United States Government Accountability Office

Testimony

Before the Subcommittee on Economic Development, Public Buildings, and Emergency Management, Committee on Transportation and Infrastructure, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. ET
Wednesday, July 6, 2016

FEDERAL REAL PROPERTY

Opportunities Exist to Enhance Information on and Coordination among Federal Entities with Leasing Authority

Statement of David Wise, Director
Physical Infrastructure Issues

GAO-16-763T

Chairmen Barletta, Ranking Member Carson, and Members of the Subcommittee:

I am pleased to be here today to discuss our work on federal entities' use of independent leasing authority for real property. As the federal government's principal civilian landlord, the General Services Administration (GSA) leases real property on behalf of many federal tenants. However, independent leasing authority can be provided to federal entities either through their enabling legislation or through an appropriations act.[1] While GSA tracks and reports on its tenants' real property holdings, less is known about the holdings of federal entities that independently lease real property. To promote the efficient and economical use of federal government real property, in 2004 the President issued Executive Order 13327 establishing the Federal Real Property Council (FRPC) composed of executive branch departments and agencies covered by the Chief Financial Officers Act of 1990 (CFO Act), including GSA, and chaired by the Office of Management and Budget (OMB).[2] The executive order established FRPC with the goals of developing guidance, facilitating the implementation of agencies' asset management plans, and serving as a clearinghouse for leading practices. The executive order also directed GSA, in consultation with the FRPC, to establish and maintain a single, comprehensive database describing the nature, use, and extent of all real property under the custody and control of executive branch agencies. To meet this directive, GSA established the Federal Real Property Profile (FRPP).

[1]A provision in an annual appropriations act is presumed to be effective only for the covered fiscal year unless language in the act or the nature of the provision makes it clear that Congress intended for the provision to be permanent.

[2]Federal Real Property Asset Management, Exec. Order No. 13327, 69 Fed. Reg. 5897 (Feb. 6, 2004). Certain provisions of the executive order apply to executive branch departments and agencies listed in section 901 of title 31, United States Code: the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; the Environmental Protection Agency; GSA; the National Aeronautics and Space Administration; the National Science Foundation; the Nuclear Regulatory Commission; the Office of Personnel Management; the Small Business Administration; the Social Security Administration; and the U.S. Agency for International Development. For the purposes of our report, we will be referring to this group of executive branch departments (including federal entities within the departments) and agencies included in the FRPC as "FRPC member agencies."

My statement is based on our report that was issued today on federal entities' use of independent leasing authority.[3] My statement, like the report, examines: (1) which federal entities have independent leasing authority and their use of this authority to lease office and warehouse space; (2) how selected independent leases compare to GSA leases in terms of cost; and (3) to what extent selected federal entities with independent leasing authority have leasing policies and practices that align with leading government leasing practices.

To conduct the work that is the basis for this statement, we administered a survey to 103 civilian federal entities.[4] We contracted with a real-estate consulting firm to perform analyses of the costs for a non-generalizable sample of independently leased offices and warehouses from eight selected federal entities and compared the selected leases against similar GSA leases in four different U.S. metropolitan areas. We reviewed lease documentation from federal entities to evaluate whether leading practices were used. We also evaluated these entities' space-use per employee against GSA's recommended space utilization target for the selected leases we reviewed. Lastly, we interviewed relevant officials from our selected federal entities, GSA, OMB, and the Small Agency Council. More detailed information on our objectives, scope, and methodology can be found in the issued report. We conducted the work on which this statement is based 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.

[3]GAO, *Federal Real Property: Actions Needed to Enhance Information on and Coordination among Federal Entities with Leasing Authority*, GAO-16-648 (Washington, D.C.: July 6, 2016).

[4]GAO, *Federally Created Entities: An Overview of Key Attributes,* GAO-10-97 (Washington, D.C.: Oct. 29, 2009). Our survey universe included all federal entities identified in a prior GAO report on federally created entities such as executive departments, other executive branch entities, government corporations, and other federally established organizations in the executive branch that received an average of over $20 million in annual appropriations from fiscal years 2005 through 2008.

Twenty-five Federal Entities That Reported Having Independent Leasing Authority Are Not Consistently Tracked in FRPP

According to GSA officials and OMB staff, neither GSA nor OMB maintains a comprehensive list of federal government entities with independent leasing authority, and neither is required to do so. FRPP offers a possible way for determining which agencies have independent leasing authority since the FRPP has a data field that indicates if a federal entity uses its own authority to lease real property. However, this information is incomplete as only agencies in the FRPC are required to annually submit their real property information to the FRPP.

To obtain more complete and reliable information on federal entities with leasing authority, we surveyed 103 civilian executive branch agencies and other federal entities that met our selection criteria. Of the 103 surveyed entities, 52 reported having the authority to lease domestic office and warehouse space, and 25 of those entities are not members of the FRPC. The 25 entities that are not members of FRPC reported that they leased 243 offices and warehouses covering approximately 8.3-million rentable square feet of space and costing $303.4 million in annual rent as of October 1, 2015. (See table 1.)

Table 1: Selected Data about Federal Entities That Reported Having Independent Statutory Leasing Authority for Domestic Offices and Warehouses and Are Not Part of the Federal Real Property Council

	Offices and warehouses		
Federal entity	**Number**	**Rentable square feet**	**Annual rent ($)**
Federal Deposit Insurance Corporation	91	1,912,379	$47,161,467
Smithsonian Institution	50	1,487,394	$52,009,858
United States Postal Service	35[a]	701,613	$11,888,432
Tennessee Valley Authority	21	223,500	$2,973,000
Pension Benefit Guaranty Corporation	9	564,703	$28,222,074
Securities and Exchange Commission	8	1,882,484	$90,854,696
National Credit Union Administration	7	73,741	$1,456,317
United States Commodity Futures Trading Commission	4	434,679	$20,066,000
United States Holocaust Memorial Museum	4	10,528	$403,376
Federal Reserve Board	3	545,170	$21,689,150
Millennium Challenge Corporation	2	129,206	$8,300,000
National Transportation Safety Board	2	84,681	$2,715,075
Appalachian Regional Commission	1	21,626	$858,629
Farm Credit Insurance System Corporation	1	4,325	$155,813
Federal Retirement Thrift Investment Board	1	92,179	$5,236,601
Inter-American Foundation	1	14,332	$713,000

Federal entity	Offices and warehouses: Number	Rentable square feet	Annual rent ($)
Overseas Private Investment Corporation	1	116,487	$7,504,813
Peace Corps	1	6,500	$348,281
United States African Development Foundation	1	15,705	$803,502
American Battle Monuments Commission	—	—	—
Farm Credit Administration	—	—	—
National Endowment for the Arts	—	—	—
National Endowment for the Humanities	—	—	—
Railroad Retirement Board	—	—	—
United States Tax Court	—	—	—
Total	**243**	**8,321,232**	**$303,360,084**

Source: Information reported by the respective federal entities in a GAO survey. | GAO-16-763T

Note: This list of selected civilian federal entities with independent leasing authority was compiled from responses to a survey. These federal entities are those with independent leasing authority that are not part of the Federal Real Property Council. All reported figures were as of October 1, 2015.

[a]According to a United States Postal Service (USPS) official, USPS does not categorize its buildings as "offices." For the purposes of our review, we are using as a proxy, USPS's independently leased spaces where over 50 percent of the total square footage was used for administrative functions. These spaces may include office buildings, as well as small offices or administrative space located in non-office buildings. USPS does not lease warehouse space.

The FRPP's effectiveness as an oversight and accountability mechanism for entities with independent leasing authority is limited because only FRPC member agencies are required to report their real property data to the FRPP. Two non-FRPC-member entities voluntarily reported data on their independently leased offices and warehouses to FRPP in fiscal year 2014—the Smithsonian Institution and the Tennessee Valley Authority. The remaining entities' data were not included in the FRPP.

In our review, most of the federal entities that reported having independent leasing authority, outside the entities that are covered under the CFO Act, are members of the Small Agency Council. The Small Agency Council is a voluntary association of about 80 independent federal entities with generally fewer than 6,000 employees that represents the entities' collective management interests. The Small Agency Council provides these smaller federal entities a line of communication with key decision makers, including OMB. GSA officials who manage the FRPP said that the Small Agency Council may be able to help coordinate its members' involvement in the FRPP. For example, the Council could provide technical assistance to help its members collect and submit their real-property data to the FRPP and facilitate the process on behalf of GSA and OMB.

Most of the 37 Selected Independent Lease Rates Were Comparable to or Lower than Matched GSA Rates

We analyzed 37 selected independent leases[5] across seven federal entities.[6] Table 2 shows that of these 37 leases, 14 (38 percent) had rates that were less costly than matched GSA leases and 11 (30 percent) had comparable rates. The remaining 12 leases (32 percent) had rates that cost more than matched GSA leases.

Table 2: Selected Independent Real Property Lease Rates Compared to Matched General Service Administration (GSA) Real Property Lease Rates, National Capital Region versus Other Metropolitan Areas

Metropolitan area	Number of leases	Leases Below GSA Rate	Leases Comparable to GSA Rate[a]	Leases Above GSA Rate
National Capital Region[b]	19	7 (37%)	5 (26%)	7 (37%)
Other areas[c]	18	7 (38%)	6 (33%)	5 (28%)
Total	**37**	**14 (38%)**	**11 (30%)**	**12 (32%)**

Source: GAO analysis of federal lease data. | GAO-16-763T

Note: All comparisons were made using the annual net present values per rentable square foot of the full terms of all leases.

[a]Due to variation caused by the specific circumstances and unique features of each lease transaction, we considered independent leases' rates that were within plus or minus (±) 10 percent of the matched GSA rates as comparable.

[5]Our analyses matched a non-generalizable set of independent leases with at least one similar GSA lease to assess differences in matched leases' rental rates. Factors assessed in the determination of similarity for matched leases included the leases' square footage, location, starting year, duration, among other factors. For the matched analysis of independent leases with GSA leases, we performed the analysis with the annual net-present value for the full terms of the leases' rates per rentable square foot. Net present value is the sum of costs over a period of time, in this case a lease's term, adjusted using a discount rate.

[6]The seven federal entities included in our lease rate analysis were the Federal Aviation Administration (FAA), the Federal Deposit Insurance Corporation (FDIC), the National Aeronautics and Space Administration (NASA), the National Credit Union Association (NCUA), the Pension Benefit Guaranty Corporation (PBGC), the U.S. Coast Guard (USCG), and the U.S. Patent and Trademark Office (USPTO). One of our selected federal entities—National Oceanic and Atmospheric Administration (NOAA)—was not included in this analysis because its only selected lease did not require rent payments. As such, this unique aspect of the lease did not allow for us to find a comparable GSA lease.

[b]The National Capital Region includes Washington, D.C., and local jurisdictions in Maryland and Virginia.

[c]Includes Atlanta, Georgia; Los Angeles, California; and Miami, Florida, metropolitan areas.

Based on our analysis and interviews, we identified several possible factors that could be influencing why some of the independent leases we analyzed were less expensive than matched GSA leases.

- GSA officials said that GSA uses standardized lease documents that include clauses that can be more rigorous than the leases provided by private sector landlords. For example, GSA leases could include clauses with higher—and thus possibly more expensive—energy conservation, security, and seismic safety requirements.
- Tenant improvement allowances directly increased lease costs in about 64 percent of the matched GSA leases but only in about 43 percent of our analyzed independent leases.[7]
- The independent leases we analyzed had periods of free rent built into the leases more frequently than the matched GSA leases.
- Officials from a federal entity with independent leasing authority said that the use of private sector real estate brokers may have contributed to lower leasing rates because the brokers use the lowest offer as leverage to negotiate lower rates with other potential landlords.

[7]A tenant improvement allowance includes the costs of changes to leased spaces. These costs are associated with additions or alterations of the structure and base building systems that adapt the workspace to the specific uses of the tenant. The tenant typically bears these costs.

Most Selected Entities' Leasing Policies Generally Align with Leading Practices, But Lack Documentation

We reviewed the Federal Management Regulation, GSA policies and procedures, and other applicable documents to develop a list of leading practices that all federal entities should incorporate into their real property leasing functions to help ensure that mission needs are met in a cost-effective and transparent manner. In addition to leading practices, federal entities must follow all applicable laws related to real property management. (See fig. 1.) For example, the recording statute requires that federal entities record the full amount of their contractual liabilities, including for leases, against funds available at the time the contract is executed.[8] Previously, we found that two federal entities with independent leasing authority—the Commodity Futures Trading Commission and the Securities and Exchange Commission—did not fully comply with the recording statute in the way they recorded the lease obligations against funds available at the time the leases were executed.[9] Violations of the recording statute such as these can also result in Antideficiency Act violations if lease obligations exceed available budget authority at the time the lease is executed.

We reviewed the extent to which our eight selected federal entities had policies that aligned with leading government leasing practices and found that six had policies that generally aligned with these practices; two entities did not have any documented leasing policies.[10] Although most of the selected entities had established policies consistent with leading government practices, we found numerous instances where the lease files lacked evidence to support that the leading practices were actually used. We analyzed 30 selected lease files from 6 selected entities.[11] We

[8]31 U.S.C. §1501(a)(1). GSA, however, has the authority to record obligations for multiple-year leases on a year-to year basis. 40 § U.S.C. 585(a)(2).

[9]GAO, *Commodity Futures Trading Commission—Recording of Obligations for Multiple-Year Leases*, B-327242 (Washington, D.C.: Feb.4, 2016); GAO, *Securities and Exchange Commission—Recording of Obligation for Multiple-Year Contract*, B-322160 (Washington, D.C.: Oct. 3, 2011).

[10]To gain understanding about the extent to which federal entities with independent leasing authority have policies that align with leading practices, we reviewed our eight selected entities: FAA, FDIC, NASA, NCUA, NOAA, PBGC, USCG, and USPTO.

[11]For the analysis on leading practices we did not include leases that fell below GSA's Simplified Lease Acquisition Threshold of $150,000 net annual rent as some leading practices are not applicable for low value leases. All NOAA and USCG leases were omitted for this reason, as well as several other leases from other entities. More detailed information on our scope and methodology can be found in the full version of the report.

looked for documentation of 10 sub-practices within the four leading government leasing practices as shown in figure 1. The extent to which lease files documented alignment with the leading practices varied by entity, but no lease files contained evidence of full alignment with all the leading practices. Without documented evidence in the lease files that all of the leading practices and sub-practices were used in the acquisition of leased space, it is difficult to determine whether the federal entities performed the leading practices that would help them achieve the best lease rate in a competitive and transparent manner.

Figure 1: Percentage of Six Selected Entities' Lease Files That Documented the Use of Leading Government Practices for Leasing Federal Real Property

Leading practice	Sub-practice documentation	Alignment status		
		● In alignment	◐ In partial alignment	○ Not in alignment
Assess needs	Assess type and amount of space needed	30%	10%	60%
	Consider future staffing needs	22%	19%	59%
	Specify geographical area for needed space	40%	40%	20%
Plan ahead	Document factors used to evaluate offers	23%	0%	77%
	Document expected costs	47%	3%	50%
	Document time frame for acquiring space	20%	3%	77%
	Conduct market research	53%	0%	47%
Ensure best value	Advertise need for space	13%	0%	88%
	Justify other than full competition	35%	13%	52%
Analyze and document the budget effects of the lease	Determine if lease qualifies as operating or capital lease	17%	0%	83%

● In alignment ◐ In partial alignment ○ Not in alignment

Note: Percentages may not add up to 100 because of rounding. Also, the percentages listed are the percentages of lease files for which the particular sub-practice was applicable. All 10 sub-practices were not necessarily applicable to all 30 lease files. For example, if a lease was advertised, a sole source justification would not need to be included in the file.

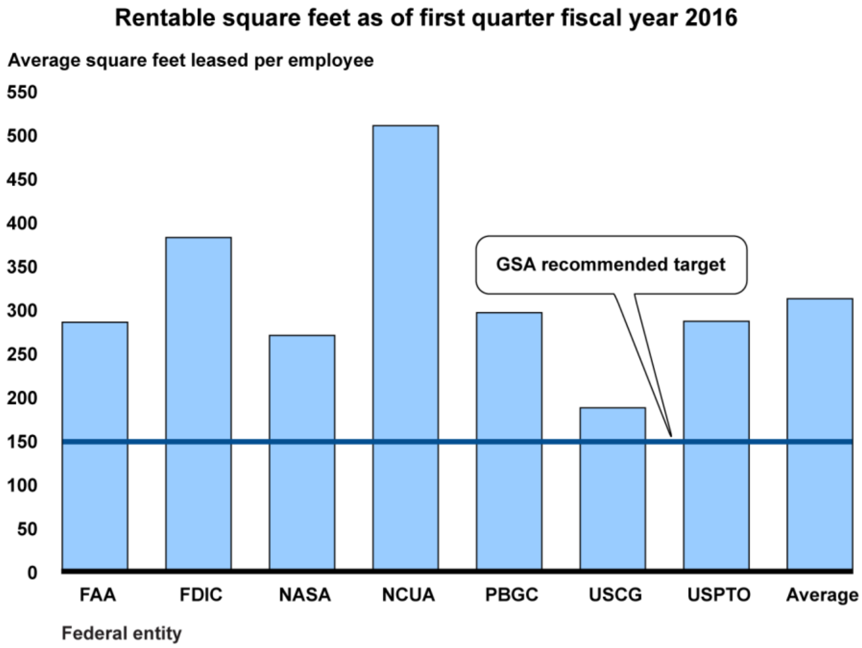
Source: GAO analysis of 30 selected lease files. | GAO-16-763T

All Selected Entities' Space Allocations Exceed GSA's Recommended Target

As shown in figure 2, all selected entities we reviewed leased more office space per employee on average than GSA's recommended target. According to GSA officials, GSA recommends that federal entities allocate approximately 150 rentable square feet per employee for office space. Twenty-eight of the 30 selected office leases analyzed for space allocation exceeded GSA's recommended target.[12] The 30 selected leases we reviewed averaged more than double the GSA recommended target per employee. Many of these leased offices had vacant spaces, which can inflate the per-employee space allocation.

[12]For the analysis on federal entities' space utilization we did not include warehouses since GSA's recommended target for office space is not applicable to that building type. Additionally, we did not include leases that had large non-office related spaces attached (such as server rooms), which can skew the amount of space allocated per employee. More detailed information on our scope and methodology can be found in the full version of the report.

Figure 2: Selected Federal Entities' Per-Employee Office Space Allocation Averages and GSA's Recommended Target



FAA: Federal Aviation Administration
FDIC: Federal Deposit Insurance Corporation
GSA: General Services Administration
NASA: National Aeronautics and Space Administration
NCUA: National Credit Union Administration
PBGC: Pension Benefit Guaranty Corporation
USCG: United States Coast Guard
USPTO: United States Patent and Trademark Office

Source: GAO analysis of 30 selected leases. | GAO-16-763T

Note: This analysis is based on information gathered from 30 lease files and interviews with entity officials. It excludes two office properties with significant non-office spaces attached and five warehouse properties.

Many Entities with Independent Leasing Authority Are Not Included in FPRC's Coordination and Information Sharing

FRPC members coordinate efforts and share leading practices, and OMB staff said that the FRPC has been critical to improving real property management since its creation through executive order in 2004. For example, OMB staff said that FRPC has created an effective forum for promoting more efficient space-use standards that are key to the success of the administration's real-property management reform efforts. However, FRPC's membership has remained limited to agencies covered by the CFO Act. We found that 25 federal entities that reported having independent leasing authority are non-CFO Act agencies. We also found that for the selected entities we reviewed, those that were FRPC member entities were more likely to have leasing policies that aligned with leading practices than the entities that were not FRPC members. In addition, the two federal entities with the highest per-employee space allocation rates are not members of the FRPC. Increasing FRPC participation would allow all federal entities to benefit from the collaboration and sharing of leading practices. The Small Agency Council already coordinates with OMB on other policy matters and may offer a potential way to increase involvement in FRPC and FRPP as many of the non-FRPC federal entities with leasing authority are already members of the Small Agency Council.

In our issued report we recommended that the Deputy Director of the OMB—as chair of the FRPC—establish efficient methods for including data from non-FRPC member entities in the FRPP and increasing collaboration between FRPC member and non-member entities, including sharing leading real-property management practices. OMB concurred with both recommendations.

Chairmen Barletta, Ranking Member Carson, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions concerning this testimony, please contact David Wise, Director, Physical Infrastructure Issues, at (202) 512-2834, or at wised@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony include Keith Cunningham, Assistant Director; Catherine Kim; Hannah Laufe; Steve Rabinowitz; Malika Rice; Kelly Rubin; Janani Shankaran; Sean Standley; Michelle Weathers; and Crystal Wesco.

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