this Committee.

Thank you, and I yield back.

Mr. FLORES. The gentleman yields back.

Ms. Negrete McLeod, did you have any questions?

Ms. NEGRETE MCLEOD. I think my only question is, this hearing, so we can find a solution, is this what we are here for?

Mr. FLORES. Hopefully. So the gentle lady yields back.

Dr. Roe, you are recognized for five minutes.

Mr. ROE. I thank the Chairman for yielding.

And a couple things. Dr. Petzel knows this. But one of the ways we solved the lease problem in Sevierville, Tennessee was you have a one dollar a year lease. That was pretty cheap. Even I can afford that. So if we got more of those, it would not be an issue.

I would like to know how we get around and fix this, why the VA, and I suspect it happened, and Mr. O'Rourke's question was very good about how this came to pass. There may have been some leases that were not good that the VA had in the past and the Committee—I do not know. We will find out what that is and why it was done that way.

But the VA has to be able to do these leases to carry on its mission. I mean, you cannot do it, in other words, you just heard how disruptive it is for patient care, so we have to fix this. It is not an option.

And I agree with the Ranking Member to have the people who score this to not even be here is shameful to hear the concerns that we have.

One of the questions, and back to what the Chairman was speaking to when I first came in, was when you look at the cost of care that is contracted out and what he was asking, I think, was if you look at, let's say, an orthopedic procedure at a VA, we never seem to look at all the cost of the hospital, the nurses, all of that. Is it cheaper, I think he was asking, and correct me if I am wrong.

Would it be cheaper in some cases to have someone just perform that service outside the VA? Would that be less expensive? And certainly I know you do that and we are probably doing that at home right now because our orthopedics is backed up so far that Veterans are having to wait an inordinate amount of time.

Is it cheaper if you amortize everything just to say, okay, we will just pay this much because you are being able now to with the new ACOs and so forth to get some really good bundled prices on what it would cost you to have a hip replacement, let's say, or a knee replacement?

Dr. PETZEL. Dr. Roe, thank you. That is an excellent question.

The studies that I am most familiar with were done comparing Medicare costs to VA costs, sort of specific procedure by specific procedure. And in those instances, they did amortize the VA's buildings, et cetera, in the same fashion that a private sector hospital or clinic might be doing that.

And what they found, and that would have been probably the least costly way to do it in the private sector, was about an 18-percent reduction in cost in the VA. So it was cheaper.

And the comparisons that you point out are very difficult. It is just very hard to get everybody to agree, yes, this methodology compares apples and apples.

Our experience is that when we go out and contract for care that the cost is higher than when we provide it. But there are circumstances where it is important for us to do that.

If we only need to have five or six orthopedic procedures a year, hip replacements, we do not want an orthopedic surgeon in the facility that we are paying for that is not kept as busy as they need to be. And we would buy that service on the outside even though procedure by procedure, it might be more expensive. That is a cost-effective thing to do.

On the other hand, if we have enough business to keep an orthopedic surgeon appropriately busy, we probably can do those things in a less costly way.

Mr. ROE. I think there are a lot of new opportunities out there that, new models that are being created now with just being forced, with the way the Affordable Care Act is paying, reimbursing, that there would be some opportunities out there. Maybe not right now, but I think in the future.

I know that there are plenty of places now that are bundling everything. And it is the hospital, the doctor, the whole shebang and you write one check and that is what the cost is going to be. I think the VA could look at that.

Dr. PETZEL. We will. Absolutely, sir, we will.

Mr. ROE. And before my time runs out, what exactly, Dr. Petzel, would you say that we need, as a Committee we need to do, to help rectify that because it cannot go forward the way it is?

Dr. PETZEL. I think that we need to get together with you, with OMB perhaps, and figure out whether there is a fix legislatively that would give you the oversight that you need of the clinic process, yet allow us to continue doing business as we have.

The idea of having to provide for 20 years of funding in the year that there is approval——

Mr. ROE. Makes no sense.

Dr. PETZEL. —is not viable.

Mr. ROE. Well, I mean, I looked at a lease. We leased our office space. My Lord, if I had to put up 20, I could not have done it. I mean, I could not have run a clinic. So no business in the world does that.

Dr. PETZEL. So we need to find a solution that I think allows us to continue with the appropriate amount of money in the year of approval, an appropriation without having to come up with the 20 years because the resources are not there.

Mr. ROE. Mr. Chairman, I yield back. And I think that hits the nail on the head right there.

Mr. FLORES. Thank you, Dr. Roe, for yielding back the rest of your time.

Just for clarification, I did not say the cheapest care. I said the best care at the most fairest price for Veterans, the fairest price for the taxpayer.

Ms. Brownley, you are recognized for five minutes.

Ms. BROWNLEY. Thank you, Mr. Chair.

And thank you, Dr. Petzel.

And I was curious to know that if you are, you know, leasing a clinic and you have to later sort of recalibrate based on demands and, you know, you might need more clinics in one area and less in another just given where the demand is, what happens when you walk away from a clinic like that? I mean, you lease it to build it and if you walked away from it, then what happens?

Dr. PETZEL. Thank you, Congresswoman.

Mr. Sullivan, I think, can address that directly.

Mr. SULLIVAN. Sure, we can address that. Our leases at the end of the lease term, we do not own it. We walk away. And I know that has been a concern. In recent history, we looked. CBO raised this issue saying, you know, when you walk away, no one can use it.

We did a little research, granted not exhaustive, and looked at three places where, in fact, VA walked away. And those facilities have been repurposed. One of them in Las Vegas for 160,000 square feet is now the home corporate office for Cox Communications, a cable company.

We also did one in Evansville, Indiana where we moved into a new clinic. The old one was there, about 30,000 square feet. A nonprofit social service organization uses it now as their headquarters.

Lufkin, Texas, same thing. That one was purchased and used by a private medical practice and used it as an office building.

So in many cases, there is life after VA for these facilities and I think that is somewhat common in leasing, not in every case, but in many cases.

Ms. BROWNLEY. So is it the VA's responsibility then when you decide that that facility is one that you no longer need, is it your responsibility then to find a user for that facility and negotiate that process or——

Mr. SULLIVAN. No. That is one of the positives of leasing. Once we are finished with it, we can move on to a new clinic that could be updated for workload and for technology changes. And that old clinic then becomes the private entity who owned it's responsibility to do whatever he or she may want with.

So we do not have that obligation to have to take that on. And that is one of the beauties of leasing. It allows us—I think Dr. Petzel said earlier our key word for leasing is flexibility. In leasing, we are allowed to walk away at the end. We are allowed to shift them.

If veterans' services are needed in a slightly different area, we can move to the next lease or we can expand or contract leases if the veteran demand changes. So that flexibility, we think, is absolutely critical in our asset management approach and in our approach to providing the most up-to-date services for veterans in the right place.

Ms. BROWNLEY. Thank you.

And, Dr. Petzel, I was wondering if you could just elaborate a little bit more on, you know, the fact that these 11 facilities were not created last year and the other prioritized facilities that you have from your SCIP list is not getting done.

And can you just elaborate a little bit more on what, you know, what the impact is on our Veterans who, because we are not getting these facilities at this particular moment, can you just tell us what that really means?

Dr. PETZEL. Well, Congresswoman, I can speak to it broadly. It really is a very specific clinic-by-clinic kind of operation. But——

Ms. BROWNLEY. I know. My line of vision is blocked. Sorry.

Dr. PETZEL. Generically, number one, it is access, that the Veterans just will not have the same kind of access to both primary care and specialty care that they had before.

Two, that means travel time. That means that they are going to have to travel greater distance. Our standard is 30 minutes' drive time to primary care. And in 2009, that was 75 percent of our patients had 30-minute access. Now 85 percent of our patients have 30-minute drive time access. That is going to deteriorate. No question about it.

The impact perhaps of these 27 is not going to be huge, but as this process snowballs, it will have a significant impact on access and will have a significant impact, we think, on wait times because we are going to have to put these patients into already overcrowded other venues.

Ms. BROWNLEY. Thank you.

I know in my district in talking to the Veterans, travel time is a major issue. I am not quite sure how you evaluate 30-minute travel time because in my district, travel time, it might be ten miles, but it could be two hours worth of travel time. So it is typically a, you know, very early to late in the evening through heavy traffic is a full day for a Veteran just to have maybe a 30-minute appointment.

Dr. PETZEL. Well, Congresswoman, that is a very good point because this is not an issue just in rural America. This is an issue in urban America.

Traveling across a metropolitan area like Minneapolis where I am familiar, from the northwest corner of Minneapolis down to the southeast corner where the hospital is, people that are 85 years old do not want to take that drive. They are intimidated, in fact, by the urban traffic.

So you are absolutely right. It is not just distance.

Mr. FLORES. The gentle lady's time is expired.

Mr. Neugebauer, you are recognized for five minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Dr. Petzel, it is certainly good to see you again. And I want to thank you for including the Lubbock community-based outpatient clinic in your fiscal year 2014 submission.

As you know, the lease is about to expire on the existing facility there and business fortunately and unfortunately is growing. And I think the projection is that in that area that there will be a 50-percent increase over the next 20 years.

You know, one of the things that you and I have discussed in the past is, you know, some of the pluses and minuses of collocating with a major medical school. Just, you know, to get your thoughts on why that is a positive.

Dr. PETZEL. Thank you, Congressman.

And I do recollect the discussions we had. I appreciate that.

A number of things. One is that it allows for the participation of the VA and the teaching programs of the university and we believe that clinical care is enhanced when you have students that are being taught when you are doing research in and around that facility.

Number two is the access to specialty care. You have a university hospital or a university affiliated hospital right there proximate to the VA clinic and being able to purchase on fee-basis or contract the things that you cannot provide in that clinic are much easier under the circumstances of an affiliation.

It is a very positive thing for us. It is one of the ingredients that is responsible for the VA having evolved into this excellent health care system.

Mr. NEUGEBAUER. And one of the other things that is making sure that you all have the flexibility of doing some leasing and some shared space and joint use because one of the things that is going to be important when we move forward is we have got all these baby boomers, we have got all these Veterans, is controlling the cost for health care, providing that.

And so, you know, I think Texas Tech proposal, for example. They are bringing some other participants, the county hospital and, you know, looking at ways to share and co-utilize some of the facilities there.

Isn't that really the way for the future and something that you need the flexibility to work out and negotiate on behalf of Veterans?

Dr. PETZEL. Yes, Congressman, we do need the flexibility to do that. And in circumstances like we have in Lubbock, it is close to an ideal circumstance and situation. We do not have that everywhere, but where we do we need the flexibility to be able to take advantage of it, yes.

Mr. NEUGEBAUER. And I think that the CBOC concept, I mean, one of the things we know is that we deliver health care much differently than we did even 10 years ago or 20 years ago. And things that we used to have to go to the hospital for today we can do in many of the cases on an outpatient basis.

And I have a congressional district that has almost 30,000 square miles and we have a lot of Veterans. And these community-

based clinics are extremely important to those Veterans that utilize those. Otherwise, as you say, have to drive long distances.

And it is not just the fact that they have to drive long distances. It is they are longer distances away from their support system, the people that are going to take care of them after they have had a procedure or some care in that CBOC. So I think that is an important part of that.

I know that this joint use and sharing concept is something that Texas Tech is working extremely hard on. And one of the things we hope that we will be able to do here is, one, is to be able to lower the cost of the VA being able to have an access to a much larger infrastructure than it would have if it was just on a standalone basis.

And I look forward to working with the Chairman on ways that we can kind of jump over this little hurdle here because one of the things that I think almost de facto if we cannot work through this, you are going to be basically getting into the fee business of outsourcing a lot of the care that we have been doing in these clinics.

And, as you say, in some cases, maybe that is not necessarily in the Veterans' best interest and it may not be in the taxpayers' best interest. And so I will look forward to working with you and the Chairman on this very important issue.

Mr. FLORES. Will the gentleman yield the remainder of his time to me?

Mr. NEUGEBAUER. I would.

Mr. FLORES. Thank you, Mr. Neugebauer.

Dr. Petzel, one of the things I was going to ask you if you would look at the Lubbock facility and see what legislative adjustments would need to be made in order for facility to be approved or so that we could go forward with it, if you will let us know supplementally.

We are going to give you a bunch of questions following this hearing and we would ask for you to include that among those things to answer.

Dr. PETZEL. We will do that, Mr. Chairman.

Mr. FLORES. Now I will yield to Mr. Walz for five minutes.

Mr. WALZ. Thank you again. Thanks to the Chairman and Ranking Member.

I would just make a friendly suggestion. Perhaps we could invite CBO back for an extended time to talk to us again. I am just baffled in the last 50 minutes that someone is not watching TV and someone scurrying over here. But it reinforces my opinion, I think.

Dr. Petzel, thank you. As always, thanks for being here.

And I, too, am a fan like many of my colleagues, especially from rural areas, the CBOC concept is working. And, again, I think there is a mature attitude here that it is not an all or nothing, that in some cases contracts work well, in others they do not.

And in my district, I have one that is a VA run facility and another that Sterling Medical is doing and they are providing excellent care. And I am appreciative of that.

Two specific questions on here. Since I have been in Congress, the southern Minnesota/northern Iowa clinic was going to be ap-

proved next week. That has been six years that next week, it was going to be approved.

Is this whole process interfering with the completion of that contract and the completion of that clinic for rural veterans in southern Minnesota/northern Iowa?

Dr. PETZEL. Thank you for the question, Congressman Walz.

As near as I can tell, no. It is on the approved list for 2013, as I understand it, already. And I think it is slated to be open sometime in 2013 or early 2014. So it should not.

Mr. WALZ. All right. I am excited about that. I do not often get to quote President Reagan, trust but verify. We will see this one.

Dr. PETZEL. And I am going to do that, sir.

Mr. WALZ. Open that thing. It is a good one.

But my other question is this, and I am hearing from my folks back home, Secretary Shellito, Commissioner Shellito, and others. Is this problem forcing you to reprogram?

And I bring this up specifically on an issue that is very near and dear to my heart, the stand-downs. And you guys have been fabulous partners in communities on stand-downs. This year, out of the blue, Minneapolis VA is no longer supporting stand-downs and that created a gap.

Our question is, and there is a lot of hurt feelings over this as you might imagine and these are long-term partnerships for good causes, is it your interpretation, Dr. Petzel, that reprogramming because of some of these decisions on leases is starting to have an effect there?

Dr. PETZEL. No, sir. There has been no discussion about reprogramming in relationship to this lease issue. And I am chagrin to hear that Minneapolis is not supporting stand-downs. We will look into that.

Mr. WALZ. I appreciate that.

And, again, I thank you, Chairman. This is a very timely hearing and I think we are starting to get at the heart of some of the problems.

Mr. FLORES. The gentleman yields back.

Dr. Petzel, thank you, Mr. Matkovsky, thank you, Mr. Sullivan, thank you for joining us today. You are now excused.

I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and include extraneous material. Without objection, so ordered.

I would like to once again thank all of our witnesses and audience members for joining us at today's conversation.

This hearing is now adjourned.

[Whereupon, at 11:55 a.m., the Committee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. Jeff Miller, Chairman

Good morning, and welcome to today's Full Committee hearing, "Assessing VA's Capital Investment Options To Provide Veterans' Care."

As today is National Post-Traumatic Stress Disorder Awareness Day, I would like to take a brief moment to address those veterans experiencing post-traumatic stress who may be in attendance or listening.

Hope and healing are possible, and I encourage you and all those suffering to reach out for help.

You can call 1-800-273-talk (8255) and press one for veterans.

Now, turning our attention to what we are gathered here today to discuss—the potential for a new paradigm of care for our veterans through the Department of Veterans Affairs (VA's) Capital Investment Programs.

As many of you know, when this Committee was considering legislation to authorize VA's major medical facility projects and leases last year, the Congressional Budget Office (C-BO) raised concerns about how to properly account for VA's lease authorizations.

C-b-o, after soliciting and receiving additional information from VA about the lease contracts, determined that such leases should be classified as "capital leases" rather than "operating leases," as c-b-o had done in the past.

This new scoring criteria has resulted in new challenges to our ability to authorize VA's leases as, under CBO's new scoring construct, they now constitute significant direct spending costs that must be offset under statutory paygo requirements and house and senate budget rules.

For the twenty-seven pending leases that means finding more than two point three billion dollars in up-front savings from other government programs.

This issue is not one of politics or party nor is it not one that pits one body of Congress or one branch of government against another.

Rather, this is an issue that all of us who are tasked with providing high-quality care and services for our veterans are facing together.

And, it is one that will take our collective effort to resolve.

VA has proposed twenty-seven major medical facility leases—most of them for community-based outpatient clinics—in the current budget.

Of these, twenty-one are expansions or consolidations of existing leased facilities and six are new leases.

Let me be clear—the needs of our veterans in those areas are going to be met, but how those needs will be met in light of CBO's reclassification of VA's lease authorization requests is what we will discuss today.

Information VA has circulated to Members of Congress about the status of the pending lease requests includes a statement that, "until last year, enactment of these leases has been a fairly routine annual exercise."

I do not take that as a compliment and neither should the department.

Expending our hard-working taxpayers' dollars on authorizing costly capital investment projects should never be a matter of routine.

Rather, it should be a responsibility that is taken seriously, evaluated carefully, and scrutinized constantly to ensure that the capital investments we are undertaking are expanding our veterans' access to care and not just expanding VA's bureaucratic reach.

Last year, I committed to working closely with VA, C B-O, and our colleagues in the Senate to find a way forward for VA's major medical facility lease program to provide high-quality care and services for our veterans.

That commitment remains today.

However, we can no longer afford to invest our time arguing about the merits of C-
O's scoring determinations.

That does not get our veterans closer to the care they need, which is the goal we all share and must achieve.

Absent a way forward to either adhere to C B-O's ruling and pay for these leases or collectively decide to waive our budget rules, we must take a hard look outside the box to assess our options for developing these projects.

Those options include new constructs for public private partnerships, joint collaborations, and other avenues of care.

That is what I look forward to discussing here today.

Prepared Statement of Hon. Michael Michaud, Ranking Minority Member

Thank you all for coming today.

I want to thank the Chairman for holding this hearing. Ensuring the Department of Veterans Affairs has the proper infrastructure and facilities to provide safe, effective, quality health care to veterans is a priority of mine and of this Committee.

Some of the ways in which VA provides this care is through the construction program, sharing agreements, collaborations with other Federal agencies, and leasing authority.

This is an important hearing, and an important step in our ongoing discussion regarding how we can best meet these infrastructure and facilities needs of the VA this year, and in the years and decades to come.

The VA has an ever-increasing backlog of construction requests. Along with this backlog we are facing an environment of constrained Federal spending, and uncertainty regarding where our veterans will live, and how, in the decades to follow, medicine will be provided. The VA has an inventory of many facilities that are over 50 years old, that were built to provide medicine the way it was provided following World War II. We must ensure that the facilities we build today will meet the needs of the future, and that we build or acquire them for a reasonable cost.

One way VA meets its infrastructure needs today is through seeking authorization for major medical facility leases as required in statute. In light of recent events regarding a change in the way the Congressional Budget Office treats VA major medical facility lease authorizations for scoring purposes, the time has come to look for alternative solutions. This hearing is an important step to begin that discussion.

Last year, the CBO made a determination that VA leases were "similar to contracts for acquiring facilities and thus a form of third-party financing" as compared to operating leases. CBO decided that, in its view, this third-party financing was "equivalent to a government purchase of the asset" and therefore the cost should be recorded up front, as compared to spread out annually over the duration of the lease, as is the practice for operating leases, and how VA major medical facility lease requests were scored in the past.

For 20 years CBO had been scoring VA's facility leases as operating leases, however, in preparing the cost estimate for the construction authorization for Fiscal Year 2012, CBO received additional information from VA that caused CBO to determine that the facility leases were executed more like capital leases and therefore the cost of the leases should be recorded upfront for budgetary purposes.

This determination led to a CBO score of $1.2 billion in direct spending for the leases originally contained in the FY2012 construction bill. Because offsets could not be found the leases were stripped from the bill.

For over a year now we have been unable to come to a solution or put forth alternative ideas on this issue. In all honesty, it has been disappointing and I hope that this hearing provides some open discussion from all parties involved.

I would like to hear from our witnesses whether there was a change in VA policy regarding the types of leases it undertakes. I want to hear from both panels on what they have done together to try and solve this issue. Is it a matter of disagreeing on definitions or terms or does this need a legislative fix? Has VA looked at alternative ways besides the major medical facility lease program as it is currently operating to provide services to veterans?

I have many more questions than I have answers. What I do know is that if we don't find a way forward, over 340,000 veterans in 20 States could be negatively affected by this and that is simply unacceptable. We must find a way ahead.

In short, I would like to learn from our witnesses where we go from here. Not just in terms of the VA's major medical facility lease program, but where do we go from here in terms of providing the infrastructure needed to provide world-class health care to our veterans this year, and 20 years from now. I look forward to the testimony of our panelists.

Prepared Statement of Hon. Jackie Walorski

Mr. Chairman and Ranking Member, it's an honor to serve on this Committee. I thank you for holding this hearing on such an important issue for our veterans and the future of veteran health care.

The Department of Veterans Affairs (VA) has worked to improve access to veteran specific medical care through community-based outpatient clinics (CBOC). Indiana's Second Congressional District is fortunate and proud to have one of the approximately 821 CBOCS which currently exist throughout the country.[1] The facility in South Bend provides many of the 53,000[2] veterans back in the district with primary and mental health services they have earned.

The Congressional Budget Office's recent change in classification for major medical facility leases has significantly impacted the expansion and improvement of CBOCs throughout the country. I have seen how critical the services CBOCs provide for veterans are. Unfortunately, a dire need has arisen to re-examine the funding of construction for veteran facilities, such as CBOCs, throughout the country.

I know I share the sentiment of this Committee in its commitment to provide veterans with quality and advanced medical care. In discussing how to best address this issue, it is most important to keep veteran access to care at the forefront of any potential solution.

I look forward to working with my colleagues and our panelists to establish a plan of action for the Department of Veterans Affairs which will continue to improve veteran access to appropriate care.

Thank you.

Prepared Statement of Robert A. Sunshine

Mr. Chairman, Congressman Michaud, and Members of the Committee, thank you for inviting me here to -discuss the Congressional Budget Office's (CBO's) -budgetary treatment of leases of medical facilities by the Department of Veterans Affairs (VA).

The main points of my testimony are as follows:

- In estimating the budgetary impact of a proposed financial transaction, CBO assesses the nature and extent of the government's financial commitment, taking into account not just the form, but also the substance of the transaction.
- Although VA classifies its leases of medical facilities as operating leases, most of them, in CBO's judgment, are akin to government purchases of facilities built specifically for VA's use—but instead of being financed by the U.S. Treasury, they rely on third-party financing (that is, funds raised by a nonfederal entity), which is generally more expensive.[1] For VA leases, the cost premium is even greater because, when the department vacates the facility at the end of the lease term, it loses the residual value of a building that it has fully or mostly paid for.
- Because those transactions are essentially governmental purchases, the full costs of acquiring the facilities should be recorded in the budget when VA enters into the lease—as is done for other purchases that the government makes—rather than spread out over the duration of the lease.

I will discuss why CBO reached those conclusions and how CBO's treatment of proposed VA leases is comparable to the approach it has applied in other, similar cases.

VA's Leases of Major Medical Facilities

Under current law, VA must receive specific legislative authorization to lease medical facilities with average annual rental payments in excess of $1 million. VA

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[1] Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, "Department of Veterans Affairs Statistics at a Glance," Updated 4 February 2013. *http://www.va.gov/vetdata/docs/Quickfacts/Winter—13—sharepoint.pdf.*

[2] There are an estimated 53,318 veterans in IN–02. This data was compiled on 09/30/2012, based on the district lines from the 112th Congress. *http://www.va.gov/vetdata/Veteran—Population.asp.*

[1] Third-party financing is a type of arrangement wherein a non-federal entity borrows money in private capital markets to finance a facility or other asset that is built at the behest of and for use by a federal agency. For more information on the budgetary treatment of third-party financing, see Congressional Budget Office, Third-Party Financing of Federal Projects (June 2005), *www.cbo.gov/publication/16554.*

classifies those arrangements as operating leases (an agreement to use a property for a limited amount of time in exchange for periodic payments) and records the obligations on an annual basis in an amount equal to the lease payments due in that year. [2]

Before 2012, CBO followed that treatment in estimating the cost of legislation that would authorize those leases on the assumption that all of the leases were short-term contracts for the use of existing facilities or renewals of leases on facilities currently used by VA.

However, while preparing a cost estimate for the introduced version of H.R. 6375, the VA Major Construction Authorization and Expiring Authorities Extension Act of 2012, CBO received additional information from VA regarding the department's practices in contracting and executing most of the existing leases. On the basis of that information, CBO concluded that most of VA's leases of major medical facilities are not operating leases, but instead are a form of third-party financing because they have many of the following key features:

- The facilities are designed and constructed to the unique specifications of the federal government;
- The facilities are constructed at the request of the federal government;
- The leases on the newly constructed facilities are long term—usually 20 years;
- Typically, payments from the federal government are the only or the primary source of income for the facilities;
- The term of the contractual agreements coincides with the term of the private partner's financing instrument for developing and constructing the facility (that is, a facility financed with a 20-year bond will have a 20-year lease term);
- The federal government commits to make fixed annual payments that are sufficient to service the debt incurred to develop and construct the facility, regardless of whether the agency continues to occupy the facility during the guaranteed term of the lease; and
- The fixed payments over the life of the lease are sufficient to retire the debt for the facility.

Whereas entering into an operating lease is similar to renting an apartment—a renter can move out after a short period with no further commitment—VA's build-to-lease contracts are similar to obtaining a mortgage to buy a house; through the agreement, the agency acquires an asset along with a corresponding liability to pay for the asset over time.

Like arrangements involving third-party funding for other federal facilities, VA's leases for medical facilities are more expensive than traditional acquisition methods because the third party borrows funds at interest rates higher than Treasury rates. In the case of VA's leases, the cost premium is even greater because, when the agency vacates the facility at the end of the lease term, it loses the residual value of a building that it has fully or mostly paid for.

Third-Party Financing of Federal Projects

Proposals to enter into arrangements involving third-party financing are not unique to veterans' medical -centers. Other agencies have structured third-party transactions to try to justify recording investment costs in the federal budget over the life of a project instead of in full when the investment is made—as would be the case with up-front appropriations for acquisition and construction projects. However, such budgetary treatment is at odds with established principles of federal budgeting, which require agencies to record the costs of government -investments when they are made.

Examples of Third-Party Financing

Over the past 10 years, CBO has evaluated many projects involving third-party financing, and it has -consistently estimated up-front budgetary effects of -legislation that would authorize those projects. Some examples of other uses of third-party financing are energy savings performance contracts (ESPCs), enhanced-use leases, lease-leaseback ventures, and military housing privatization projects.

Energy Savings Performance Contracts (ESPCs). Federal agencies enter ESPCs to acquire energy-efficient equipment—such as new windows, lights, and heating, ventilation, and air conditioning systems—while paying for the equipment

[2] For further information on the budgetary treatment of operating leases, see the Office of Management and Budget, Preparation, Submission, and Execution of the Budget, Circular A–11, (August 2012), Appendix B, *www.whitehouse.gov/omb/circulars—a11—current—year—a11—toc.*

over time. Because the government does not pay for the equipment at the time it is acquired, the contractor borrows money from a nonfederal lender to finance the acquisition and installation of the equipment. When the government signs the ESPC, it commits to paying for the full cost of the equipment as well as the interest costs on the contractor's borrowing for the project. [3]

Enhanced-Use Leases. Various federal agencies are allowed to lease out underutilized property to a non-federal entity in exchange for cash or in-kind compensation. In some instances, agencies have employed that authority to enter into enhanced-use leases to obtain third-party financing for the acquisition, construction, rehabilitation, operation, and maintenance of real property used by the agencies. Those agencies use a variety of agreements and contracts to assure the nonfederal partner that it will be able to recover its capital costs for the facilities over time through payments from the federal government. [4]

Lease-Leaseback Ventures. A few agencies such as the Tennessee Valley Authority can lease out new or existing facilities to a nonfederal entity in exchange for an up-front payment. The agency then leases those same facilities back from the lessee for the life of the asset—which can extend 30 years or more—at prices set to cover the lessee's debt. Such arrangements allow agencies to raise financing while avoiding statutory limits on their direct borrowing. [5]

Military Housing Privatization. The Department of Defense can enter into partnerships, provide direct loans and loan guarantees, enter into long-term leases, and use other financial arrangements to renovate, build, and operate military housing in concert with residential housing developers. The capital costs for the housing are repaid over time on a monthly basis through housing allowances provided to service members. [6]

Features of Projects That Use Third-Party Financing

Although projects that use third-party financing employ a variety of contractual arrangements and result in the acquisition of a broad range of assets, they generally have several features in common. In most cases, the -government:

- Initiates the project, selects the developer, and specifies the project's parameters;
- Has significant economic interests as owner, beneficiary, or lessor;
- Retains substantial control over the project's assets, business operations, and management; and
- Serves as the sole or primary source of capital backing the project's financing.

As a general rule, the conditions that make projects viable for investors are usually some of the same features suggesting that the projects should be classified as governmental activities. To secure private financing, agencies must demonstrate the government's long-term economic interest in the asset or service. Likewise, many of the -contractual conditions that agencies seek in order to -protect the government's interests in a project give the government ultimate control over the activity.

Third-party financing arrangements have a number of other consequences. Relying on third-party financing generally increases costs to the government. Each intermediary charges a fee for its services, which together can add at least 2 percent—and in some cases more than 50 percent—to the costs of a project. [7] Interest rates on projects' debt usually exceed interest rates on Treasury bonds by anywhere from 1 to 3 percentage points, depending on the terms negotiated by the parties.

In addition, if agencies do not initially record the full cost of governmental activities, the budget understates the size of the federal government and its obligations at the time when those obligations are made. Third-party arrangements may also skew decisions about how to allocate budgetary resources by giving preferential

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[3] See the discussion on energy savings performance contracts in Congressional Budget Office, cost estimate for S.1321, the Energy Savings Act of 2007 (June 11, 2007), *www.cbo.gov/publication/18735.*

[4] See the discussion on enhanced-use leases and build-to-lease military housing in Congressional Budget Office, cost estimate for S. 1042, the National Defense Authorization Act for Fiscal Year 2006 (June 2, 2005), *www.cbo.gov/publication/16561.*

[5] See the discussion on lease-lease backs in Congressional -Budget Office, cost estimate for H.R. 2548, the Federal Property Asset Management Reform Act of 2003 (November 18, 2003), *www.cbo.gov/publication/15048.*

[6] See the discussion on military housing privatization in -Congressional Budget Office, cost estimate for H.R. 4879, the Military Housing Improvement Act of 2004 (July 30, 2004), *www.cbo.gov/publication/15869.*

[7] Government Accountability Office, Capital Financing: Partnerships and Energy Savings Performance Contracts Raise Budgeting and Monitoring Concerns, GAO–05–55 (December 2004), *www.gao.gov/products/GAO–05–55.*

treatment to investment projects on the basis of their method of financing rather than their relative merits.

Such arrangements also reduce an agency's flexibility when managing its budget. The agreements entail a stream of mandatory payments that cannot be avoided. When faced with budgetary pressure, such as emergency expenses or the reductions in budget authority that arise from sequestration, for example, reductions must come from other programs or activities.

Finally, third-party financing allows agencies to raise -capital in private markets without the full scrutiny of the Congressional appropriation process.

Budgetary Treatment of Third-Party Financing

The way in which an activity should appear in the federal budget depends on the nature of the activity, not its method of financing. Under the principles that govern federal budgeting, budgetary treatment should be based on whether the activity is governmental (that is, initiated, controlled, and funded largely by the government for governmental purposes) or is an initiative of the private sector (driven by market forces independent of the government). An investment that is essentially governmental should be shown in the budget whether it is financed directly by the U.S. Treasury or indirectly by a third party that is borrowing on behalf of the government.

To properly measure the scope of the federal sector, the budget should record obligations and expenditures for projects financed by third parties the same way that it records costs for other federal programs. Thus, amounts obligated and expended by intermediaries on behalf of the government should be recorded in the budget when they occur. Such treatment provides the most accurate and timely measure of the magnitude of the government's financial commitment and the net costs of projects to taxpayers. It also discourages the use of costly third-party financing mechanisms and ensures that various types of acquisitions by federal agencies receive equivalent -budgetary treatment.

Budgetary Treatment of VA's Leases

In estimating the budget impact of authorizing legislation for VA, CBO treats leases for existing medical facilities under short-term contracts as operating leases, showing costs on an annual basis. However, on the basis of VA's practices over a number of years, CBO concludes that the majority of the leases proposed in 2013 would not qualify as operating leases. Most of those arrangements are long-term contracts for the development and construction of new facilities that are built for VA to its unique -specifications.

Therefore, CBO has determined that budget authority for leases of VA medical facilities should be recorded up front when the leases are initiated, in amounts equal to the development and construction costs of the medical facilities; that is, the cost should be recorded when the acquisition occurs, not when the debt is repaid. Because VA records a smaller amount (based on annual lease costs), CBO treats legislative authorization for such leases as contract authority—a type of budget authority that allows an agency to enter into a contract and incur an obligation in advance of appropriations.

Those conclusions reflect CBO's best objective judgment as to the appropriate budgetary treatment of VA's planned transactions, formed on the basis of the general principles that apply to federal budgeting and precedents established over a number of years. Ultimately, in such cases, the Office of Management and Budget and the affected executive branch agencies determine how transactions are recorded in the federal budget once legislation is enacted.

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

Ann Futrell, Sarah Jennings, and David Newman contributed to this testimony, with guidance from Theresa Gullo. John Skeen edited the document, and Jeanine Rees prepared it for publication. The testimony is available on CBO's website (www.cbo.gov).

Prepared Statement of Robert A. Petzel, M.D.

Good morning, Chairman Miller, Ranking Member Michaud, and Members of the Committee. Thank you for the opportunity to discuss the Department of Veterans Affairs' (VA) Major Medical Facility and Lease Program that supports VA's mission to provide quality and accessible health care for Veterans. I am accompanied today by Mr. Phillip Matkovsky, Assistant Deputy Under Secretary for Health for Admin-

istrative Operations; and Mr. Jim Sullivan, Director, Office of Asset Enterprise Management.

In my testimony, I will discuss the Veterans Health Administration's (VHA) model of health care delivery to ensure Veteran-centric care. This model is an integrated approach that includes direct care in VHA owned and leased facilities, non-VA care, and collaborations with the Department of Defense (DoD). I will also discuss the central role that capital planning has played and will continue to play in delivering the best care possible for Veterans, with the fullest access to care possible. Finally, I will address the current challenges we all acknowledge in balancing resources with needs, along with our recent challenge on major medical leases.

I. DELIVERING CARE TO VETERANS

At VA, we must anticipate and meet the needs of current and newly returning Veterans. We have many entry points for VHA health care: 152 medical centers, 821 community-based outpatient clinics (CBOC), 300 Vet Centers and 70 mobile Vet Centers that provide readjustment counseling, the Veterans Crisis Line, college and university campuses and other outreach efforts. In response to increased demand, VA has enhanced its capacity to deliver needed health services and to improve its system of care, so that Veterans can more readily access services. We acknowledge the disconnect between available capital resources and the number of facility replacement and modernization projects identified in our Long Range Capital Plan. However, our greatest immediate concern is how applying "capital lease" budgetary scoring to all proposed VA major medical facility leases threatens to potentially disrupt our ability to deploy state-of-the-art medical care for Veterans. Though VA is faced with ongoing challenges, we want the Committee and all Veterans to understand we are committed to ensuring our Veterans receive the quality health care they have earned by serving their country.

VHA has been transforming its health care delivery system for two decades, moving from an inpatient, hospital-based system to an outpatient, ambulatory care model. By doing so, VA has brought our commitment to serving timely and efficient health care services significantly closer to Veterans. The ability of Veterans to access health care at the right time and at the right place is at the heart of keeping our promise to America's Veterans. VA's capital and leasing programs are one tool by which VA has achieved this transformation.

VA provides health care to Veterans in facilities that are constructed and owned, and leased by VHA. Leased facilities, for example CBOCs, are located in Veterans' communities, allowing VA to meet access and capacity goals in locales across the country, including rural settings.

VA also provides health care to Veterans indirectly, through individual authorizations or through contracts with community health care providers, under the Non-VA Medical Care Program. Delivering health care services through the Non-VA Medical Care Program may be used when specific services cannot be provided in a VA-owned or leased facility in a timely manner, or because such VA services are not available. This option is limited to the general availability of those services in the community.

This mix of in-house and external care provides Veterans a full continuum of health care services, covered under our medical benefits package, when and where it is needed.

II. CAPITAL INVESTMENT

The goal of VA's capital asset and leasing programs is to ensure that there are safe, secure, and state-of-the-art facilities to provide benefits and services to our Nation's Veterans. VA owns and leases real property in hundreds of communities across the U.S. and overseas. Currently, VA owns and leases more than 170 million square feet in 7,786 buildings.

VA strives to maintain the optimal mix of investments needed to achieve strategic goals and ensure a high level of performance for our assets, while minimizing risk and maximizing cost effectiveness. VA has developed and continues to look for sound capital asset management strategies, to assist in maximizing the value of its portfolio, by disposing of or reusing underutilized properties.

VA has continued to innovate its capital asset management planning, including the development of a highly structured, data-driven methodology, by which to assess proposed major construction projects. Beginning with the fiscal year (FY) 2012 budget formulation process, VA introduced the Strategic Capital Investment Process (SCIP), to prioritize all capital investments across the Department based on identified mission needs. The SCIP process is a requirement-based planning tool, which informs the Department's resource allocation process, to address the most critical needs first.

SCIP involves a systematic evaluation and prioritization of all proposed capital investments, based upon identified performance gaps (e.g., safety, security, workload-driven capacity shortage, right-sizing). These gaps reflect where enhancement of current infrastructure or services is necessary to meet strategic goals for access and timeliness based on current and future Veteran demographic projections, or when VA may have underutilized or excess capacity. Only those capital investment projects that have scored well in addressing identified performance gaps are proposed for funding in VA's budget. As a result of the SCIP process, VA has a total picture of all possible capital investments that would support Departmental goals, as well as a prioritized integrated list of capital investments.

All projects are considered in light of VA's aging infrastructure. On average, VA-owned assets are more than 60 years old. The SCIP process directly addresses the challenges posed by an aging infrastructure with a range of solutions, including reuse or repurposing of underutilized assets.

In light of the fiscal outlook for our Nation, and what has always been our duty to be good stewards on behalf of taxpayers, we must more carefully than ever consider VA's footprint and our real property portfolio. Innovative approaches to deliver services to Veterans and better manage our portfolio are welcomed. The Department supports the Administration's proposed Civilian Property Realignment Act (CPRA), to add to VA's "tool-kit" for reducing unneeded assets. If enacted by Congress, this process would give VA more flexibility to dispose of unneeded property, and improve the management of its inventory.

In addition to CPRA, the Department proposed legislation that would authorize VA to plan, design, construct, or lease joint VA/Federal use medical facilities, and amend VA's Enhanced-Use Lease (EUL) statute. The proposed legislation would further VA's ability to collaborate with other Federal agencies, and would authorize VA to plan, design, construct, or lease joint VA/Federal use medical facilities. And relative to accomplishing such joint projects, the proposed legislation would allow the transfer of funds between Federal agencies—for use in the planning, design, and/or construction of joint medical facilities.

The current version of VA's EUL authority precludes the Department's ability to enter into a wide range of agreements that could benefit Veterans and help address VA's physical infrastructure needs. VA's proposed amendments to its EUL authority would enable leasing of its unneeded and vacant properties for purposes beyond the development and operation of "supportive housing," as defined in 38 U.S.C. § 8161(3) of the United States Code.

The Administration's CPRA proposal, in combination with granting VA broader EUL authority, will help VA continue to reduce operations and maintenance costs for its most challenging assets, and would offer alternative approaches to manage VA's real property portfolio.

III. MEDICAL LEASES

In addition to construction, the leasing of medical facilities is essential to providing Veterans with access to health care services. Leasing provides VA the flexibility to serve our Nation's Veterans, with both the space and services located closer and more conveniently to where Veterans live. It also allows VA to respond to demographic shifts, changing service demands, and technological improvements to support projected outpatient workload increases. Finally, leasing enables VA to vacate clinical space if doing so is prudent in order to continue to provide state-of-the-art healthcare in safer, more modern facilities. Since 2008, VA has opened 180 leased medical facilities, 50 of which required Congressional authorization as "major facilities", due to anticipated annual rent payments exceeding one million dollars. VA currently leases approximately 21.5 million square feet in support of its health care system.

As you are aware, the Congressional Budget Office's (CBO) technical cost analysis scored VA's proposed 2013 and 2014 major medical facility lease authorizations as "capital leases," requiring the Department to budget upfront for the full cost of the lease,. This score precludes VA from procuring all of the requested 27 major medical facility leases serving more than 340,000 Veterans in 20 States. The Department is very concerned about the potential negative effects on Veterans utilizing VA health care. If the Department is unable to pursue these planned projects, six existing clinics may have to close, 14 will have constrained services to already over-populated facilities, and long-planned expansions to address Veterans' health care needs will not move forward. Increased travel and wait times are likely to occur for Veterans, especially those located in rural areas, where access to care is limited.

Mr. Chairman, we appreciate your continued work to resolve this situation. Please be assured you have a partner in VA, to make all efforts to minimize or avoid disrupting or degrading Veterans' access to health care.

V. FEDERAL AND LOCAL COLLABORATIONS

In fulfilling VA's model of quality and available care, we strive to coordinate with community providers to address gaps, and create an improved patient-centric network of care focused on wellness-based outcomes. Pursuant to President Obama's Executive Order 13625, "Improve Access to Mental Health Services for Veterans, Service Members, and Military Families," VA is working closely with the Department of Health and Human Services (HHS), to establish pilot projects with community-based providers. These providers include community mental health clinics, community health centers, substance abuse treatment facilities, and rural health clinics. The effectiveness of community-based providers in helping to meet the mental health needs of Veterans in a timely way is being evaluated. Both the Health Resources and Services Administration (HRSA) and the Substance Abuse and Mental Health Services Administration (SAMHSA) of HHS, provided contacts for potential community partners. Pilot projects are varied and may include provisions for inpatient, residential, and outpatient mental health and substance abuse services. Some sites include capabilities for telemental health, staff sharing, and space utilization arrangements, to enable VA providers to provide services directly in communities that are distant from a VA facility. The pilot project sites were established based upon community providers' available capacities, and wait times, community treatment methodologies available, Veteran acceptance of external care, location of care with respect to the Veteran population, and mental health needs in specific areas.

In addition, VA collaborates with HHS-funded Federally Qualified Health Centers and community mental health clinics across the country. These community partnerships were developed locally as a means to provide mental health services to Veterans in areas where direct access to VA health care is limited by geography or workload.

The VA has partnered with HHS's Administration for Community Living to develop a Veteran Directed Home and Community-Based services program. The program is available through 45 VAMC's that partner with 99 Aging and Disability Resource Centers (ADRC)/area agencies on aging/centers for independent living in 24 states and the District of Columbia. Veterans enrolled in the program receive a flexible service budget that they use to purchase the home and community-based services they need to thrive in the community. In collaboration with an ADRC options counselor, the Veteran develops a person-centered plan that includes the services they need at the times they need them. The Veteran hires and directs the staff that provides the services and with the support of a fiscal management services organization pays their staff for services rendered. The options counselor and the fiscal management services organization are part of the No-Wrong-Door Aging and Disability Resource Center (NWD/ADRC) that the VHA, Administration for Community Living and the Centers for Medicare & Medicaid Services are working together with eight states to develop. The eight states are Connecticut, Maryland, Massachusetts, New Hampshire, Oregon, Vermont, Washington, and Wisconsin. The NWD/ADRC will provide person-centered streamlined access to long-term services and supports for all populations that are at greatest risk of institutionalization and/or spend down to Medicaid.

VI. VA/DOD COLLABORATION

VA continues to look for ways to enhance our existing collaborative relationship with DoD and other Federal agencies. VA and DoD established the Construction Planning Committee (CPC), which reports directly to VA/DoD Joint Executive Committee (JEC), to improve VA's existing collaborative relationship with DoD and other Federal agencies, particularly for joint capital asset planning. CPC developed a common approach for capital asset planning, to identify and share data information between the Departments at the field level for population, workload, purchased care, access, and space, to aid in identifying potential collaborative opportunities.

VA will continue to assist DoD in identifying opportunities and coordinating the needs and requirements of both Departments and other Federal agencies, in order to increase collaborative capital initiatives. As mentioned earlier in the testimony, the FY 2014 budget request includes legislation that would further enable VA and DoD to share medical facilities, in order to better serve Servicemembers, Veterans, and taxpayers. The proposal would allow VA to transfer and/or receive funds (major and minor construction) to/from another Federal agency, for use in the planning, design, and/or construction of joint medical facilities.

VA/DoD partnerships deliver benefits and services to Veterans, Servicemembers, military retirees, and beneficiaries, through an enhanced VA and DoD partnership. VA and DoD have direct sharing agreements between VA medical centers (VAMC)/Veterans Integrated Service Networks, and Military Treatment Facilities (MTF), for a range of services. In FY 2012, there were 230 direct sharing agreements between

61 VAMCs and 105 DoD MTFs. Of these facilities, 59 VAMCs provided health care services for DoD beneficiaries and 38 DoD medical facilities provided health care services for Veterans. VA purchased from DoD $94.02 million for services rendered and DoD reimbursed VA $96.9 million for services delivered.

There are also several national Memorandums of Agreement (MOA) and Memorandums of Understanding between VA and DoD in place, which allows VA to further collaborate in providing care to Veterans and their families.

- Polytrauma Rehabilitation Centers: Spinal Cord Injury/Traumatic Brain Injury/Blind Rehabilitation for Active Duty Service Members
- National TRICARE Pharmacy MOA
- Integrated Disability Evaluation System (IDES) in concert with Disability Office
- National MOA Active Duty Dental Program with United Concordia (where capacity permits)
- MOA for Provision of Mental Health Providers to Army

VA and DoD have several Joint Ventures that enhance the cost-effective use of Federal healthcare resources, maximize the shared use of resources, and benefit both VA and DoD beneficiaries. There are ten Joint Venture locations:

- Charleston, SC (Naval Health Clinic (NH)/Joint Base Charleston/Naval Hospital and Beaufort/Charleston VAMC)
- Key West, FL (NH Jacksonville/ Miami VAHCS CBOC)
- Gulf Coast FL (Keesler AFB & VA Gulf Coast HCS)
- El Paso, TX (Wm Beaumont AMC/ El Paso VAHCS)
- Las Vegas, NV (Nellis AFB/ VA Southern Nevada HCS)
- Fairfield, CA (David Grant Medical Ctr/ N. California VAHCS)
- Albuquerque, NM (Kirkland AFB/ New Mexico VAHCS)
- Honolulu, HI (Tripler AMC/ VA Pacific Island HCS)
- Anchorage, AK (Elmendorf AFB/ Alaska VAHCS)
- James A. Lovell Federal Health Care Center (North Chicago)

VII. CONCLUSION

Mr. Chairman, we appreciate the opportunity to address these important subjects and continue pursuing solutions and ways ahead for our Nation's Veterans. VA must ensure Veterans and other eligible beneficiaries receive timely, accessible Veteran-centric high-quality health care. We welcome discussion of that central priority, our comprehensive care model, and the topics I have discussed in my testimony; notably, VA's capital planning process, VA's collaborations with DoD and other Federal agencies, and community providers. But if I may respectfully stress, if the major medical facility leasing issues are not expeditiously resolved, I fear it will have a significantly negative impact on VA's health care services for Veterans. We appreciate your support and encouragement in identifying and resolving challenges as we continue caring for Veterans. VA is committed to providing the highest quality of care, which our Veterans have earned and deserve. My colleagues and I are prepared to respond to any questions you may have.

Statements For The Record

THE AMERICAN LEGION

The American Legion – Testimony for the Record, Assessing VA's Capital Investment Options to Provide Veterans' Care, Committee on Veteran' Affairs U.S. House of Representatives, June 27th, 2013

Over the last 20 years, The Department of Veteran Affairs (VA) has utilized its medical leasing authority at 38 USC 8103 & 8104, in conjunction with the General Services Administration Acquisition Regulation (GSAR) and Federal Acquisition Regulation (FAR) to lease nearly 600 Community Based Outreach Centers (CBOCs). The wisdom, and need for these centers is not in question or dispute.

The average facility goes through a comprehensive competitive procurement process, whereby VA stipulates its unique needs in solicitations, offering contractors the chance to submit competitive proposals in an attempt to receive the lease award to provide underlying medical space so VA can serve Veterans in a convenient, accessible manner, with expertise that VA is required to provide. And, VA's major leases are negotiated based on fair market appraisals, where VA is not tied to lessor's underlying debt/loan obligations. Simply put – the VA enters into a leasing contract

for these properties at competitive rates, similar to any other equal commercial property. The advantage to VA in the case of these leases is that they get to have a facility which is custom tailored to our veterans' needs, in space that VA can vacate at the end of the lease term, and the lessors can then repurpose the space for other desired non-VA uses.

Commercial property leasing is a common in the United States, and long-term leases are an industry standard. Some of the reasons that leasing property might make more sense that owning property include:

- *Flexibility* – As population demographics change, the lessee has the freedom to relocate to an area where they can best meet the needs of their client/customer/patients.
- *Cost* – Leasing a facility minimizes the financial burden placed on the organization, and the cost of occupancy can be stretched over the course of 10, 15, or even as much as 20 years.
- *Risk* – Construction cost overruns are more than common in the construction industry – in fact, they are almost a guarantee. Lease contracts help insulate the lessee from unexpected costs, due for example, to unforeseen issues, poor planning, loss-leader bidding, or underbidding. Underbidding is a common problem in the competitive construction process, as bidders seek to win large contracts by underbidding their competition, and then attempt to recover some of those lost revenues by adding on charges later that weren't specifically named in the original bid, but are essential to the successful completion of the project. In the industry, these are referred to as modifications, or "mods" for short.

In 2005, The Congressional Budget Office (CBO) published an Economic and Budget Issue Brief titled "Third-party Financing of Federal Projects". It is this brief that CBO now uses as the basis for their opinion to score VA's future CBOCs upfront, by claiming that the total expenditure of a long-term lease be charged against the federal budget in the first year of the contract—as if the federal government were to purchase the property and the supporting land outright. In addition, CBO states that a subsequent lease of 20 years (if VA remains in that same leased space) would not be scored fully upfront, but would instead be scored only for the years worth of financial commitment the government would need to draw from the treasury, year-by-year—stretching the impact over the life of the lease, instead of in the first year as in the case of a new lease. According to CBO "We would treat renewal of the lease after the construction note is paid off as a straight lease. There would be no direct spending" [1].

According to the report, "if agencies do not initially record the full cost of governmental activities, the budget understates the size of the federal government and its obligations at the time when those obligations are made" [2]. Froma a pragmatic business perspective, The American Legion fails to see the difference between an initial lease, and a subsequent lease of equal time, and what logic dictates that the impact to the federal budget be considered differently in each scenario.

The 2005 CBO brief assumes that long term leases that are built-to-suit sufficiently satisfy the financed debt that the contractor invested in the project, and therefore the contract should be viewed a being more costly to taxpayers "In many instances of third-party financing, a project is created as a stand-alone entity, sustained by the cash flows generated by its assets" [3]. Based on our understanding of the brief, CBO disagrees with this business model, and leaves us, the reader, with the impression that the contractor, financier, and landlord are all somehow unjustly enriched, and that the government will ultimately pay more for these types of contracts than they would have, had they either purchased the property outright, or leased an existing property through a commercial leasing agent. Based on The American Legions evaluation of this program, we find no evidence to support this claim.

CBO further warns that the government could be liable for the total cost of a lease, even in the case of an early termination. In the 20 year history of the CBOC leasing program, The American Legion understands that there has only been one case where a major lease was prematurely terminated, and that the government did not suffer total-cost liability as a result of that early termination.

The American Legion recognizes that The Congressional Budget Office is in place to provide policy cost estimates through assumptions and methodologies, and that the opinion of the analyst is not politically motivated. We also recognize that the

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[1] Email between CBO and TAL dated June 11, 2013 at 3:59PM.

[2] Congressional Budget Office report, Economic and Budget Issue brief, Third-party Financing of Federal Projects June 1, 2005.

[3] *ibid.*

recommendations of CBO are provided to congress for inclusion in the overall evaluation process, and are specifically not intended as binding recommendations. As such, The American Legion calls on Congress to consider the government's cost to own, operate, and maintain facilities after their economic life has outlived its competitive usefulness. Healthcare treatment has advanced more in the past 20-years than any other time in our history, and it will advance at the same rate, or faster, over the next 20-years. The American Legion is concerned that VA will be saddled with an inventory of antiquated facilities, leaving veterans with substandard care, reduced access to quality care facilities, and outdated technology. The lease model provides VA with an exit strategy for inefficient facilities. If they own the properties, the exit strategy is less clear and possibly more expensive.

While The American Legion accepts that the analyst's opinion is not politically motivated, we question the whether the opinion, in this case, is based in sound and reasonable business best practices. As an example, CBO states "Third-party transactions are generally structured in such a way as to try to justify recording investment costs in the federal budget over the life of a project instead of in full when the investment is made—as would be the case with normal appropriations. Treating investment costs as an annual operating expense may make it easier to get projects funded by eliminating the need for substantial up-front appropriations. However, such budgetary treatment is at odds with established principles of federal budgeting, which require agencies to record the costs of government investments when they are made." Accounting for obligations is different than accounting for investments. The leases discussed here are not burdens placed on the federal treasury in a single year, rather a series of investments committed to over the course of a long term contract. The American Legion disagrees with CBO's opinion that first term leases place a disproportionate obligation on the budget in the first year, as opposed to subsequent leases, and is able to find no statistical or empirical data to support this CBO claim.

At the time the CBO report was written, VA's CBOC lease program was still fairly new. CBO used only colloquial data to support their assumptions, which in-turn supported their conclusions. After 20 years of facility leasing, The American Legion can find no accusations of overspending based on the CBOC facilities leasing program, nor has CBO offered any evidence that the CBOC leasing program has cost the American taxpayer a dime more than should have been spent.

The American Legion firmly believes that the opposite is true; that the CBOC leasing program is less expensive than purchasing, and as an added advantage, VA's budget is not overextended—which allows them the freedom to open 10 to 20 times the amount of clinics to serve veterans than they would be able to, if they had made the decision to purchase the same facilities.

If Congress does not marginalize the opinion of The Congressional Budget Office in the case of CBO scoring these leases, then the cost of serving our disabled veterans in the affected communities will be exponentially increased – because each veteran will then be relegated to contract services – which the American Legion believes to be far less cost effective than leasing and operating VA's own facility. The American Legion also joins with the rest of the Veteran Service Organization community when we recognize that the best place for veterans to receive VA covered health care, is at the VA.

Congress enjoys the services of several federally funded offices; the Congressional Budget Office is but one. Another well respected federal office that provides constructive nonpartisan evaluation and cost estimates based on legislative projections is the Congressional Research Service (CRS) and The Office of Management and Budget (OMB). Contrary to the CBO opinion, CRS and OMB both believe "Based on the information VA provided, OMB assumes these leases will be operating leases provided they are structured consistent with the requirements contained in OMB circular A–11."[4] In closing, VA is acting responsibly under its major lease authority, the GSAR and FAR, and in the best interest of veterans. With regard to this program, the American Legion finds that VA is acting in good faith, and is being responsible stewards of the taxpayer's money. Therefore, in accordance with The American Legion Resolution Number 24 dated May 8–9, 2013 which states;

WHEREAS, In the mid-1990s, Dr. Kenneth Kizer, former Department of Veterans Affairs (VA) Under Secretary for Health, revolutionized the delivery of health care to our nation's veterans by opening local community based outpatient clinics (CBOCs) to provide outpatient medical care to veterans; and

[4] Email between Rep Boustany's office and TAL dated 15 may 2013 at 5:57PM containing an email response from The Congressional research Office, and an excerpt from a response from OMB.

WHEREAS, CBOCs transformed VA into a health care-based system that became more geographically accessible to veterans; and

WHEREAS, Since the mid-1990s, the VA has turned to outpatient clinics as a way to bring health care closer to where veterans live, with 827 clinics to supplement the care provided at 152 medical centers; and

WHERAS, In FY 2012, H.R. 2646 authorized the VA sufficient appropriations to continue to fund and operate leased facility projects that support our veterans all across the country; and

WHEREAS, The Congressional Budget Office (CBO) abruptly changed its scoring methodology of interpreting leases as operational to capital leases after decades of precedence; and

WHEREAS, In September of 2012, the authorizations for 15 Veterans Health Administration facility leases were eliminated from a construction bill due to the scoring change initiated by the CBO; and

WHEREAS, Approximately 27 leases are impacted for FY 2013 and FY 2014 (see Attachment A) as well as a number of future leases that are set to expire; and

WHEREAS, Based on the scoring change, funding for these leases must be accounted for up-front; and

WHEREAS, VA would see a detrimental impact on its budget and medical care program without the leases; and

WHEREAS, This technical book-keeping ruling prevents Congress from enacting important authorizations to renew and establish new leases; and

WHEREAS, If no action is taken to resolve the issue, veterans will ultimately suffer increased delays and diminished access to needed medical care and services; inefficiencies in their continuum of care, and veterans' care will negatively be impacted by increased costs of duplication of services and contracted care; now, therefore, be it

RESOLVED, By the National Executive Committee of The American Legion in regular meeting assembled in Indianapolis, Indiana, on May 8–9, 2013, That The American Legion request that Congress provide an annual or permanent exemption for the Department of Veterans Affairs (VA) leases from the Congressional Budget Office's scoring process, so as to give flexibility to VA to meet the health care needs of veterans.

Any questions concerning this testimony can be directed to The American Legion Legislative Director, Mr. Louis J. Celli Jr., The American Legion 1601 K Street NW Washington, D.C. 20006, by calling (202) 861–2700, or by email *LCelli@Legion.org.*

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