Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Chairman

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September 23, 2016

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Economic Development, Public Buildings and Emergency Management
FROM:	Staff, Subcommittee on Economic Development, Public Buildings and Emergency Management
RE:	Subcommittee Hearing on "Department of Veterans Affairs Leases: Is the VA Over-Paying for Leased Medical Facilities?"

PURPOSE

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Wednesday, September 28, 2016, at 10:30 a.m. in 2253 Rayburn House Office Building to receive testimony related to the Government Accountability Office's (GAO) report on Department of Veterans Affairs (VA) leasing for health care facilities and alignment of its practices with those of the General Services Administration (GSA). The Subcommittee will hear from representatives of the GAO, the VA, and the GSA regarding the findings of that report, progress and timing on the VA lease prospectuses to be submitted to the Committee on Transportation and Infrastructure (Committee) for approval, and how the GSA and the VA are ensuring the costs associated with the facilities are managed appropriately.

BACKGROUND

In 2003, the GAO placed real property management on its list of "high risk" government activities, where it remains today.[1] Real property management's placement on the list is in part because of the federal government's increasing reliance on leasing instead of federal ownership even though the GAO has shown that ownership is generally more efficient for large, long-term space needs. Despite this, the VA has increasingly turned toward leases to fulfill its facility needs for providing veterans with medical care. As a result, the Committee requested that GAO study the real estate practices of the VA to ensure that agencies growing reliance on leasing is justified.

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[1] GAO, *High-Risk Series: An Update*, GAO-15-290 (Washington, D.C.: February 11, 2015).

The Committee specifically requested that the GAO conduct a review related to: (1) the factors that account for the VA's decisions to lease space for medical facilities; (2) whether the VA's cost-estimating is consistent with best practices; and (3) how the VA's leasing process aligns with that of the GSA.

Department of Veteran Affairs (VA) Leasing

The VA manages the largest health care network in the United States through the Veterans Health Administration (VHA). It has over 2,700 health care sites, including hospitals and outpatient clinics. In order to meet the health care demands and to keep pace with changes in health care technology and delivery, an increasing number of the VA's health care facilities are leased. Over the 10-year period from 2005-2015, the number of leased health care facilities grew 80 percent from 689 in 2005 to 1,246 in 2015. The outpatient facilities vary in size from under 20,000 square feet to over 200,000 square feet. Typically, given the nature of the facilities, new leased VA facilities are build-to-suit (built specifically for the VA's purposes and use) and have lease terms of up to 20 years.

The VA's leasing authority for leasing a medical facility can be found at Section 8103 of title 38, United States Code. However, pursuant to 38 U.S.C. §8104, leases exceeding $1 million require congressional authorization. While the GSA had previously delegated authority to the VA under the *Public Buildings Act*, the VA never sought authorization for leases above $2.85 million (the GSA's threshold for congressional authorization) from the Committee to authorize use of the GSA's leasing authority (40 U.S.C. § 3307).

In 2014, the Congressional Budget Office (CBO) estimated that the leases authorized in *the Veterans' Access to Care through Choice, Accountability, and Transparency Act of 2014*, would result in $1.2 billion in direct spending.[2] This followed testimony by the CBO on June 27, 2013 concluding that the CBO viewed most leases of medical facilities by the VA as akin to capital leases and, therefore, the full costs of such leases must be recorded in full when the lease is executed.[3] Questions were raised as to whether the VA was recording its leases appropriately pursuant to *the Recording Statute and Anti-Deficiency Act*.[4] This also raised questions as to whether the VA had the authority to enter into long-term leases under its own leasing authority.

As a result, the VA began working with the GSA to use the GSA's leasing authority to help the VA acquire medical facilities.[5] On July 24, 2014, the GSA entered into a new delegation agreement with the VA. Under the delegation agreement, leases exceeding $2.85 million require Committee authorization.[6] Six leases were submitted to the Committee for authorization and were approved by the Committee on September 17, 2014. Since that time, the Committee has not

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[2] Congressional Budget Office Cost Estimate for H.R. 3230, Veterans' Access to Care through Choice, Accountability, and Transparency Act of 2014, July 10, 2014.
[3] The Budgetary Treatment of Medical Facility Leases by the Department of Veterans Affairs, Robert A. Sunshine, Deputy Director, Congressional Budget Office, before the Committee on Veterans' Affairs, U.S. House of Representatives, June 27, 2013.
[4] 31 U.S.C. 1341 and 31 U.S.C. 1501, respectively.
[5] Letters to Chairman Shuster and Ranking Member Rahall dated September 12, 2014.
[6] 40 U.S.C. sec. 3307.

received any new VA medical facility leases for approval. The Committee expects to receive eight prospectuses for the VA's leases exceeding the GSA's threshold in the near term.

While the GSA has long-term leasing authority, it must still follow the requirements of Office of Management and Budget (OMB) Circular A-11, Appendix B related to the Budgetary Treatment of Lease-Purchases and Leases of Capital Assets. The circular requires that if a lease meets the definition of a capital lease[7], the full budget authority for the entire term of the lease must be allocated when the lease is executed. A capital lease is any lease other than a lease-purchase that does not meet the criteria of an operating lease. This OMB Circular A-11 requirement applies to both the GSA and the VA. As such, the GSA and the VA must ensure that VA leases are operating leases (which do not require the full cost upfront) and are not categorized as capital leases.

GAO Findings

The GAO found some areas where improvements have been made by the VA and where improvements are still needed – such as better transparency on the VA's preference for leasing and cost comparison data.

The VA Prefers Leasing: The VA established the Strategic Capital Investment Planning (SCIP) process to identify and assess capital needs starting with those included in the 2012 fiscal year budget submission. This process includes a gap analysis and assessment, long-range action planning and prioritization. During the SCIP process, the VA analyzes alternative solutions to meet space needs, including leasing and construction. The VA's preferred solution for new medical facilities has been leasing. The VA asserts that leasing is faster and provides flexibility should a facility need to relocate. While the VA considers costs in its process, project costs have a lower weight among the VA's criteria. The VA has also asserted that owned facilities would require a longer timeframe to open than a leased facility and would limit the VA's flexibility to adapt to potential changes in the veteran's population, demand for services, new technologies, or health care delivery. However, the VA has not provided congressional stakeholders with information that supports that reasoning. For example, the VA did not have the data and the ability to track leases in a way to determine if more flexibility was in fact achieved or needed. The GAO recommended greater transparency on data that can help assess whether the reasons for preferring leasing are founded and to better assess and compare the costs of leasing verses construction.

Cost-Estimating: The GAO also reviewed the VA's cost-estimating process for medical facility leases. The GAO concluded that the VA's cost-estimating process mostly met the characteristics for producing reliable cost estimates by addressing nine out of 12 best practices. The primary area where the VA fell short in the GAO's review was related to ensuring accuracy based upon

[7] A capital lease is any lease other than a lease-purchase that does not meet the criteria of an operating lease. An operating lease is a lease where the ownership of the asset remains with the lessor during the term of the lease; is not transferred to the Government at or shortly after the end of the lease term; a lease that does not contain a bargain-price purchase option; has a lease term that exceeds 75 percent of the estimated economic life of the asset; have lease payments that do not exceed 90 percent of the fair market value of the asset; the asset is a general purpose asset; and there is a private sector market for the asset.

comparisons to market rates. While the VA includes a review of market rates in a given area, the VA then adds to those rates standard adjustments to account for building out medical space. The GAO concluded that the specialized build-out space may make full compliance with best practices for cost-estimating difficult. In addition, the GAO indicated that the VA does not follow-up to track the actual costs to develop lessons-learned to help inform its future cost-estimating process.

The VA Alignment with the GSA: The GAO indicated that the VA has made progress in working with the GSA. The GAO noted the VA expanded the training of its contracting officers, implemented an internal management review process to better manage the GSA delegations, and increased its coordination with the GSA. According to the VA's data, the average processing time for the VA's delegation requests fell from 58 days between July 2014 and February 2015 to 21 days between February 2015 and February 2016.

CONCLUSION

The hearing will focus on the GAO review, updates from the VA and the GSA on how their lease review processes are working, and the status of outstanding prospectuses to be submitted for Committee approval.

WITNESS LIST

Ms. Rebecca Shea
Acting Director, Physical Infrastructure
U.S. Government Accountability Office

Mr. James M. Sullivan
Director of Asset Enterprise Management
U.S. Department of Veterans Affairs

Mr. Chris Wisner
Assistant Commissioner for Leasing
Public Buildings Service
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