



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

July 1, 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 “Independent Leasing Authorities: Increasing
Oversight and Reducing Costs of Space Leased by Federal Agencies”

PURPOSE

The Subcommittee on Economic Development, Public Buildings and Emergency Management will hold a hearing on Wednesday, July 6, 2016, at 10:00 a.m., in 2167 Rayburn House Office Building on the Government Accountability Office’s (GAO) reports on federal agencies with leasing authorities independent of the General Services Administration (GSA) and the use and potential taxpayer benefits of options to purchase real estate negotiated in GSA lease agreements.

BACKGROUND

The Committee requested that GAO conduct two reviews related to: (1) the independent leasing authorities of federal agencies and (2) GSA leases with purchase options. The results of these reviews will be detailed at the hearing.

GAO Reports and Findings

Independent Leasing Authorities

In fiscal year 2015, GSA leased 7,171 real estate assets, totaling 191 million rentable square feet costing the taxpayer more than \$5.6 billion.¹ Despite GSA's role as landlord for the federal government, over the years, the number of federal agencies with their own authority to lease space has grown. There is no comprehensive list of agencies that have authority to lease space independent of GSA. While several lists have been produced over the years, none of them were exhaustive.

As part of the report requested by the Committee, the GAO surveyed 103 federal entities and of those, 60 entities self-reported as having independent leasing authority and 52 of those indicated they have authority to lease office and warehouse space. Thirty-seven of these agencies reported actually using their authority to lease 944 domestic offices and 164 warehouses totaling 20 million rentable square feet costing \$586 million annually. Only 18 of these entities reported using GSA to lease a portion of their space.

Twenty-five entities with their own leasing authority are not members of the Federal Real Property Council (FRPC) and, therefore, are not required to submit real property data to the Federal Real Property Profile (FRPP) database.² In recent years, the Office of Management and Budget (OMB) issued memoranda in 2012, 2013, and 2015 requiring federal agencies to freeze and reduce their space footprint. However, these requirements only apply to those agencies on the FRPC. Of the 25 agencies with their own leasing authority that are not members of FRPC, 19 have used their authorities to lease 243 offices and warehouses composing more than 8 million rentable square feet and at a cost of approximately \$293 million annually.

GAO also examined eight agencies in depth – reviewing the extent to which they had policies incorporating leading government leasing practices, comparing their lease rates and deals with those of GSA, and looking at their space utilization. GAO found that six of these agencies had policies that generally conformed with leading government leasing practices; however, there was no evidence in the leasing files that the policies were consistently followed. While GAO generally found that the rates for most agencies were less costly or comparable to GSA leases, seven of the eight agencies leased 43 percent more space per employee on average than GSA's standard of 218 rentable square feet per person.

Smithsonian and PBGC

The Smithsonian Institution and the Pension Benefit Guaranty Corporation (PBGC) are among the 25 agencies that have their own leasing authority and are not required to participate on the FRPC or submit data to the FRPP. The Smithsonian leases 50 offices and warehouses composed of 1.4 million rentable square feet, costing \$41.6 million annually. The PBGC leases

¹ FY2015 State of the Portfolio Snapshot, U.S. General Services Administration.

² The Federal Real Property Council and the Federal Real Property Profile Database were established by executive order (E.O. 13327) in 2004 which only requires federal agencies covered by the Chief Financial Officers Act of 1990 to participate.

nine offices and warehouses, totaling over 500,000 rentable square feet, costing \$28 million annually. The PBGC, however, recently determined it would work through GSA to consolidate and reduce three leases in D.C. for its headquarters functions, which compose the majority of its leased space. A prospectus is pending for approval before the Committee.

Purchase Options

Purchase options give an agency the choice to buy a building typically at the end of a lease term (or at shorter time intervals during a lease) and can be for a fixed-price (which may be discounted) or through an appraisal process at the time the option can be exercised.

Scorekeeping rules are established by OMB, the Congressional Budget Office, and the Senate and House Budget Committees to determine how certain Executive Branch and legislative actions will impact the budget of the federal government. Pursuant to the Budget Enforcement Act of 1990, Congress adopted scorekeeping rules on how real estate leases are to be recorded in the budget. The scorekeeping rules assume that agencies will exercise discounted purchase options and therefore they changed how leases with such options are scored. Specifically, OMB Circular A-11, Appendix B essentially requires that if a purchase option for less than fair market value is included in a lease (and the option can be exercised without specific legislative authorization), the lease must be scored as a capital lease. Therefore, an agency must have the full budget authority of the entire cost of the lease upfront when it executes a capital lease agreement. Compared to an operating lease for which an agency only needs the budget authority to cover the first year lease payment plus cancellation costs.

GAO identified and reviewed 17 examples of GSA leases from 1992 to 2014 that included purchase options and made the following findings:

- The scoring rules have effectively eliminated the use of discounted purchase options.
- The scoring rules have resulted in GSA using non-discounted purchase options less often because of the concern of the increased level of scrutiny.
- The scoring rules have led to the unintended consequence of creating a greater incentive to use operating leases.
- Three purchase options executed in recent years have resulted in at least \$80 million in financial benefits to the federal government:
 - Columbia Plaza in Washington, D.C. purchased for \$100 million (valued at \$150 million).
 - USDA Center in Riverdale, Maryland purchased for \$31 million (valued at \$45 million).
 - IRS Annex in Detroit, Michigan purchased for \$1, property (valued at \$14.5 million).

Legal Pitfalls to Independent Leasing

There are various laws, in addition to procurement and contracting laws, that agencies must follow if they choose to use their own leasing authority. While GSA has the legal authority

to enter into long-term, multi-year leases, many other agencies with leasing authority do not.³ Because of this, some agencies, have run afoul of some of these laws when exercising their independent leasing authority.⁴ Specifically, an agency's leasing authority must be interpreted and applied in accordance with various laws such as the Anti-Deficiency Act (ADA) and the Recording Statute.⁵ Generally, agencies must have explicit authority to either enter into long-term, multi-year leases or have sufficient no-year funding, *and* agencies be exempt from requirements like the ADA or they must have the budget authority for the full cost of the lease term upfront when executing the lease agreement.

The chart⁶ below highlights basic questions agencies should answer prior to determining whether or not they have the legal authority to enter into any particular lease.⁷ In order to lease real property for longer than five years and budget annually for the lease payments (as opposed to obligating funds for the entire lease term upfront) an agency must have multi-year leasing authority, specific budget authority for this purpose, and the lease must meet the tests for an operating lease under OMB Circular A-11.

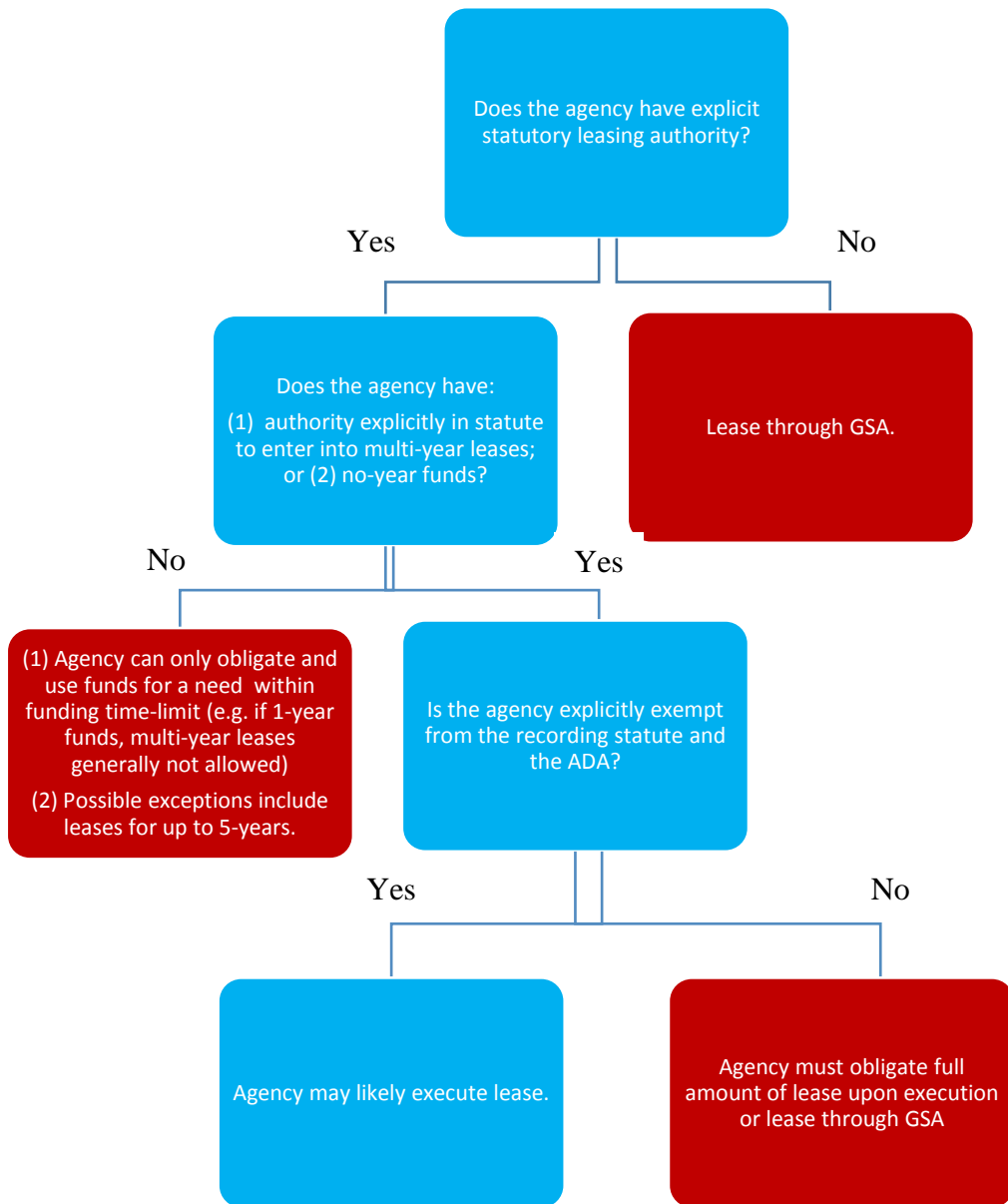
³ Note that while GSA has the legal authority to enter into long-term leases, GSA leases remain subject to the scoring rules of OMB Circular A-11 which require that for certain leasing, such as capital leases, GSA must have the full budget authority available for the entire cost of the lease upfront.

⁴ See, for example, Report of Investigation, United States Securities and Exchange Commission, Office of Inspector General, Case. No. OIG-553, May 16, 2011, pp. 77-81; National Transportation Safety Board, Application of Section 1072 of the Federal Acquisition Streamlining Act to Real Property Leases, GAO File B-316860, April 29, 2009; and Commodity Futures Trading Commission – Recording of Obligations for Multiple-Year Leases, GAO File B-327242, February 4, 2016.

⁵ 31 U.S.C. 1341 and 31 U.S.C. 1501, respectively.

⁶ Developed by Committee staff. This chart does not address the analyses for the purposes of scorekeeping for capital versus operating leases which is a separate evaluation that must also take place.

⁷ This simplified chart is intended only to provide a general overview of issues and questions.



CONCLUSION

The hearing will focus on the GAO reviews, findings, and recommendations related to independent leasing authorities and purchase options.

WITNESS LIST

Mr. David Wise
Director, Physical Infrastructure Team
U.S. Government Accountability Office

The Honorable W. Thomas Reeder Jr.
Director
Pension Benefit Guaranty Corporation

Mr. Chris Wisner
Assistant Commissioner for Leasing
Public Buildings Service
U.S. General Services Administration

Mr. John K. Lapiana
Deputy Under Secretary for Finance and Administration
Smithsonian Institution