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FEDERAL REAL PROPERTY

Overreliance on Leasing Contributed to High-Risk Designation

Statement of David J. Wise, Director
Physical Infrastructure Issues

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Highlights

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

Why GAO Did This Study

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

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

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

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What GAO Found

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

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

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

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

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

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

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

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

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

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

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

We performed this work from July 2011 to August 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

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

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

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

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

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

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

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

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

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

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

We have raised the scorekeeping issue as a challenge in several reports and testimonies over the past 20 years[9] and believe that if it is not addressed, reliance on leasing at a potentially high cost will persist over the long-term. To that end, in April 2007 and January 2008, we recommended that OMB, as the agency responsible for reviewing agencies' progress on real property management, develop a strategy to reduce agencies' reliance on costly leasing where ownership would result in long-term savings.[10] Such a strategy could identify the conditions under which leasing is an acceptable alternative, include an analysis of real property budget scoring issues, and provide an assessment of viable alternatives. OMB agreed with the need for a strategy to optimize agencies' use of and spending on leased space that addresses how to identify those instances where agencies are relying on costly leasing.

GSA Has Faced Operational Losses Related to Leasing in Recent Years

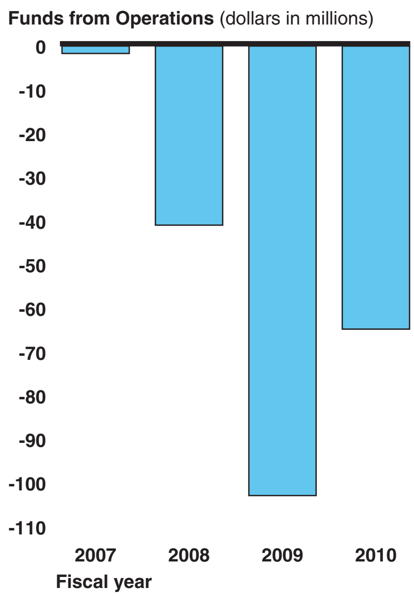
Although GSA's goal is to break even on the administrative costs of the facilities it leases from private sector owners, recent years have seen significant losses, raising concerns about the management of its leases. Tenant agencies pass lease payments plus a fee to GSA, which retains the fee and then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

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

[10]GAO-08-197 and GAO-07-349.

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

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



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

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

CPRA May Provide an Opportunity to Reduce Overreliance on Leasing

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

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

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

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

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

- *Special purpose space delegation*. This is a standing delegation of authority from the Administrator of General Services to specific federal agencies to lease their own special purpose space. Thirteen specifically identified agencies have special purpose leasing delegations for special types of space, subject to additional limitations. For example, the Department of Commerce is delegated authority to lease space for the Census Bureau; laboratories for testing materials; classified and ordnance devices; calibration of instruments; and atmospheric and oceanic research, maritime training stations, and radio stations.

- *Provider of choice authority delegation*. This occurs when the Administrator of General Services has issued a standing delegation of authority to the heads of all federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years. Since 2007, GSA has limited the use of this type of delegation to lease transactions of less than 20,000 square feet. Additionally, according to GSA guidance, federal agencies must acquire and use the space in accordance with all applicable laws, Executive Orders, regulations, and OMB Circulars that apply to federal space acquisition activities.

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

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

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

GAO Contact and Staff Acknowledgments

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

Appendix I: Independent Statutory Leasing Authority

Table 1: Agencies That Have Independent Statutory Leasing Authority

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

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

Source: General Services Administration.

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

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