



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

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Ranking Member

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January 22, 2020

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 *GSA Outleases and the Trump Old Post Office Hotel*

PURPOSE

The Subcommittee on Economic Development, Public Buildings, and Emergency Management will meet on Tuesday, January 28, 2020, at 10:00am in 2167 Rayburn House Office Building, for a hearing titled *GSA Outleases and the Trump Old Post Office Hotel*. The purpose of the hearing is to examine the General Services Administration's (GSA) outleasing authorities and the potential assignment of the Trump Old Post Office lease. The Administrator of General Services will testify.

Old Post Office Building History

The Old Post Office Building is a unique, historic building located at 1100 Pennsylvania Avenue N.W., Washington, DC, and owned by the GSA. The building was completed in 1899 and served as the main post office for the Nation's capital. It was placed on the Historic Register in 1973. After the main post office closed, the Old Post Office Building was used to house Federal agency offices and limited retail space. The building was underutilized for decades. Attempts by GSA to introduce amenities failed and the Federal government lost money year after year. For example, in 2007, the building's rental receipts of \$5.4 million were far lower than the total expenses of the property of \$11.9 million, resulting in a loss of \$6.1 million to the Federal government.¹ The

¹ H.R. Rep. No. 110-724, at p. 3 (2008).

House Transportation and Infrastructure Committee held multiple hearings related to the Old Post Office Building and passed legislation to require GSA to find a private partner to redevelop the site.² Until 2016, the Old Post Office Building was one of the oldest buildings in Washington, D.C. that had yet to be rehabilitated and preserved.

Old Post Office Building Redevelopment

In 2008, Congress enacted H.R. 5001, the “Old Post Office Redevelopment Act of 2008,” sponsored by Congresswoman Eleanor Holmes Norton, which became P.L. 110-359 when signed into law.³ The Act had bipartisan support and directed GSA to move forward with the redevelopment of the Old Post Office Building.

In March 2011, GSA issued a Request for Proposals (RFP) for the redevelopment of the Old Post Office using authority under Section 111 of the National Historic Preservation Act (NHPA).

On February 7, 2012, GSA announced the selection of the Trump Organization as the preferred developer for the Old Post Office.⁴ The Trump Organization’s proposal called for redeveloping the Old Post Office building into a luxury hotel.⁵

On August 5, 2013 a lease agreement was signed by Donald J. Trump, for Trump Old Post Office LLC (as tenant) with GSA (as landlord) for control over and the redevelopment of the Old Post Office Building.⁶ Trump Old Post Office LLC is a subsidiary of the Trump Organization.⁷ The Trump Organization invested \$200 million to redevelop the Old Post Office Building into the 271-room Trump International Hotel.⁸ The lease agreement extends for 60 years to the year 2076 from the date of the hotel’s grand opening which occurred on October 26, 2016.⁹ The Federal government is entitled to a monthly rental payment as well as a percentage of profits each year if annual profits exceed the cost of the annual rental payments.¹⁰

² Old Post Office Redevelopment Act of 2008, P.L. 110-359 (2008).

³ P.L. 110-359 (2008).

⁴ Press Release, “GSA Selects the Trump Organization as Preferred Developer for DC’s Old Post Office,” General Services Administration, Feb. 7, 2012, accessed here: <https://www.gsa.gov/about-us/newsroom/news-releases/gsa-selects-the-trump-organization-as-preferred-developer-for-dcs-old-post-office>.

⁵ The Trump Organization won the competition and submitted the original proposal. Trump Old Post Office LLC is the party to the lease and was created after the Trump Organization won the competition.

⁶ Ground Leaser by & between the U.S. (as “Landlord”) & Trump Old Post Office LLC (as “Tenant”), Lease No.: GS-LS-11-1307 (Aug. 5, 2013).

⁷ Trump Old Post Office LLC is a Delaware-based corporation at the time of lease signing owned by Mr. Trump and his three adult children Ivanka Trump, Donald J. Trump, Jr., and Eric Trump.

⁸ Press Release, “GSA and Trump Organization Reach Deal on Old Post Office Lease,” General Services Administration, June 5, 2013, accessed here: <https://www.gsa.gov/about-us/newsroom/news-releases/gsa-and-trump-organization-reach-deal-on-old-post-office-lease>.

⁹ See “Old Post Office Building,” General Services Administration, accessed here: <https://www.gsa.gov/real-estate/gsa-properties/visiting-public-buildings/old-post-office-building> (last reviewed Sept. 20, 2019).

¹⁰ Ground Leaser by & between the U.S. (as “Landlord”) & Trump Old Post Office LLC (as “Tenant”), Lease No.: GS-LS-11-1307 (Aug. 5, 2013).

Under the lease agreement, the Trump Old Post Office LLC gained access to the Old Post Office Building in May 2014 for construction activities. The ceremonial groundbreaking for the project took place on July 23, 2014.¹¹ GSA performed oversight of compliance with the lease and of construction activities. The Trump International Hotel partially opened on September 12, 2016,¹² and officially opened on October 26, 2016.¹³

After President Donald J. Trump's presidential inauguration, Trump Old Post Office LLC sent a letter to GSA stating that President Trump transferred his interests in Trump Old Post Office LLC to DJT Holdings Managing Member LLC, a revocable trust.¹⁴

On March 20, 2017, Trump Old Post Office LLC requested a certificate stating that Trump Old Post Office LLC was in full compliance with Section 37.19 of the lease and that the lease was valid.¹⁵ On March 23, 2017, GSA's contracting officer for the lease issued an Estoppel Certificate and accompanying letter stating that Trump Old Post Office LLC was "in full compliance with Section 37.19 and, accordingly, the Lease is valid and in full force and effect."¹⁶

In November 2019, various news articles reported that the Trump Organization had retained JLL to market the Trump International hotel to potential buyers.¹⁷

Assignment of Lease

Section 15.3 of the lease permits the lessor to sell the lease under certain conditions. According to the lease:

Following the minimum hold period, Tenant shall have the right to assign its interest in the Lease or sublease all or substantially all the Premises, provided that the proposed Transferee is a Qualified Transferee and Tenant otherwise complies with this Section 15.3. Prior to such assignment or sublease of all or substantially all of the Premises, Tenant shall be required to provide Landlord with detailed information evidencing that the proposed Transferee qualifies as a

¹¹ "Transformation of Washington's Old Post Office Underway," General Services Administration, July 23, 2014, accessed here: <https://www.gsa.gov/blog/2014/07/23/transformation-of-washingtons-old-post-office-underway>.

¹² Ian Simpson, "Trump luxury hotel opens just blocks from the White House," Reuters, Sept. 12, 2016, accessed here: <https://www.reuters.com/article/us-usa-trump-hotel/trump-luxury-hotel-opens-just-blocks-from-the-white-house-idUSKCN11I25L>.

¹³ See Trump International Hotel Certificate of Occupancy [on file with Subcommittee].

¹⁴ "Evaluation of GSA's Management and Administration of the Old Post Office Building Lease," Office of Inspector General (OIG), General Services Administration (GSA), JE19-002, January 16, 2019, accessed here: <https://www.gsaig.gov/content/evaluation-gsas-management-and-administration-old-post-office-building-lease>.

¹⁵ Ibid.; see Letter from Kevin Terry to Trump Old Post Office LLC (Mar. 23, 2017), accessed here: https://www.gsa.gov/cdnstatic/Contracting_Officer_Letter_March_23_2017_Redacted_Version.pdf.

¹⁶ Letter from Kevin Terry to Trump Old Post Office LLC (Mar. 23, 2017), at 1, accessed here: https://www.gsa.gov/cdnstatic/Contracting_Officer_Letter_March_23_2017_Redacted_Version.pdf.

¹⁷ John Banister, "JLL Marketing Materials for Trump D.C. Hotel Reveal Below-Market Occupancy," Bisnow, Nov. 15, 2019, accessed here: <https://www.bisnow.com/washington-dc/news/hotel/jll-marketing-materials-for-trump-dc-hotel-reveal-below-market-occupancy-101811>, see also Jonathan O'Connell & David A. Farenthold, "Trump's Washington hotel has fallen behind competitors, with rooms running nearly half empty, marketing materials show," Washington Post Nov. 14, 2019, accessed here: https://www.washingtonpost.com/business/economy/trumps-washington-hotel-has-fallen-behind-competitors-with-rooms-running-nearly-half-empty-marketing-materials-show/2019/11/14/c1a9fc40-070f-11ea-b17d-8b867891d39d_story.html.

Qualified Transferee (the “Landlord Qualified Transferee Confirmation”) and Landlord shall have the opportunity to confirm whether it concurs that the proposed Transferee is a Qualified Transferee (the “Landlord Qualified Transferee Confirmation”). If Landlord fails to respond within forty-five (45) days of the Tenant submitting all necessary Qualified Transferee Information to the Landlord, then Tenant shall provide a second written notice, then the Landlord Qualified Transferee Confirmation shall be deemed given.¹⁸

GSA’s Outleasing Authorities

According to the Government Accountability Office (GAO), “GSA is authorized under certain circumstances to lease unneeded space to private businesses and other nonfederal entities—a process known as outleasing”¹⁹ Outleasing “involves the temporary disposal, not the acquisition, of space,”²⁰ and GSA “is not required to follow the standardized processes or to use model lease provisions contained in the General Services Acquisition Regulation (GSAR) and other documents pertaining to GSA’s more typical leasing activities.”²¹ In 2018, GSA published “The Program Outlease Guide” to provide guidance on the process of outleasing for GSA leasing professionals.²²

GSA’s statutory outleasing authorities are listed below:

40 USC Public Buildings, Property and Works

- Subtitle I Federal Property and Administrative Services
- Chapter V Property Management
- Subchapter III – Disposing of Property
- Sec. 543 – Method of Disposition

40 USC Public Buildings, Property and Works

- Subtitle I Federal Property and Administrative Services
- Chapter V Property Management
- Subchapter V – Operation of Buildings and Related Activities
- Sec. 581 - General Authority of Administrator of General Services

40 USC Public Buildings, Property and Works

- Subtitle I Federal Property and Administrative Services
- Chapter V Property Management
- Subchapter V – Operation of Buildings and Related Activities
- Sec. 585 – Lease Agreements

¹⁸ Ground Leaser by & between the U.S. (as “Landlord”) & Trump Old Post Office LLC (as “Tenant”), Lease No.: GS-LS-11-1307, § 15.3 (Aug. 5, 2013).

¹⁹ “Federal Real Property: GSA Outleasing and Restrictions on Participation of Elected Officials,” U.S. Government Accountability Office (GAO), GAO-18-603R, p. 2 (July 25, 2018) accessed here: <https://www.gao.gov/assets/700/693396.pdf>.

²⁰ Id. at p. 2.

²¹ Id. at p. 2.

²² See “The Outlease Program Guide,” General Services Administration (2018) [on file with Subcommittee].

54 USC National Historic Preservation Act

- Sec. 306121 - Authority to Lease or Exchange

54 USC National Historic Preservation Act

- Sec. 306122 - Contracts for Management of Historic Property

WITNESS

Ms. Emily W. Murphy
Administrator of General Services