



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

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BRIEFING MEMORANDUM

TO: Members of the Subcommittee on Economic Development, Public Buildings and Emergency Management
FROM: Subcommittee on Economic Development, Public Buildings and Emergency Management Staff
SUBJECT: Oversight Hearing on "Sitting on Our Assets: The Vacant Federal Courthouse in Miami"

PURPOSE

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Monday, August 6, 2012, at 10:00 a.m., at the David W. Dyer Federal Building and U.S Courthouse located at 300 NE 1st Avenue, Miami, Florida to receive testimony from the U.S. courts, the Government Accountability Office (GAO) and the General Services Administration (GSA). The hearing will focus on the costs to the taxpayer of underperforming or vacant assets and the overbuilding of federal courthouses.

BACKGROUND

Prior Committee Actions during the 112th Congress

To address the problem of vacant and underutilized space, H.R. 1734 was introduced and passed the House in February of this year. H.R. 1734 would create a civilian BRAC-like process to create savings by shrinking the Federal footprint and selling or redeveloping under-used buildings. In February, the Subcommittee held its second hearing at the vacant Old Post Office Annex to further highlight the problems of vacant and underutilized space. Shortly before the hearing, GSA finally announced its selection of a developer, the Trump Organization, to redevelop that building after more than a decade of losing taxpayer dollars. In addition, in March of this year, the Subcommittee held a hearing at the vacant Cotton Annex highlighting the continued problem of vacant federal buildings and underperforming assets. And, in June, the Subcommittee held a hearing at the Georgetown Heating Plant to ensure the process for

the planned sale of the Georgetown Heating Plant would result in the highest return to the taxpayer after the plant had sat vacant for more than 11 years.

General Services Administration

The Subcommittee has jurisdiction over all of GSA's real property activity through the Property Act of 1949, the Public Buildings Act of 1959, and the Cooperative Use Act of 1976. These three Acts are now codified as title 40 of the United States Code. The Public Buildings Service (PBS) is responsible for the construction, repair, maintenance, alteration, and operation of United States courthouses and public buildings of the Federal Government. Additionally, PBS leases privately owned space for Federal use. GSA owns or leases 9,600 assets and maintains an inventory of more than 362 million square feet of workspace. GSA acts as the "landlord" for the Federal government, obtaining and managing space to meet the space needs of other Federal agencies. GSA, however, is just one of nine¹ Federal agencies that, in total, own or manage 93% of Federal real property.

Property Management

Given the vast real estate holdings of the Federal Government, poor asset management and missed market opportunities cost taxpayers significant sums of money. For this reason, in 2003, the Government Accountability Office (GAO) placed real property management on its list of "high risk" government activities where it remains today. GAO conducts biennial reviews on high-risk areas within the Federal Government to bring focus to specific areas needing added attention and oversight. Areas are identified as "high" risk due to their greater vulnerabilities to fraud, waste, abuse, and mismanagement or areas that need broad-based transformation to address major economy, efficiency, or effectiveness challenges.

The key reasons the GAO identified Federal real property as high risk are:

- excess and underutilized real property,
- deteriorating and aging facilities,
- unreliable property data, and
- the over reliance on costly leasing.²

Unfortunately, despite executive orders and memoranda issued during two administrations and acts of Congress intended to improve the management of Federal real property, these problems persist.³ The high risk activities of Federal real property are

¹ The other major land-holding departments and agencies include the Department of Defense, Veterans Affairs, Department of Energy, Department of Homeland Security, Department of the Interior, Department of State, National Aeronautics and Space Administration, and the U.S. Postal Service.

² See High Risk Series: Federal Real Property, U.S. General Accountability Office, GAO-03-122, January 2003.

³ See, for example, Executive Order 13327, Federal Real Property Asset Management, signed by President George W. Bush, February 4, 2004; Presidential Memorandum, Disposing of Unneeded Federal Real Estate, signed by President Barack Obama, June 10, 2010; Public Buildings Cooperative Use Act of 1976;

significant. Considerable amounts of vacant or underperforming assets can translate into significant costs associated with their operation, maintenance, and security. For example, in fiscal year 2010, the Federal Government spent \$1.7 billion in annual operating costs for under-utilized buildings.⁴

Federal Real Property Profile (FRPP)

In June 2012, GAO issued a report that calls into question the data collected by GSA and other federal agencies about the federal property inventory.⁵ The database is compiled through the Federal Real Property Council and managed by GSA. The GAO concluded that “sound data collection practices” have not been followed in the “designing and maintaining” of the FRPP database. As a result, the GAO report raises serious questions as to how useful the database is in describing the nature, use and extent of excess, vacant, and underutilized properties. As part of its review, GAO visited a sampling of buildings listed in the database and found inconsistencies and inaccuracies at 23 of the 26 locations visited. Indeed, at least, as of last year, the empty Dyer courthouse (the site of the hearing) was listed in the database as “mission critical” and “underutilized” but not excess or vacant.

The GAO report also noted that, based on questions of the accuracy of data in the FRPP, potential savings from efforts to reduce costs are unclear. For example, in June 2010 a Presidential Memorandum was issued to direct federal agencies to achieve \$3 billion in savings by the end of fiscal year 2012. During the June 19, 2012 Subcommittee hearing entitled “Sitting on Our Assets: The Georgetown Heating Plant,” GSA testified that the federal government will meet this goal and exceed it. GSA, while comprising only a portion of this goal, indicated at that hearing it had saved more than \$300 million as part of that goal. At the time of the GAO report, GSA had reported \$118 million in lease cost savings resulting from four new construction projects. However, GAO noted that GSA had yet to occupy those new buildings and get out of the leased space. Further, the GAO noted that GSA’s cost savings analysis projected that the savings would occur over a 30-year period – far beyond the timeframe of the memorandum, raising questions about the accuracy of the savings claimed.

Federal Courthouse Construction Program

The Subcommittee has also had ongoing oversight on the federal courthouse construction program. Last Congress, at the request of the Subcommittee, the GAO completed a study entitled, “*Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*”.⁶ The GAO provided testimony to the Subcommittee on May 25, 2010 on its findings. Specifically,

Public Law 108-447, Division H, Title IV, Section 412, December 8, 2004 (providing enhanced flexibility to GSA in real property management).

⁴ FY2010 Federal Real Property Report, Federal Real Property Council, p. 6.

⁵ Federal Real Property: National Strategy and Better Data Needed to Improve Management of Excess and Underutilized Property, GAO-12-645, June 2012.

⁶ GAO-10-417.

the GAO examined 33 courthouses that were constructed during the ten-year period from 2000 to 2010. The GAO found that 3.56 million square feet of *extra* space was built because of the following reasons:

- The Judiciary grossly over-estimated its 10-year projection of future judges assigned to courthouses;
- New courthouses did not incorporate courtroom sharing; and
- GSA constructed courthouses above the congressionally-approved size.

Over Estimating the Future Number of Judges

A primary reason for the overbuilding of recent courthouses has been the Judiciary's inaccurate 10-year projections for future judgeships. Because courthouses are designed to house judges and their staffs, the overall size of a courthouse is largely determined by the number of judges expected to be housed in the building and whether or not judges will share courtrooms. However, even as far back as 1993, the GAO questioned the basis on which the U.S. courts calculated their projections for new judges. In particular, at that time, the courts based their calculations on a caseload projection method. In 1993, GAO found that the courts' consistently over-projected the number of judges that Congress would authorize.⁷

The problem of over-projecting the number of judges has not been resolved. In the 2010 GAO report on courthouses, the GAO found:

- GSA constructed 887,000 extra square feet of space due to over-estimating the number of judges;
- 28 of the 33 courthouses had reached or passed their 10-year planning projection period and 24 of the 28 courthouses had fewer judges than estimated; and
- The Judiciary over-estimated the number of judges by 35% (342 actual judges vs. a total projected judge population of 461).

Lack of Courtroom Sharing

The lack of courtroom sharing has also been an ongoing issue. Using information provided in a study completed in 2008 issued by the Federal Judicial Center (FJC)⁸, the GAO created a model for courtroom sharing that showed significant amounts of unscheduled time in courtrooms for judges such that the sharing of courtrooms could be at significantly higher levels than were in practice.

Congress has consistently questioned the need for every judge to have a courtroom, particularly in the case of a large courthouse with 20 or more courtrooms.

⁷ *Federal Judiciary Space: Long-Range Planning Process Needs Revision* (GGD-93-132).

⁸ The FJC is the Judiciary's research and educational arm, which conducted an in-depth study involving six months' worth of daily scheduled and actual use for 602 courtrooms in 26 of the nation's 94 Federal district courts.

However, the courts have consistently requested a courtroom for every active judge. The Judicial Conference has adopted policies with respect to Senior Judges, Magistrate Judges and Bankruptcy Judges sharing courtrooms. However, there is no indication that these sharing policies are being applied in existing courthouses. In fact, no sharing is occurring in the Miami courthouse complex.

In addition, the 2010 GAO report shows that there could be significantly more sharing than proposed in the courts revised policies. Using information provided by the Administrative Office of the U.S. Courts (AOUSC) and FJC, GAO found that three district judges could share two courtrooms, three senior judges could share one courtroom, and two magistrate judges could share one courtroom, all while still providing approximately 20 percent of unused time.

Overall, in its report, GAO's analysis of courtroom usage indicates that if sharing had been required in all courthouses constructed since 2000 there would have been significant savings including:

- 946,000 extra square feet was constructed because of a lack of sharing;
- The number of courtrooms needed in 27 of the 33 courthouses would have been reduced by a total of 126 if sharing was done; and
- 40 percent of district and magistrate courtrooms constructed would not have been needed.

Construction Exceeded Authorized Limits

GAO estimated that the cost of constructing the 3.56 million square feet of extra space was \$835 million and that the estimated cost to rent, operate, and maintain the extra space was \$51 million annually.

More specifically, the GAO found that:

- 27 of the 33 courthouses completed since 2000 exceeded their congressionally-authorized size by 1.7 million square feet;
- 15 of the 33 courthouses exceeded their congressional authorization for square footage by 10 percent; and
- Three courthouses exceeded their authorized square footage by 50 percent.

The GAO criticized GSA's inability to ensure courthouse projects stayed within the authorized limits and noted that GSA consistently built courthouses that exceeded the scope of congressional authorizations.

Miami Courthouse Complex

The Miami courthouse complex consists of multiple buildings, including the new Wilkie D. Ferguson Jr. United States Courthouse, the James Lawrence King Federal Justice Building, and the C. Clyde Atkins Courthouse. In addition, three bankruptcy

judges are located in the Claude Pepper Federal Building. The David W. Dyer courthouse is now vacant.

The new Wilkie D. Ferguson Jr. United States Federal Courthouse was built in 2007. In 2000, when the new courthouse was proposed, the 10-year projection for judges was 33. There are currently 27 judges, including vacancies, four senior judges, and 12 magistrate judges.⁹ The Ferguson courthouse was specifically highlighted by the GAO as over built. According to GAO, the courthouse was overbuilt by 238,000 square feet at an excess cost of \$49 million plus \$3.8 million in annual costs related to maintenance and operations.¹⁰ It exceeded the authorized limit on construction by over 97,000 square feet.¹¹

In this case, not only was the new courthouse overbuilt, the new Miami courthouse was originally intended to supplement space in the existing David W. Dyer Federal Building and United States Courthouse, a historic building now abandoned by the U.S. courts. The square footage of overbuilding calculated by the GAO did not take into account the space in the historic courthouse no longer in use by the Judiciary. In addition, according to the Federal Real Property Profile database, the vacant Dyer building is costing the taxpayer \$1.2 million in annual operating costs.

Following the announcement of the Subcommittee hearing, GSA on August 1st issued a Request for Information (RFI) to solicit options for redeveloping the Dyer courthouse.

Conclusion

The hearing will focus on the problem of vacant and under-utilized properties and, in particular, the status of the vacant Dyer courthouse. The hearing will also examine the recent GAO report that raises questions about the accuracy of property data collected by the federal government and the measurement of savings used by GSA. In addition, the hearing will also highlight the continued problems with space utilization and overbuilding in federal courthouses.

⁹ Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs, GAO-10-417, June 2010, p. 28; Information also reconfirmed with U.S. courts on August 1, 2012. Further, of the 12 magistrates, 3 are “recalled,” meaning they are retired but returned temporarily to assist in the caseload.

¹⁰ *Id.* at p. 11.

¹¹ *Id.* at p. 18.

WITNESSES

The Honorable Frank M. Hull
Circuit Judge
United States Court of Appeals for the Eleventh Circuit

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

Mr. John Smith
Regional Commissioner
Public Buildings Service
General Services Administration