GENERAL SERVICES ADMINISTRATION'S FISCAL YEAR 2009 CAPITAL INVESTMENT AND LEASING PROGRAM

(110–152)

HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND
EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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July 10, 2008

SUMMARY OF SUBJECT MATTER

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: Hearing on "General Services Administration's Fiscal Year 2009 Capital Investment and Leasing Program (CILP)"

PURPOSE

The Subcommittee will meet on Friday, July 11, at 10:00 a.m., in room 2167 Rayburn House Office Building, for a hearing on "General Services Administration's Fiscal Year 2009 Capital Investment and Leasing Program (CILP)". The hearing will focus on all aspects of the CILP program including alteration, design, modernization, and construction activities.

BACKGROUND

The General Services Administration (GSA) is the central management agency of the Federal Government. GSA was created in 1949, after the Hoover Commission recommended a central management entity for Federal personnel and real property activities, telecommunications, and automatic data processing equipment. GSA owns more than 1,500 Federal buildings totaling 175.5 million square feet of space, which provides office space for 640,000 Federal workers. GSA leases 176 million square feet of space in approximately 7,100 leased properties, which provides office space for an additional 700,000 Federal workers. It also provides space in Federal buildings for child-care and telecommuting. The inventory ranges from 2,500-square-foot border crossing stations along the northern border, to million square foot courthouses located in major metropolitan areas.

The Public Buildings Service owns, operates, and develops Federal buildings. 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. PBS, with a work force of approximately 6,000 employees, owns, operates, maintains, and repairs existing Federal buildings, and plans for the construction of new Federal buildings, including courthouses.

GSA Capital Investment and Leasing Program (CILP)

The Capital Investment Program plays a key role in providing the necessary resources to maintain current real property assets and acquire new or replacement assets. The Subcommittee scrutinizes each project under the CILP to assure Members that these projects meet critical tests of need and other benchmarks. The Subcommittee on Economic Development, Public Buildings, and Emergency Management has jurisdiction over all of GSA's real property activities pursuant to the Property Act of 1949, the Public Buildings Act of 1959, and the Cooperative Use Act of 1976. These three Acts are now codified in Title 40 of the United States Code.

Funding

PBS activities are funded primarily through the Federal Building Fund (FBF), an intra-governmental fund that agencies pay into through rent to GSA for the space they occupy. Any excess funds generated by the rental system are used for building repairs and new construction. In 1975, the FBF replaced appropriations to GSA as the primary means of financing the operations and capital costs associated with the Federal space owned or managed by GSA.

Congress exercises control over the FBF through the annual appropriations process by setting limits on how much of the fund can be expended for various activities. Section 3307 of Title 40, United States Code, requires the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on the Environment and Public Works of the Senate to pass resolutions authorizing the construction, repair, alteration, or leasing of space prior to an appropriation of funds. Title 40 also requires the Administrator of GSA to submit to the Committees a prospectus requesting authority for any project in excess of $2.66 million for FY 2009. The prospectus must be approved by the Office of Management and Budget, and must detail the particular project, along with the cost, benefits, and plan for Federal occupancy.

Committee resolutions authorizing leases, new construction, or repair and alteration projects are usually approved and sent to the Committee on Appropriations prior to markup by the appropriate Appropriations subcommittee.

The Transportation Committee can also initiate building projects by passing a resolution in accordance with 40 U.S.C. §3314(b), which allows Congress to direct the Administrator of GSA to conduct a study of Federal space needs in a community and report back to the Committee. These reports can serve as the basis to pass resolutions authorizing the appropriation of funds for the construction, acquisition, renovation, alteration, or leasing of space for Federal use.

In many previous budget cycles, the amount requested by GSA is not fully appropriated, which results in a backlog of repair, alteration, and construction needs and delays ongoing projects. The result of this delay is that GSA often does not need new authorizations for ongoing projects, which results in a disparity between the Administration's authorization request and their budget request.

FY 2009 Authorization Request

The President's budget request for PBS for FY 2009 includes $620.1 million for new construction, including $331.3 million for consolidation of the Department of Homeland Security. GSA has requested:

A. Repairs and Alteration

The alteration program includes approximately $692.3 million worth of work to be done on several projects. These projects include the Eisenhower Executive Office Building Phase III, the Everett M. Dirksen United States Courthouse, and West Wing Infrastructure Systems Replacement.

B. Design

No design funds are requested in the Fiscal Year 2009 Program.

C. Construction

GSA has submitted $620.1 million for construction projects in FY 2009. The largest project is $331.3 million for the consolidation of the Department of Homeland Security headquarters on St. Elizabeth's West campus and acquisition of a parcel of land for site access. The construction portfolio also includes funds for two land ports of entry at San Diego, California, and Portal, North Dakota.

D. Leasing

GSA has submitted 20 leases for committee authorization. The bulk of the lease requests are for space in the District of Columbia and Northern Virginia.

WITNESSES

Mr. David Winstead
Public Buildings Service Commissioner
General Services Administration

GENERAL SERVICES ADMINISTRATION CAPITAL INVESTMENT PROGRAM, FISCAL YEAR 2009

Friday, July 11, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:06 a.m., in Room 2167, Rayburn House Office Building, Hon. Eleanor Holmes Norton [Chair of the Subcommittee] presiding.

Ms. NORTON. I want to welcome all.

I want to begin by putting the opening statement of the Ranking Member, Mr. Graves, in the record.

Ms. NORTON. Welcome to everyone, especially the Public Buildings Service Administrator, David Winstead, to today's hearing on the GSA Fiscal Year 2009 Capital Investment and Leasing Program.

The program represents a wide variety of agencies located throughout the United States in need of office space and facilities to further their mission. Since I have been a Member of the Subcommittee, which is since I have been in Congress, this annual hearing has often had a perfunctory and bureaucratic quality.

However, I believe an annual request for funding provides an opportunity and an obligation to review the agency that is requesting more taxpayer dollars. This Subcommittee's oversight of the program this year will feature the necessity for GSA to think more self-critically and innovatively about the need for comprehensive reform about the agency's leasing and construction processes, with particular focus on making both more efficient and less costly to the Federal Government and the private sector alike. We are particularly disappointed that GSA has failed to use the authority to pursue innovative deals for construction on Federal land that Congress passed in section 412 of P.L. 110-447, the Omnibus Appropriations Act of 2005, for more efficient approaches to construction contracts. The Subcommittee will not continue to tolerate GSA's reluctance to examine all the options available to bring construction and leasing processes into the 21st Century.

GSA has submitted a request for $620.1 million for construction projects in fiscal year 2009. The largest project is an amended prospectus for $331.3 million for the consolidation of the Department of Homeland Security headquarters on St. Elizabeth's campus, an acquisition of a parcel of land for site access. The construction portfolio also includes funds for two land ports of entry at San Diego, and Portal, North Dakota. The fiscal year 2009 repair and alteration programs are about $692.3 million for work to be done on several projects, including the Eisenhower Executive Office Building, Phase III, Dirksen United States Courthouse, Chicago, and the West Wing Infrastructure Systems Replacement.

The 20 leases in the fiscal year 2009 lease package include leases for the Internal Revenue Service, the Federal Emergency Management Agency, Department of Health and Human Services, Department of Interior, Department of Defense, Department of Homeland Security and the Federal Aviation Administration. The 2009 Capital Investment Program is relatively small measured against past fiscal years. In recent years, the construction program has been reduced to special-use spaces, such as land ports of entry and courthouses, but very little general purpose office space. The Subcommittee is concerned that recent trends towards leasing buildings because of neglect of valuable federally owned property has led to a steady shrinking of the Federal Building Fund, which in turn limits the Federal Government's capacity both to maintain existing buildings and to construct new inventory. When Federal agencies make rent payments to the Federal Building Fund, it operates as a self-replenishing revolving fund, generating income for the Federal Building Fund to the greater benefit of all Federal agencies under GSA control.

Our major concern centers on Federal tenants leaving buildings owned by the Federal Government for leased space with a resulting loss of vital income to the Federal Building Fund. Last year the GSA submitted three prospectuses to move from federally owned sites to leased space. In particular, GSA allowed the National Archives and Records Administration building in St. Louis to go from disrepair to disintegration. And then GSA focused on the relative expense of rebuilding versus leasing new space when the failure was years of neglect of the Federal building. Making repairs is a much higher priority when the inevitable prospect is loss of Federal occupancy of a Federal property would help resolve continuing losses to the Federal Building Fund. We declined to approve the Billings, Montana, Courthouse prospectus, which sought to move from a government-owned courthouse to a leased courthouse. As a matter of security and policy, the Federal Government always requires courthouses to be built and housed on Federal property. The courthouse proposal vividly highlights the distressing portrait of the condition of an essential government function.

The health of the Federal Building Fund is also threatened by the reduction of real estate experts at GSA because of retirement and inability to attract the necessary new talent. Lack of expertise has led to serious problems, such as so-called holdover leases. In this case, the lack of trained GSA personnel is leading GSA to unfairly sit on leases rather than finding new space or renewing existing leases. In turn, Federal leaseholders in today's tight credit market are stuck with stagnant rent rates, making it difficult to get necessary financing for repairs for the Federal tenant or, alternatively, to get a private tenant.

The Subcommittee must help GSA analyze the root causes of these and many other agency problems and must require GSA to pursue feasible steps to attract the personnel needed to accomplish the agency's mission. The Subcommittee initiated reform itself with our first hearing this session on February 27, 2007. The Subcommittee held a hearing on GSA's delineated area policy, resulting in the provision we now require that directs GSA to inform the Committee when the delineated area of a prospectus is not the same as the solicitation area. The 2007 hearing showed that agency abuses of the delineated area process had resulted in redlining an area or space shopping here and elsewhere with greater cost to taxpayers and needless cost and delay to the private sector. The change that we required has already had desirable effects and can lead the way to true reform at GSA.

The Committee intends to retain this provision, but it is at best a tiny step toward reform and hardly represents the wholesale reform that GSA requires. To set the table for comprehensive reform, the Subcommittee held a hearing on June 8, 2008, on the GSA leasing and construction processes and the necessary steps to make both of them efficient and, thus, less costly for all concerned. The Subcommittee is in the process of thinking through changes that the June 8th hearing demonstrated were necessary for the GSA leasing and construction processes.

We look forward to hearing testimony about the 2009 GSA Capital Investment and Leasing package before the Subcommittee today.

Ms. NORTON. I am pleased to hear from Mr. Winstead.

TESTIMONY OF DAVID L. WINSTEAD, COMMISSIONER, PUBLIC BUILDINGS SERVICE, U.S. GENERAL SERVICES ADMINISTRATION

Mr. WINSTEAD. Chairman Norton, thank you again for holding this hearing. I am pleased to be back.

I remember our June 6th hearing on the leasing program of GSA, and I also take into account your comments and concerns and interest to this Oversight Committee to help us do our job better for our Federal tenants, and I am pleased to be here again.

I would like to ask that my full testimony be submitted for the record. And I would also like to thank the Committee staff and our GSA staff behind me for the work in preparing for this hearing and the prospectus proposals.

As I mentioned, PBS is very proud of its record in terms of operating performance this year. If you look at the second quarter of fiscal year 2008, 81 percent of our government-owned assets are yielding a positive fund from operation, and that is rent minus expenses. And the percentage of vacant spaces at 4.4, and Madam Chair that compares to about 12 percent nationwide given the state of the real estate industry in most of the urban markets. In addition, we are operating below, in terms of the operating costs, on 1.6 percent below the industry average in operating costs of cleaning, maintenance, and utilities.

Before I address the fiscal year 2009 capital program for GSA, I would like to share several accomplishments that I think address some of the concerns that you have mentioned this morning and this Committee's continued interest in terms of our relationship with critical contractors, in addition to the challenges which we are having with our clients.

First, I would like to mention that, in response to the increase in leasing that you have referred to and the hearing on June 6th dealt with, we have established a new office of real estate leasing acquisition. Our new director of that is behind me, Chip Morris. And I think, given the volume of leasing and the complexity of this work and the significant stakeholder interest in terms of rent and budgeting, we have made this really one of our top priorities. And this new office will continue to focus on improving the real estate leasing program for GSA, both in the National Capital Region and the other ten regions around the country.

We are looking for increased, obviously, resources and staffing, as you have mentioned in terms of your concern on training of realty specialists, consistency between regions and efficiency in terms of the time it takes to execute these leases, and I believe that this new office will add value in that regard.

Secondly, we are strengthening our Construction Excellence Program within the Office of Chief Architect at GSA and focusing really on issues, such as project estimating, which has been an increasing challenge over the last 3 years with market material increases of 9 percent, averaging almost 27 percent over the last 3 years. We have new systems of project variance and tracking. We are also looking at project execution across the country.

And I will acknowledge Bill Guerin our new assistant commissioner for construction excellence is with us today. And we are seeing, as you have alluded to, some differential in terms of competency in project managers around the country and adequacy of staffing in certain areas. But we are addressing it, I believe, very aggressively, and I know this interest to the Committee is very clear in that regard.

A recent survey of our major clients, the courts, FBI, IRS, DHS, VA, and others, through our 11 regional offices, we really continue to try to develop national business plans to deal with these tenant agencies. And I hear from the IRS and the FBI and the courts and others that this national perspective in customer approach is really helping them react as they are trying to manage their budget and allocation of rent nationwide.

Lastly, we continue in a state of new IT tools and new approaches to better managing projects and lease actions. We continue to develop new IT tools, such as our eLease, which is in development and utilization now; Transaction Management Playbook, which is our inventory system of really what the status of projects are throughout the country. We have got over 200 in the development pipeline at the Chief Architects Office. Also the application of BIM, Building Information systems. Given these management approaches, as well as our increased portfolio on these, I am really pleased to say that, if you look back on what we are focused on, both leasing, construction and better business and better client relations, I am pleased to say that I think the request for authorization for individual projects as a part of our Fiscal Year 2009 Capital Program will not only meet the needs of agencies but be well administered.

The projects that are in our fiscal year 2009 program have been analyzed. We have analyzed these projects. We have met with staff of the Committee and determined that they are consistent with overall portfolio objectives, which are primarily to optimize the value of owned inventory, some 1,500 buildings that GSA owns around the country; direct capital resources primarily towards performing assets; and developing work and disposal strategies for underutilized or nonperforming assets; maintaining the continued functionality of our buildings; safeguarding the health and welfare of tenants and occupants; providing quality work space in support of mission-critical goals of Federal agency tenants. And we have focused a lot in the last two years about a new work place initiative.

We also have been—you had a hearing on this, Madam Chair—about achieving energy efficiency and trying to meet the goals of the Energy Policy Act of 2009 and the recently signed Energy Dependence Act of 2007, as well as fulfilling the responsibility we have under the National Historic Preservation Act for over 400 historic buildings in that 1,500 building inventory. We continued to focus on these 1,500 federal buildings as well as our leased actions which have a replacement value, if you look at our GSA inventory, of about $39 billion. And we are requesting as a part of the capital program today a repair and alteration program of about $692 million to maintain and approve these properties that are in the inventory for which there is a defined long-term Federal need and capable of self-sustaining those buildings at about 6 percent return, which is our benchmark hurdle rate.

The highlights of GSA's fiscal year 2007 repair and alteration program includes $350 million for basic program; $91 million for limited scope program; $215 million for major modernization; and $37 million for the energy program.

Before we utilize the finite revolving fund, Federal Building Fund resources, we evaluate and rank our repair and alteration proposals based on the following criteria; financial return and lifecycle cost of the buildings; projected project timing and execution risks; physical urgency, based on building condition; and customer urgency, based on mission requirements and overall satisfaction levels. So the projects before you and the Committee today have passed these criteria and reflects, we feel, sound investments of taxpayer dollars in the Federal civilian portfolio that GSA manages.

One key section I would like to call your attention to also is the energy program, which is a small but really crucial part of our repair and alteration request. As you know, the 2007 EISA Act sets aggressive goals for the Federal Government and GSA. I think we have addressed this in a Committee hearing about the role that GSA is playing. Before 2010 fiscal year, we are required to reduce consumption of fossil fuel emissions in new buildings. By 2030, as you well know I think, we are totally to be eliminating fossil fuel consumption in new buildings. This recent act accelerates the rate at which we must reduce energy consumption in our inventory as a whole to about 3 percent a year. So these funds that we are requesting in this category will go a long way, this $37 million, to implement individual energy and water retrofit projects and government-owned buildings during fiscal year 2007.

GSA is currently identifying energy and water retrofit projects required through surveys and schedules of these buildings, and they are being prioritized in terms of installing high-energy HVAC systems, lighting controls and variable air flow systems, as well as building automation control systems. We are estimating that annual savings of about $6 million resulting from projects where we are applying this energy funding for fiscal year 2009 alone.

Under new construction we are requesting $620 million. This request includes funding for site acquisition, design, infrastructure, construction and maintenance of inspection costs at six Federal facilities. PBS traditionally pursues a construction and ownership solution for special purpose in unique Federal buildings that are not readily available in local real estate markets through leasing. In addition, we recommend new construction where there is a long-term need not given locally and also, obviously, specialized facilities, such as courthouses and border stations.

You well know GSA is working with the Department of Homeland Security to consolidate its headquarters in the NCR. We have gotten funding from both the House and the Senate for that project. DHS's current facilities are dispersed among some 50 locations around NCR. And this has adversely impacted the communications, coordination, and efficiency of DHS. Madam Chair and I heard this firsthand from Secretary Chertoff at a visit to St. Elizabeth's a couple of months ago. A unified secure campus putting together DHS's senior leadership will fulfill their command-and-control functions as well as their mission, and we are very pleased to see the House and Senate actions in this regard.

A quick highlight of the Fiscal Year 2009 New Construction Program include $331 million for the Coast Guard Headquarters at St. Elizabeth's; $79 million for the Food and Drug Administration consolidation White Oak, and that project is going extremely well and the Commissioner of the FDA, von Eschenbach, is very pleased with both the on-track as well as the environment that that is creating for FDA employees; $19 million for infrastructure improvements at St. Elizabeth's West Campus and the Denver Federal Center; $7 million for acquisition off additional egress of the West Campus; and $74 million for design and construction of two land port of entries.

In addition, we are entering into a fairly healthy leasing program overall; leases in some 7,100 locations. Our total lease inventory is 176 million square feet. We are managing that leased action inventory very effectively, and we currently have only 1.5 percent vacancy in our leased inventory when the national average is about 12 percent.

This year we have submitted 20 lease prospectuses for this Committee's consideration. This submission represents about half of the above prospectus level lease requirements for fiscal year 2009. Due to the volume and complexity of these programs, we will submit at least one more set of prospectuses separately for you and the Committee's considerations.

In conclusion, Madam Chair, I would like to mention that we are very proud of the progress we are making. We do acknowledge the concern in the leasing area as well as in the speed and the construction procurement area. But I would like to mention that a lot of effort has been put, in addition to leasing, on portfolio management over recent years. I will be happy to submit for the record our new fiscal year 2007, "State of the Portfolio," which sets out those accomplishments. And in fact, in terms of disposal of facilities, which we got under the 412 authority, we have, as a result of disposal of some 271 assets in recent years, we have had a cost avoidness of about $600 million. Also, design excellence continues, I think, to be refined to focus on design cycle times and reduce that, which both the courts and the CDP are very pleased about. And I will tell you that we are making progress in the Design Excellence Program as well.

We will also continue to work with this Subcommittee in the areas that you have expressed concern. To capitalize on the requirement of our aging inventory and growing needs, we have over $7 billion of reinvestment we need in our 1,500-building inventory. We do continue to restructure the portfolio and will continue to do so.

. But I also wanted to mention, Madam Chair, as I did before the hearing to you directly, that we, as a result of the June 6th meeting, hearing, we had on leasing with some industry experts, as well as construction and building owners and managers, we have responded to that QFR, and we do have those submittals to come into the Committee. They should be up here momentarily. I would mention that they do address one of the issues in the June 6th hearing that I wanted to make sure we follow up on; our specific recommendations in terms of how we might, with the Committee's support, look at authority, look at legislative options to improve both the leasing program and the speed in which we are moving lease and construction projects through our schedule.

So, with that, Madam Chair, I would be pleased to conclude my remarks and be happy to answer any questions the Committee may have.

Ms. NORTON. Thank you Mr. Winstead.

As you know, first, let me say how pleased I am that the National Leasing Office has been set up. This has been one of the priorities of this Subcommittee for some time. If there is any interest in cost reduction it has got to begin, as you have now done, with the National Leasing Office. And I want to thank and commend the agency for setting that office up by the time you had this annual hearing.

And you obviously report some other good steps you have begun to take. We are very pleased with those.

Let me ask you directly about the program submitted today, the construction costs of the border stations. It seems particularly high. Can you explain those very high, $486 per square foot in San Diego, for example. Even in North Dakota, $404 per square foot. Can you explain those very high per-square-foot costs in border stations?

Mr. WINSTEAD. Madam Chair, with the Portal border station, we had a pre-construction meeting just this month. And looking at those cost estimates, obviously, that is a very rural site——

Ms. NORTON. Very what?

Mr. WINSTEAD. It is a very rural site in terms of availability of materials and contractors. But we——

Ms. NORTON. Which one are you talking about, both of them?

Mr. WINSTEAD. No. Obviously, Portal. San Ysidro is quite populated on the southern border south of San Diego. It is a very large community.

But the two are distinguishable in that the Portal is a not-very-populated area. We allocated $20 million in 2006 and requesting another $15 million. And the reason the per-square-foot cost is, quite frankly, just the availability of competent contractors and material costs in that part of the country. We do not have the availability. And also the highly purposed and specialized use of the ports of entry. We have tried to, over the last 2 years in meetings with CBP, we have been trying to shorten the design cycle for our ports of entry. Because what I found when I came on as commissioner over 2 years ago, I saw that our design cycle for these relatively small ports was taking over 2 years. And so we were dragging out entering the market a year longer than we really needed to. And as I mentioned in my testimony, material costs have been going up 9 percent a year for the last 3 years. So in the Portal situation, I think, and we can get the Committee more information on pre-bids, but it is really a rural setting. And what I have heard, it has been very difficult to get the materials and basically the economics of available materials and construction is much more costly in that area.

In terms of San Diego, we have a very, very complicated project there. It is the biggest port of entry in the country. We have some 50,000 vehicles going through it daily. We are actually acquiring 17 acres of site. The huge number you see is really the site acquisition.

Ms. NORTON. The cost of land is——

Mr. WINSTEAD. Is very high in that area. I mean, San Diego was one of the highest-growth markets.

Ms. NORTON. And North Dakota, this rural area, is just as high as in San Diego?

Mr. WINSTEAD. No, clearly not.

Ms. NORTON. But the costs are pretty close?

Mr. WINSTEAD. They are, even though at the Portal, obviously, the land costs are much less; material costs are much more compatible with San Diego. The 17 acres are going to be very costly due to the price of real estate on the border in the largest crossing in the U.S. We are going to be demolishing the court in San Diego, and we are going to begin to do construction of Phase I in 2009. And I will tell you, it is a very, very complicated project. And the $59 million we are requesting is really for Phase I looking at the northbound capacity expansions for that port. I am visiting the San Diego port on July 24th with our Region 9 people to meet with our project team as well as CBP, our client, to try to obviously understand both the difficulties of that project as well as where we are in terms of the completion.

Ms. NORTON. You need to submit—I understand what you are saying. From what I—the notion about requiring the expertise, you are talking about specialized expertise to put this up, to put these buildings up?

Mr. WINSTEAD. Yes.

Ms. NORTON. I recognize, by the way, that there is a shortage in the construction trade. We will need to have back-up information to be able to understand, though, these very high costs. I am not sure I understand the cost of land in, for example, North Dakota being factored in here so we get to $404 per square foot. I am not sure why those should be so close.

Mr. WINSTEAD. We would be happy to give you both the acquisition value of the land as well as material allocations for those two projects.

Ms. NORTON. Where do you buy the land from?

Mr. WINSTEAD. Sorry?

Ms. NORTON. Where do you buy the land from?

Mr. WINSTEAD. The land in San Ysidro was basically looking——

Ms. NORTON. Who owns those two parcels of land?

Mr. WINSTEAD. Are you talking about North Dakota or San Ysidro?

Ms. NORTON. Both of them. Apparently you are having to acquire land. That is understandable.

Mr. WINSTEAD. Right. I do not know actually the ownership of the property. They are both in the private sector, Madam Chair. I mean, both the land and——

Ms. NORTON. I would like to know who owns the land. They saw you coming is all I can say. It really goes to my question about expertise. I also want to know what land in the area goes for.

Mr. WINSTEAD. Okay. We do have those estimates.

Ms. NORTON. I want to know what you paid for it, and I want to know comparable costs for land, just land, in the area. I am not sure that you could possibly have taken into account this economy. If anything, it may drive it up, or it can drive it down, so many people are looking for work. But it is very, very difficult. In fact, the reason that we moved forward without more is that we are talking about border stations. We have got to do it. And do you know what? Everybody knows we have got to do it. And we are dealing with amateurs because you don't have people who know how to deal with people who know the government is coming, and that is what we are going to be facing. So I just need more background, and what in the world led to this? If you can justify it, maybe that is the way it has to be. Frankly, the most interesting thing to me is the cost virtually in two different States, very different States, if I may say so.

Mr. WINSTEAD. No, they are. I mean, the markets are very different. I do have the breakdown, which we can give the Committee.

Ms. NORTON. You go to two East Coast States that different, you will not find those kinds of course. But, again, it is up to you to justify that within 30 days please.

Mr. WINSTEAD. I will be happy to.

Ms. NORTON. Let me then follow up about what looks to be a very serious, perhaps even a crisis, in trained personnel and specifically at a number of levels, but certainly realty specialists. Is it true, for example, that the number of realty specialists have been cut in half from, I don't know, 2000 or so, the year 2000 or so? What are the numbers?

Mr. WINSTEAD. Looking at—you are correct.

In 1992, we had about 1,200 realty specialists through our 11 regions. Currently, we employ about 526. That is up actually from about 500 three years ago. But we are—the realty function has changed, as you well know, with the incorporation of the national brokerage contract. But we are finding challenges, recruiting and keeping talented realty specialists.

Ms. NORTON. So let's go to that, since the agency was in great pains to contract out this service, one thing you sure did was to reduce the personnel there. That may have been a lethal blow, because you did that very quickly, and of course, you assured this Subcommittee that the way to do it was to broker out this function. Well, why then are we having the concerns we see everywhere?

Mr. WINSTEAD. Well, Madam Chair, we are in fact—the national brokerage contract is in its fourth year, as you know. And we are finding that in a large majority of the regions, it is working extremely well and it is leveraging, for example, the NCR, which you are most familiar with. The application——

Ms. NORTON. This 1,200 figure was nationwide?

Mr. WINSTEAD. That is correct. So the 1,200 was a 1992 figure. Now we have about 500.

Ms. NORTON. I know. But you cut in half the personnel——

Mr. WINSTEAD. That is correct.

Ms. NORTON. —of an agency, you have to make it up some way. And of course, you said, we want to contract this out.

Mr. WINSTEAD. Right.

Ms. NORTON. So you certainly—the agency never informed the commission that there would be less work or that there would be new problems arising in the agency. All I want to know is, who is taking up the slack?

Mr. WINSTEAD. Well, number one, the application, in terms of utilization of the national brokerage contract on a nationwide level, is at about 80 percent.

Ms. NORTON. Say that again. What is 80 percent?

Mr. WINSTEAD. Eighty percent of leasing actions nationwide are being handled on average through the national brokerage contract. And what we have been trying to do since the implementation of the national brokerage contract is continue to train the realty specialists in both, obviously, the oversight and management of the national——

Ms. NORTON. All right. Wait a minute. The oversight and management of what?

Mr. WINSTEAD. Of the national—of the brokerage contract, as well as looking at property management functions, leasing, as well as disposal. So these 562 realty specialists, their role is really broadened with the support of the private sector and the actual finding, the best deal on the market and assisting us in negotiating the best lease rate for our tenant clients. We are also, these realty specialists are also working to look at the long-term housing needs and focus much more on the client in a long-term way.

Now, the reality is——

Ms. NORTON. Let us now focus on the client then. The client is the Federal Government. The client is a Federal agency. I raised, among the many problems that we are aware of at GSA, is the problem of holdover leases. That punishes everybody concerned. It punishes the agency who may want that space, may want other space. Really, it kicks the lease holder where it hurts. It makes the government look like a very bad actor. Now, since we have got 80 percent of the work being done by these contracted brokers, why are we having this problem?

Mr. WINSTEAD. Well, I think on June 6th, I talked in detail what we are trying to do in the lease hold, lease situation, both at NCR, where we—at that point, and I know we are less than that now—but we had about 80 leases in the holdover situation. But we have actually reduced the holdover leases from 4 to 3 percent since the beginning of the year. So we are addressing the issue. But your question——

Ms. NORTON. That is an important figure.

Mr. WINSTEAD. —nationwide from 4 to 3 percent, so we are tackling the problem.

Ms. NORTON. From 4 percent to 3 percent?

Mr. WINSTEAD. That is correct.

Ms. NORTON. Would you kindly answer my question? Why, since 80 percent—I am now looking to the people who you say are responsible, the contracted brokers; how could they possibly be doing satisfactory work if you have that, I believe, huge percentage when you understand that everybody involved is being penalized of holdover leases? How could you be possibly be satisfied with what these people are doing? I have never heard of this problem arising since I have been on the Subcommittee, at least to this degree.

Frankly, do you know where I heard about it? Is in the newspapers. You know, when it hits the press, it must be fairly unusual. And I have certainly never heard about 4 percent holdover leases before.

Mr. WINSTEAD. Basically, we have experienced, particularly in NCR, but there is cases around the country of it, we have seen—the national brokerage contract is in fact delivering better deals, some 9 percent below market on average, so we are getting better value. The reality is that the administration of the lease——

Ms. NORTON. Wait a minute. In 30 days, I want a list—I am tired of hearing that with nobody coming forward with something to prove it. I want a list of what they are producing below market.

Mr. WINSTEAD. All right.

Ms. NORTON. I would congratulate them, particularly given the fact that you are losing expertise in the agency. But generalities will never fly with this Subcommittee, and that is not the first time I have heard that one. They are delivering. How many deals? How many were below market? How many were at market? Where were they?

Mr. WINSTEAD. We would be happy to provide that. We keep it up monthly. We review these with the brokers monthly, and we have that data. We would be happy to give the Committee full information in that regard.

The issue on the—the staffing issue, we are working very, very hard to try to have training programs to——

Ms. NORTON. How do you—you have got to deal with my question. Holdover leases at a percentage that is totally unacceptable, you say the contractors are largely responsible. What is the reason for the holdover leases in this large number? All I am asking is, why? I am pleased that you are reducing it, but I don't understand the origin of this high percentage of holdover leases.

Mr. WINSTEAD. Well, it has been increased quantity in terms of the number of lease actions, as well as, obviously, we are responsible for getting the leases tasked to the brokers, and that with the fact that it is a 3 or 4 year new program, it has taken longer to bring realty specialists up to speed in terms of that tasking.

Ms. NORTON. So you have the specialists, or the specialists need to be trained?

Mr. WINSTEAD. That is correct. They have to be retrained. The leasing specialist is responsible, as well as the contracting officers, need to be trained in the use of the national brokerage contract. We are 3 years into it. That training has been done nationwide where every quarter we are doing regional training. We are monitoring their performance and evaluating the realty specialists' actions in terms of managing these leases.

Ms. NORTON. Of course, not having access for sure has not helped that whole process of getting some kind of uniform system of training and understanding of your own people so that they can have the appropriate relationship with the contractors who are responsible. They are not doing any of this work. It is the contractors who are doing it?

Mr. WINSTEAD. Yes, in terms of the leasing action and in finding the best deal in the market, yes. In terms of managing the brokers and overseeing the contracting, it is the realty specialists.

Ms. NORTON. So you think the problem is not with the contractors, but with the agency's slow process in getting to the contractors what?

Mr. WINSTEAD. In terms of the holdovers, clearly, it is getting the lease action in place, given the quantity of leases. And I talked on June 6th about what NCR is trying to do to improve that and reduce the holdovers. It is a high priority. And the QFR that we are giving to the Committee addresses specifically——

Ms. NORTON. What percentage of holdovers——

Mr. WINSTEAD. We have 4 percent.

Ms. NORTON. —would be acceptable do you think?

Mr. WINSTEAD. Well, I mean, obviously, we would like to reduce it down to 1 percent, but we are clearly at 3 percent. I think that the tolerance point is probably some 1 percent or minimum number——

Ms. NORTON. Are you hiring more realty specialists?

Mr. WINSTEAD. We are. We are trying to—we are basically reaching out in the market. I will tell you that, up until recently, the real estate market was fairly healthy. Now we are certainly seeing, on the commercial side, which we are obviously impacted by, as well as residential, there are a few more people in the market than there were a year ago. We continue to have co-op programs in local schools. We attract through obviously ads to try to get——

Ms. NORTON. I have asked you a question, and you obviously don't have the pictures before you. Would you submit to this Subcommittee the number of realty specialists hired from 2000 to 2008, the number hired in each of those years?

Mr. WINSTEAD. I would be happy to. I know, Madam Chair, the last 3 years we have increased——

Ms. NORTON. Wait a minute. You are right. You created the program.

Mr. WINSTEAD. But we have actually increased the realty specialists by 10 percent.

Ms. NORTON. You created the contracting program. It started 3 years ago; is that right?

Mr. WINSTEAD. That is correct. We are in our fourth year. And we have increased from 500 realty specialists——

Ms. NORTON. I still want it from 2000 to 2008. I have to have some—I can't be—otherwise I may be criticizing the agency for things for which it doesn't deserve criticism. I need to have something to compare with, so I need to know how many were hired in each of those years. The only thing I can compliment you for at the moment is how fast you got rid of half the staff. That you all did with great efficiency.

Mr. WINSTEAD. Well, I am very concerned about this issue that you have seen and watched the agency for years on. And we do meet quarterly with the ARAs, who are responsible for the regional—the realty specialists and the leasing function——

Ms. NORTON. Quarterly with?

Mr. WINSTEAD. With the assistant regional administrators, the people that run our 11 regions. And I have constantly been asking them, how is the transition going between the former GSA prenational brokerage contract and the current tool we have and integration? And they are very focused on this. There are fewer people. I will tell you I do have a concern. One of the concerns I picked up in going to service centers around the country is that some of the realty specialists are doing more administrative work, at particularly the 13 and 14 level, than they should be doing. And I brought that back to Tony Costa and our team in Washington to try to make sure that we offload some of the more clerical, obviously administrative.

Ms. NORTON. Anybody without expertise needs to be doing it, you know, 24/7.

Mr. WINSTEAD. And I will tell you, one of the concerns I have brought back from those meetings is that the realty specialists are overloaded with some functions that maybe 10 years ago they weren't doing. And so we are looking at that.

Ms. NORTON. And what kinds of functions were they not doing, like supervising the contractors?

Mr. WINSTEAD. Obviously that. Looking at the long-term housing—you know, working with the tenant agency on an ongoing basis, working through the occupancy agreement, ensuring all the program——

Ms. NORTON. So the decision to, now that we have some contractors, let's quickly get rid of specialized staff who can get probably get higher-paying jobs in the private sector turns out to have been shortsighted; wasn't it?

Mr. WINSTEAD. Well, Madam Chair——

Ms. NORTON. It seems to me, if you are going to let people go while you are still in transition, you can understand that, at some point, you would figure out that you had in fact somehow balanced this out.

Mr. WINSTEAD. Right. And it still is very much in that process. We still need to improve.

Ms. NORTON. But the people are gone.

Mr. WINSTEAD. Not all of them are gone. Last——

Ms. NORTON. I want to know, also submit to this office—first of all, were these people—how were these people let go?

Mr. WINSTEAD. Well, back in 2002, I think that the realty team was dealing with about 7,600 leases. In 2007, about 8,500. So we have had an increased number of leases, but we have increased the realty specialists from 3 years ago to today 10 percent to deal with that.

Ms. NORTON. But all of that was foreseeable. More leases—a whole new function given to contractors, and the first thing the agency does is to use it as an opportunity to get rid of people and save money. And now the wind is blowing right back in your face, and it has become a matter of public controversy and embarrassment to the government and to this Subcommittee.

Mr. WINSTEAD. Well, we are very focused on it. I will tell you that the majority of the realty specialists that did leave between that 1992 time period—you want the 2000 to 2008—left through attrition. And I will tell you that a lot of the alumni of PBS have gone to other Federal agencies in some of their lease programs. But we have attempted to stimulate—one of the things I have marvelled at——

Ms. NORTON. Once the agency announces that we are going to get rid of an X number of people, people better fend for themselves, of course, we don't lay off people, particularly with this kind of expertise. They easily find other jobs. Yet this is the government's leasing and construction central agency. It is a matter of some serious concern——

Mr. WINSTEAD. I will be happy to——

Ms. NORTON. —to the Subcommittee.

Mr. WINSTEAD. I will be happy to get the data specifically on the people that have left since 2000 to 2008, the current numbers, as well as their grade and their responsibilities to the Committee. And we are making every effort, looking at work force modeling in the realty functioning throughout the 11 regions.

Ms. NORTON. How many realty specialists does the agency—you have a program for hiring them right now as I speak?

Mr. WINSTEAD. Yes. We are looking——

Ms. NORTON. You are trying to bring on realty specialists right now.

Mr. WINSTEAD. We are looking to fill slots that are available. And I will be happy to get exactly——

Ms. NORTON. Yeah, please submit it.

Mr. WINSTEAD. I would be happy to.

Ms. NORTON. You got available FTEs. I would like you to submit what your goal is for hiring, when you expect them to be hired. We can't allow this situation to go on. If you say it is not the contractors, it is getting necessary information to the contractors, then in fact you have got to—that is why I am trying to penetrate to see what the cause is. We have got to that to that cause.

Mr. WINSTEAD. I would be happy to provide all the information on both attrition as well as what we have done to bring new realty specialists in to what positions in the region. We are not ignoring—this is a critical staffing area.

Ms. NORTON. And the attrition took place because the agency announced it was going to contract out people's jobs, so I understand that. At the same time that you do that, you will be requesting that people help you in the transition, which what bothers me is the short-sightedness of leaving the agency short of the necessary expertise to accomplish its mission so that the Federal Government looks like it can't even negotiate leases with the private sector. And that becomes a matter of public controversy that is then written up.

Mr. WINSTEAD. I am very concerned as you are on this.

Ms. NORTON. What are you doing to make sure we don't lose any more, Mr. Winstead?

Mr. WINSTEAD. Madam Chair, I think I mentioned on June 6th, we have a very aggressive training program with them. We have a very aggressive recruitment program through internships, through co-op programs with the universities.

Ms. NORTON. You recruit from other agencies? Where are you getting these people?

Mr. WINSTEAD. Well, we are advertising in both the private sector as well as in Federal Government.

Ms. NORTON. Is the pay sufficient, do you think?

Mr. WINSTEAD. No, the pay is not competitive with the private sector. I can get you the pay grades for the realty team. But if you look at it compared to what brokers and——

Ms. NORTON. Do you have a special program, for example? When you are dealing in an area like you are dealing in where people can, after all, if they already have the expertise, the private sector knows what to do with them. Agencies confront that all the time. So then they have very special recruitment programs for hot shots, people who may have the necessary educational background and fairly shallow experience but who are just the kinds of people the Federal Government would want to hire and often can't hire because, once they get that expertise, the private sector may get to them. And so one of the things some agencies do is to go after such people, train them, give them a very special status so as to bring in the kinds of new talent it takes, particularly when they face this kind of loss. Usually agencies aren't facing this kind of loss. They are facing the need to backfill with retirements that are occurring with the baby boomers leaving and that kind of thing. You are facing something where you all did it. This is what gets me about this one. You have the same baby boom problem as every other part of the Federal agency, then you said, look, everybody, your job is going to go as soon as these contractors get on the job. People would have been crazy to stay there. So they had to know that their jobs were being contracted out. But at the very same time, any agency that valued its expertise would have in place something that would encourage those people not to leave quickly, if, for no other reason, to help us train whoever were the new people coming in and to keep from handicapping the agency.

I am very, very concerned at the effect of this broker contract on the expertise inside the agency, and if I may so, foreseeable effects at a time when the Federal Government is having trouble attracting the kind of, yeah, hot shots from the baby boom that gravitated toward public service and therefore to the Federal Government. We are having trouble no matter where we look.

So unless you have some kind of special program, Mr. Winstead, going out and advertising, whatever you are doing, I don't know why they ought to choose GSA.

Mr. WINSTEAD. Well, Madam Chair, we are doing all the above. I mean, the impact of the national brokerage contract, as you have alluded to, there obviously has been some attrition as a result of tasks that are now being done by private sector that were originally done by realty specialists. But I think the majority of our core, the 562, have adjusted to that. And I will give evidence in terms of who we have lost and why we think they have left.

Ms. NORTON. But you can't ever know anything until you know how long was it taking us, whether or not they have adjusted, how long was it taking us last year to get to prepare what was needed for the brokers versus how long is it taking us this year?

How long will it take us in the first year of the brokerage contract? Second year? Third year? We need those figures from the Committee.

Mr. WINSTEAD. I will be happy to provide that.

We also——

Ms. NORTON. The only reason that I ask for these figures, I want to encourage the agency to quantify everything. People respond—we are not saying to you that giving guidance means if you don't meet this guidance, off with your head. But if the guidance doesn't say we expect X to be done within this period of time, then—you are a bureaucrat in the government. Well, then you just do it. You work hard. But you work hard. You may not even focus on that particular—particularly since you say these people are overloaded. You may not even focus on that as your priority, because you have got so many other things to do. So unless you are saying that we are trying to reduce this time, it is getting out of hand, you can't simply say to people, work harder.

Mr. WINSTEAD. Madam Chairman, we are—I will provide this Committee—we are very focused on this. I fully understand your concern.

We are, I think, getting more interest from second-career people and coming in from baby boomers. I go to the PBS boot camps. I am amazed, out of the GSA personnel, there are many more people coming into the agency for the PBS workforce because of what we do, the hands-on nature of real estate.

I do think we have—we are still listed in the top 10 Federal agencies as good places to work. We have a wonderful work environment. I am amazed, coming from the private sector, to look at the camaraderie between people coming in at the lower levels of the realty function versus the majority of the ARAs and ACs that have come through realty functions and have had 20 years career in PBS.

We have recruited and kept a lot of people, and a lot of them have come through that basic understanding of the real estate delivery and the functions that you learn on the realty level, those 600—560 people. But I am concerned and do understand your concern about what has happened as a result of the national brokerage contract in terms of retention. We are doing workload modeling. I will be happy to provide that in terms of those functions and regions, what will be filled and how we are going about filling them.

Ms. NORTON. Providing that to the Committee would be very, very important.

I would ask that, besides your recruiting, your training—we need information on the training program—that you take affirmative steps to staunch—to stop the outflow of people from the agency and—I don't know—at least realty specialists. To the extent——

That means somebody has got to sit down and think about what would we need to do to encourage people who have every reason to leave because of early retirement, because of competition with the private sector, what should we be doing while we are trying to rebuild this realty specialist workforce to keep this from getting any worse?

So I would ask you to think about that. I am not asking you to submit that within 30 days, but expect me to want to know, since I think this is something that has to be thought through, about what you can do.

My interest in this, by the way, comes also from the other Committee on which I serve, the Oversight and Reform Committee, which has jurisdiction, of course, over Federal employees; and, therefore, I am aware of the difficulty you face in the ordinary course. I am horrified, though, to see the difference between your loss in this specialty and the losses of other agencies. Because theirs has been more natural and yours came largely—at least in these numbers—as a result of contracting out people's work so fast that they knew exactly what they had to do.

So I think you are in a pinch, and you have got to make up for it, and you have got to make up for it soon, and you can't do it by the usual strategies. At the very least, you have got to do all you can to keep the personnel you have there that you are now piling work on, because you don't have enough people. So somebody has got to think through how do you keep this very central function staffed.

The other problem I raise had much to do with the Federal Building Fund. What has been the growth or reduction in the Federal Building Fund over the past, let's say, 4 years?

Mr. WINSTEAD. We still—in terms of the budget, we still have the requested $8 billion in terms of the Federal Building Fund.

I think what you are alluding to is the concern, again, with the leasing. Your opening statement talked about the lease inventory, and we have seen that increase quite considerably over recent years. And if you look back 40 years we have had a quadrupling of that, up to the point now where we have 51 percent of our needs, space needs delivered through private sector leases, versus 49 percent through space in our 1,500 federally owned inventory.

I think the reality of that impact is clearly that the more we are leasing, that leased price is a pass-through. It doesn't generate additional revenue for the Federal Building Fund.

You know, from our own inventory, we are getting in the neighborhood of about $9 a square foot. If you look at the nationwide inventory of federally owned leases, we are getting about $9 a square foot that goes into the Federal Building Fund from then-owned inventory. It is reinvested in reinvestment capital through the R&A program and modernization of our buildings. So every time we go to a leased option we are seeing an attrition of revenues coming into the Federal Building Fund.

If you were to take the leased inventory and look at fiscal year 2007, last year we saw a growth in the leased inventory for PBS nationwide of 3.2 million square feet. Now we are at 175 million square feet. And what that meant, Madam Chairman—I think this gets to your point—is that with this increase, the 3.2 million square feet in fiscal year 2007, we actually did lose—that equates to about $30 million of lost revenue to the Federal Building Fund.

So the reality is——

Ms. NORTON. And that you said was sheer growth in——

Mr. WINSTEAD. That is correct. If you take the 3 percent—3.2 percent increase in new square footage on the lease side, that essentially equates to a loss of $30 million in terms of that $9 a square foot of owned inventory contribution to the Federal Building Fund for capital reinvestment. So what has happened is we have seen, you know, the allocation, the revenues have gone up to the Federal Building Fund. Because they are bringing on new office buildings, new courthouses, so the revenues are increasing. But with the increased leasing action, we are seeing a reduction of contributions to reinvestment revenues that we can put through R&A back into our own inventory.

Ms. NORTON. We are quite aware that some of this you can't do very much about. I am not suggesting that the Federal Government is going to start building lots of its own space. That is why you saw me in my—saw me focus on priorities of the agency, which seem to me to be quite skewed.

If you own some property—if I own a house in which I have invested and I look around me today and I see what the cost of buying a new house would be or renting a house, that is a precious investment that I have. So one thing I do, any homeowner does, is, you know, make the necessary repairs so I don't have to move out of the thing because either it was—it got to be so decrepit or I just couldn't stand anymore.

That is why I have been very concerned about whether or not the agency is, in fact, prioritizing the importance of its own inventory and the repair and rehab or perhaps even expansion of that inventory that might have an effect on reducing the leasing and therefore keeping the Federal Building Fund alive and kicking.

You have got a new Congress here, and it is not going to go away, and it is not going to be adding funds willy-nilly to the Federal Building Fund. This whole notion of pay-for is real real, so somebody has to be thinking about what are our options for maintaining a viable Federal Building Fund as need for more space occurs with fewer contributions to the Federal Building Fund. What are your thoughts on how you are going to maintain the fund and how much has it been reduced or not over the last 4 years I asked as a benchmark?

Mr. WINSTEAD. Right. Madam Chairman, I am very concerned and I think you address an issue that I see in the field. As I go out and go to our service centers and seeing the condition of our buildings, the 1,500 buildings that we have in the inventory, I am concerned about the condition of many of them. You know, we have needs in about six——

Ms. NORTON. Is there any chance that any Federal building will come forward, that you know of, in the near future and ask to be moved out of a Federal site into——

Mr. WINSTEAD. I preference, it has happened. It will inevitably—I think inevitably those are the discussions that occur on our property management level and the portfolio management level where we are getting requests to move out of owned inventory. And, as the Chairman certainly mentioned, part of this is because of the condition of the building.

As I look at the business model of the Federal Building Fund, you know, I am very concerned, as Commissioner, about this issue of reinvestment need, the $7 billion that we need to maintain this inventory.

I think we have done an excellent job in recent years, for the last 4 or 5 years, through our portfolio strategy of coming down and holding on to tier one assets where there is a long-term tenant demand. I mentioned earlier we have actually sold and surplused 272 buildings. It has brought in almost $200 million and created huge savings in terms of carrying costs. But for that inventory that is left, we do have long-term housing needs; and what we need to do is to manage the revenues in the Federal Building Fund, along with direct appropriation requests, and make sure that we are prioritizing and moving forward with renovation of these buildings to keep them in competitive condition. And that is what we struggle with every day. I mean, that is what the portfolio group at NCR and head office and all the regions is doing.

Ms. NORTON. And could I just ask, when we own a site, we own the land. What happens to the land and the site? In Billings, Montana, where we declined, that was really radical. Abandon a courthouse and lease a courthouse. What did you intend to do with the land and the building if we had been foolish enough to allow that precedent?

Mr. WINSTEAD. Well, the Billings, Montana, courthouse was a part of the fiscal year 2008 capital program, as you well know. We originally had submitted a lease prospectus for the courts and the Marshal Service. Our intent now is, obviously, we have proposed two leases instead of the one; and we are looking at improved land in a very scarce part of downtown Billings. But we will, in fact, based on the contribution of the—and considering the small amount generated from the lease solution, it will have an impact on the Federal Building Fund, as you alluded to, of $100,000.

But the Executive Committee of the Judiciary has viewed this as a space emergency since 2006, and we are moving forward with it.

In terms of any surplus property, we put it through a disposal process; and it goes, in many cases, to public sale. And as a result of the 2005 Appropriation Act language that I know this Committee supported, we are now pumping those proceeds back, any surplus property, any surplus buildings that go to public sale back into the Federal Building Fund.

Ms. NORTON. Would you submit—you threw out a figure of revenue from Federal buildings sold.

Mr. WINSTEAD. Right.

Ms. NORTON. Would you submit that list of buildings?

Mr. WINSTEAD. Sure.

Ms. NORTON. Where they were located to us?

I make no judgment, except if I had some land today, according to how much land and where, I would have to be very careful about just selling it off. And, therefore, the Subcommittee at least needs to know what are these sales? How much did they return to the Federal Government?

Mr. WINSTEAD. I will be happy to get that.

Ms. NORTON. The difficulties that you report are, as to what to do with the Federal Building Fund, is an example of how—you know, the Federal Building Fund was—is an example of what kind of innovative agency GSA used to be. That is working with Congress and come up with a way to pay for everything with a revolving fund.

Now, if you are sitting in an agency today and you see what you have reported, the huge increases in need, with continuing lowering of contributions, then what you do is you sit around and you say, well, you know, how do I rethink this idea? What do I think should be done?

And I love government, and I hate the bureaucratic approach to, well, this is the way we do it. I guess it is just not working.

Well, who knows best how to reinvent what has shown that, if we keep doing it that way, we are going to get into a crisis? And so it bothers me very much that the people who know best, who are experiencing the crisis, instead of coming forward to Congress to say here are some options, here are some things to do——

Well, you know what? Congress had an option—what is it now? More than 3 years ago, we passed a bill. This is the Congress of the United States. And we are still waiting for use of this authority. This authority, you know well, is authority that I don't even think took the kind of imagination that trying to do something about the Federal Building Fund requires.

But we wrote December 11, 2007, to ask GSA to provide a detailed analysis for use of that authority on the St. Elizabeth's campus project. If ever there was a project made for that authority, it is where GSA, for the first time in its history, is asked to build a compound, not simply a building. That is the kind of thing that would excite anybody as just a new and important way to do it. And the last thing you want to do it is the old-fashioned way, particularly since they have got perhaps a half a dozen buildings.

Far from seizing this as a new way, a more creative way, a more 21st century government way to deal with a problem that you have, in its report, GSA says—and I am quoting—proceeds from the ground lease may not be used to offset the space lease rental obligation.

Why not shoot yourself in the gut? Why does GSA hold that view against its own interests?

Mr. WINSTEAD. Madam Chairman, I would—I am very pleased of the Committee's support for the section 412 authority, and as you——

Ms. NORTON. Why are you pleased? Why are you pleased if you fail to use it?

Mr. WINSTEAD. Because since fiscal year 2006 we have actually applied the retention of proceeds effort. We have actually utilized the portion of authority and retention of proceeds. As I have mentioned earlier, we have recaptured almost $170 million.

The reality is that we have been working since then—I will address St. Elizabeth's—but we have been working since then on the ability to utilize section 412 in other ways, to look at lease and lease-back opportunities for our older inventory. I would also look at new construction applications for 412.

Ms. NORTON. Wait, wait. You know, you have a way of not answering the question I asked you directly. I don't mind a witness prefacing his answer.

We just talked about the authority, frankly, that you already had to sell property. I am now talking about using the proceeds from a ground lease to offset the space lease rental obligation. And we just talked about the Federal Building Fund. We have just talked about the problems you are having generally.

That is the question I want answered. Why—I am now quoting you all here—proceeds from the ground lease may not be used to offset the space lease rental obligation, when the very opposite is what Congress had in mind? What do you think we were doing this for?

Mr. WINSTEAD. Obviously, ground lease will still be deposited in the Federal Building Fund and a pure offset not required. So I know that that is an option. And new revenues to the Federal Building Fund.

In terms of the St. Elizabeth's issue, which is your question, we have reviewed it, both internally and with OMB, in terms of the application of 412. It is not, in our judgment, the most ideal situation to apply 412 because of, as you well know, the secure nature of that campus.

Ms. NORTON. It is not what?

Mr. WINSTEAD. It is not an ideal situation to apply 412.

Ms. NORTON. Why?

Mr. WINSTEAD. Because of the secure campus nature of it. DHS would have to lease 100 percent of the space, which would violate the scoring rules. We come against the constraints of the scoring rules in almost every instance when we look at the 412 application to a St. Elizabeth's or other projects. The site also is a highly—obviously, high infrastructure cost.

Ms. NORTON. Mr. Winstead, to get back to my question, how would that problem fare if we used the ground lease to offset the space lease rental obligation?

Mr. WINSTEAD. If we could use the ground lease and we could use the 412 application in doing so, it would offset——

Ms. NORTON. There is nothing in the statute that says you can't.

Mr. WINSTEAD. Well, I think our problem, in looking at this to date, has been the constraints of the scoring rule and being able to craft economically a ground lease and construction to be approved under a scoring rule.

Ms. NORTON. You believe it would score—you believe there would be a scoring—you said—I am trying to find out——

Mr. WINSTEAD. It would be——

Ms. NORTON. —whether or not offsetting the space lease obligation scores; and, if so, who says so.

Mr. WINSTEAD. Well, in our look at St. Elizabeth's and applying a ground lease or a 412 approach to it, we have not been able to get the economics of that beyond the security issue, beyond the high cost of infrastructure and the reality of being able to do a 412 lease, ground lease arrangement on St. Elizabeth's. We have also run into the financial costs of the security cost on any proposal of that nature and the fact that it would not be scorable.

And that is our problem, and we have been working on this the last 3 years. We have looked at, you know, many applications of 412 to this situation as well as others, and we have not been able to get it past the constraints of the scoring rules to date.

Ms. NORTON. So the specific reason for your statement that the proceeds from the ground lease may not be used to offset the space lease rental obligation—see, I keep coming back to it, because it is your words. The specific reason for that is scoring? Is—fill in the blanks, please. You put that language in. There may be lots of reasons why you think you ought not to use that. You put that language in.

Mr. WINSTEAD. OMB scoring specifically on the time arrangement between the ground lease and the lease-back is the issues that we have had in that letter and response on the 412 application St. Elizabeth's.

Ms. NORTON. OMB's what?

Mr. WINSTEAD. OMB's scoring specifically on tying the relationship between a ground lease and lease-back arrangement and the risk allocation issues under scoring rules, as well as the financial viability, given the security costs at St. Elizabeth's, given the 100 percent occupancy that DHS would have in the building and the fact that that 100 percent occupancy, because of allocation of risk criteria, that the scores at OMB make it unacceptable in terms of getting it scored.

We do have—we have vigorously—I have had two meetings at OMB in the last 2 months on this issue of looking at other options for lease financing, lease purchase, applications of 412. We have come up with studies. We have locked at, you know, the St. Elizabeth's applications. We have looked at the Denver Federal Center applications. We have looked at ground lease applications. And every time, in terms of the economics of the current market, any arrangement would be scorable and would not be—we could not get it approved, and we haven't had—you know, we need also to get authorization for it. So we have had——

Ms. NORTON. Before I leave this line of questioning, could I ask you to give me an example of where 412 authority could be used?

Mr. WINSTEAD. One example of what we spent a great deal of time, for the reasons that you have mentioned, on the R&A and modernization side and the condition of our buildings, 600 buildings requiring—1,500 required substantial renovation. We focused 412 in that area initially.

We were hoping that the authority and the view of OMB, in terms of the budget scoring, we could apply 412 to essentially lease out Federal buildings that had substantial renovation need and lease it back with renovation included. And in looking at the economics of that, our portfolio people and our financial people looked very carefully at ensuring that the funding element of that for renovation was very focused in terms of basic utility renovation so that the aggregate costs, it would still be scorable.

The reality is we could not get concurrence with OMB on our proposal in that regard, and we have been working with them. We continue to work with OMB to explore ways that a ground lease, lease-back structure can work. We are looking at new construction most specifically now because of that risk allocation. So——

Ms. NORTON. Wait a minute. On the renovation, you know, OMB told you you couldn't even use it on renovation?

Mr. WINSTEAD. That is correct. And we are still——

Ms. NORTON. We have the veto here by OMB on both new construction and on renovation. Now, my question becomes, when is 412—on what kinds of construction could 412 authority be used? Or, in the alternative, on what kinds of renovation could it be used? Are you telling this Subcommittee that that is a useless authority?

Mr. WINSTEAD. No. We do believe, and we continue to talk to OMB, that new construction, ground leasing the land separate, competitively, with a lease-back arrangement can be viable and can be structured financially to be competitive in the market, that we would actually get competent developers wanting to enter and bid on the contract. But we need to have generic—basically, the building and the structure needs to be fairly generic office space that, you know, that keeps those costs, because of the finance market now and the cost of financing, keeping them below the scoring limits.

And that is our struggle. Our struggle has been to look at—we first looked at renovation approach of 412. We were not successful there. We are currently still engaged with OMB in looking at new construction ground lease approach under 412 and looking at separate, competitive lease-back transactions that have that separation and allocation of risk between any offeror and the Federal lease. And it is a very——

Ms. NORTON. Well, you know, Congress is going to have to——

Mr. WINSTEAD. So we would be happy to share with you.

Ms. NORTON. —increase its instructions to the agency on this matter. Because I still can't get out of you how you could ever use it.

All right. General office space.

Mr. WINSTEAD. We will be happy to provide——

Ms. NORTON. Here we are about to build six buildings. If you build a hypothetical building someplace else, just count on us to do it.

Mr. WINSTEAD. Madam Chair, one example that I think is—some funding is in this budget for it for remediation effort is the Denver Federal Center. We have a very remarkable piece of property north of Denver in Lakewood, Colorado, that is 500 acres or so. We do have existing tenants, in basically 1940 buildings.

We have—fortunately, we have been very engaged—our regional staff out in Denver has been very engaged with the Lakewood mayor and planning board and the commission and the regional transit authority in Denver that is bringing a light rail to that campus. We have actually had the light rail alignment brought down into the Federal campus, as you know well, to prevent very direct public transit access as we do on New York Avenue and all the Metro stations here in Washington.

That land, we feel, is very, very valuable for consolidation of leasing in and around Lakewood and Denver onto that site. We have available land. There is an opportunity there, we believe, to do a ground lease, lease-back under a 412.

We are running the numbers. We are engaged with OMB constantly on this. Our team from Denver has come to Washington to discuss it with us. We would be happy to share with the Committee that project because it is an ideal project. As I said, to date, we have had issues under the application of that ground lease, lease-back and getting it under the scoring rules, but I will be happy to give the Committee examples of that.

Ms. NORTON. I very much appreciate you giving us that example. Very much appreciate it.

Particularly, since Congress—we have had some recent experience. Don't think I don't sympathize with your dealing with scorers. It is very interesting. Instead of moving ahead and doing this, you went to granddaddy and said, can I do this?

Congress never had that in mind. We thought we were dealing with a grown-up agency. But you can always expect OMB to say no. So I don't know why you wouldn't just use your authority and make them stop you. But that, of course, is my problem with GSA, period.

Is there a rule? Have you been instructed not to use this authority without coming to OMB?

Mr. WINSTEAD. The interpretations of the scoring rules in looking at some of these projects will provide the profile and the economics of them—would—rule scoring would in fact not allow for the annual allocation of——

Ms. NORTON. Let me tell you something about scoring, because you are really talking to somebody who understands your frustration here. Don't think it is not the very same thing in the Congress.

Recently, we met some scorers. Understand that these people who score things know doodly squat about real estate land development. They know about scoring in the usual sense.

So we met some scorers here at CBO. These scorers said that the old Post Office scored. Now, Congress is very respectful of CBO. But we have got the kind of staff who looked at the precedents, who had the background knowledge, and who argued and convinced CBO, after it had rendered its decision saying the old Post Office scored, the first thing we used was, really? This is the Tariff Building. Armed with that precedent and with people who understood scoring and real estate, CBO backed off.

The job of people in the scoring business is to score. Your job is to build. Now if you were having problems with OMB, you should have come and talked to people over here. Perhaps we could work together.

Mr. WINSTEAD. Madam Chairman——

Ms. NORTON. Perhaps we could work with CBO and OMB. The last thing I would do is to salute to OMB when the Congress of the United States gives you authority and you are about to build the largest set of buildings in the history of the agency. They don't care what you are about to do.

Mr. WINSTEAD. I will commit to you, Madam Chairman—I mean, I have been on this issue ever since I became Commissioner of the Public Building Service, and I will continue to be on it with this Committee.

I have read, as you have, Madam Chairman, every circular, A-11 and others on this topic. I have read CBO reports. I have read four reports of GAO on the issue of leasing and scoring. We are doing everything—I am doing everything in my power as Commissioner to approach OMB at every level to address our funding needs and address our real estate needs under the authorities we have and to——

Also, I think it is fair, your assessment of the scoring budget people at OMB, is they are narrowly focused on the 1992 Federal Budget Act. They are not real estate professionals. Some of them are. Our budget analysts and others who have been around there for a couple of decades understand real estate, but——

Ms. NORTON. Name one.

Mr. WINSTEAD. Well, you are absolutely correct in the issue that we are struggling with, as you correctly have articulated——

Ms. NORTON. My only point, Mr. Winstead, is, you know, you are playing by their rules.

Mr. WINSTEAD. Well, I am doing it——

Ms. NORTON. —and you will always get their answer. And don't think you are talking to somebody who has no idea about OMB. I headed a Federal agency. I know their power, and I know how difficult it is once a decision is made.

You knew that they were not going to approve this authority. And, you know, even if you go back with the general purpose office space, they are not going to approve this authority. So unless you have another whole way of playing the game you are going to lose and this Congress loses and the taxpayers lose.

And again, if I run up upon that—you know, OMB, after all, has to be respected by the Congress. So if OMB is saying one thing about scoring, we ought to get together. We ought to talk to CBO.

By the way, they have the same problems. You are absolutely wrong that the budget analysts understand enough about real estate and land development. They understand about scoring. They understand about how to make sure you don't spend any money, and they understand about how to make sure you don't spend any money even when you are not spending any money.

So my problem is saluting and then not using—and, indeed, yourself putting language in. You didn't need to put this language in: Proceeds from the grounds may not be used. On whose authority? Then you should have come to Congress. If you really believed this is as useless as you are saying, you should be up here talking to us about what we need to do.

We thought we had done it. We thought we had done it in time for St. Elizabeth's. And now you are telling me that we ought to do it the way we have always done it and have the taxpayers front gazillions of dollars to build these buildings. That is terrible. That is a terrible conclusion to reach.

Mr. WINSTEAD. We would be happy to continue to get together with your staff and this Committee and making it very, very clear what we have done and looking at 412 application and what we can do with this Committee going forward.

I will tell you, I am equally as concerned as you are about relief and resources. Under the Federal Building Act, we got direct appropriations and we have got 412 and we have got ESPC contracts to finance energy. That is it. Direct appropriations and ESP contracts to finance utility upgrades, as I mentioned earlier.

I am very concerned about it. And in February of this year we supplied this Committee, at your request, a copy of 10 leases demonstrating, in fact, the economics of our attempts to move forward on client agency needs in a timely manner under our existing authority and existing funds in the Federal Building Fund. And that list, which this Committee has, makes very, very clear the direct appropriations Federal Building Fund approach, the operating lease approach, and any kind of lease finance or 412 application alternative. And it, in every case—obviously, the operating lease is more expensive. So, I mean——

Ms. NORTON. Mr. Winstead, I respect your background and expertise in this field. What authority would you need from Congress in order to be able to use the 412 authority? Is there anything we could do, given your very extensive background in this field and now in the government as well?

Mr. WINSTEAD. I do believe that the intent of 412 is dealing both with attention of proceeds and giving us the ability to ground lease and lease-back facilities. I have talked to you about our approach after we were given this authority to look at the renovation approach. I mentioned the new construction approach. You know, the clear intent of the language, I think, gives us that authority to do it with, obviously, scoring and authorization to move forward with those projects that we need from this Committee.

Ms. NORTON. So the intent somehow didn't do it. Therefore, what further do we need to do?

Mr. WINSTEAD. I do believe we have provided, you know, basically the existing law I have in front of me, and it says could be expended under the 412 authority. I think it is inclusive. The interpretation and the intent of this Committee and that language is clear, is that we could apply it in the areas we have talked about. The difficulty——

Ms. NORTON. So, as I read you, what we need to say is that we direct GSA to apply the proceeds to offset the space lease rental obligation. Would you agree that that would——

Mr. WINSTEAD. What we are doing aggressively is trying to——

Ms. NORTON. I am asking you. If we did that, would you agree that that is a direct—that that is a law?

Mr. WINSTEAD. I think that anything that would clarify our authority to lease back 100 percent of space under 412 would be helpful. Because what we have is, as you well know, that allocation of risk assessment in terms of how that lease is interpreted, capital or operating lease, and it comes under that scrutiny. So that authority to have 100 percent lease-back, clarifying that obviously helps make those deals viable.

Ms. NORTON. Thank you.

I listened to what you say about the security and the rest of it. I am not suggesting there is a simple solution here. I am suggesting that I have never bought the notion of impossibility. I buy the notion of think harder, and that is what I am trying to do, and I have to get you to help me do.

Mr. WINSTEAD. I appreciate the Committee's support on this. We have briefed staff on 412, our authority, the scoring issues and the like and will continue to work with this Committee in these areas.

Ms. NORTON. Could I ask—I never did get an answer for what—you are going to, I think, submit a list of what has happened to all—well, no, that is different. I want to know what is happening—okay. That takes care of that.

We have learned that your office has recalibrated the formula used to determine what courts pay into the fund. The predicate for this question is what I have asked about the fund up until now.

Now, I have the testimony of your predecessor, Mr. Moravek, performing June of 2005. Just to give you the context, it is important to note that the fund was intended by Congress to produce cash flow for reinvestment in the upkeep of government buildings and the construction of new buildings and to reduce, as it has over the years, to under 5 percent the need for direct appropriations to the fund by Congress.

I don't know if that is still the case, by the way. It is that it is less than 5 percent.

It—meaning the fund—is—and this is the operative language—is not a simple cost recovery system. It was intended by Congress to produce funds for reinvestment.

Without coming or even informing this Subcommittee, the courts have, once again, apparently, decided they are in charge of courthouses. Because, for them, the biggest user—the biggest user—of the Federal Building Fund, you have recalibrated the formula in light of your own testimony about the threats to the fund, some of which you have no control over, such as increased need for lease space. How—why in the world would you change the pricing formula for the biggest user of the fund? And why would you do so without informing this Committee?

Mr. WINSTEAD. Madam Chairman, I know that we have engaged with this Committee on discussion of the ROI pricing alternative as well as, obviously, appraisal-market-based rent. I will tell you that, going back to early 2006, when I came on and really got into this job as Commissioner, I had meetings with the courts. And I also saw that they were very concerned both about their rent, the aggregate rent, which is a billion plus, as well as what I was seeing in terms of the efforts of the portfolio staff in terms of rent bill accuracy and appraisal work that we were doing on behalf of the courts constantly. They are questioning every appraisal. They were going back out and doing three stages of reappraisal of every appraisal in the country on the rent.

What we looked at—and I will tell you that the ROI pricing is not a new concept. We did not—it was not in response to a proposal from the courts. We did not adopt——

You talked about Commissioner Moravek's comments. They had a proposal with Commissioner Moravek that basically said at the end of the ROI period they are going to pay off the mortgage and not contribute to the Federal Building Fund.

That is not what we are talking about here. The ROI pricing concept is not new. We have been using it since the early 1990s. It is a method of pricing that we have used for courthouses, for land port of entry, for special purpose facilities such as labs that do not have easily obtained comparables in the marketplace in terms of appraisal rent.

Periodically, we have reviewed the assumptions of those ROI models and resulting rents. We have established, under the ROI, a minimum rate of return for the Federal Building Fund of 6 percent and evaluated all of our assets to see whether they provide this return. And all the courthouses that you have mentioned——

Ms. NORTON. Excuse me. You said this was not requested by the courts. Then why did you do it? Who requested it?

Mr. WINSTEAD. We already had—the courts were very—in terms of the application of ROI, they had been arguing for some time that, number one, we already apply it to courts, that they were not comparables. In most urban markets, courthouses are unique structures. And what they were constantly arguing is that the approach, in their mind, should be an ROI pricing approach that guaranteed fair return to the Federal Building Fund.

So what we found that was some appraised based rents that they did not provide—under the appraisal rent approach, they did not provide sufficient return when you examined the expanded use of ROI for these projects. So we did enter into—and we did talk to this Committee about it, as well as OMB. We did enter into an MOU which established the existing—revised the existing ROI pricing model to apply to new courthouse construction.

If I could just have a couple more points to make.

The new courthouse projects were unique in terms of overall long-term requirements, and we did apply the ROI pricing to them. And what we are seeing is that in the market you are well aware of, in Los Angeles, in almost every major market where there has been a lot of construction, increased costs and construction have not really been reflected totally by appraisal rates, that we don't have in many markets equivalent appraisal rates for courthouses. We have the courthouse in most markets.

So what we did as a result of very high costs in construction with a lot of the new courthouses is we applied a guaranteed rate of 6 percent which is adjustable under a review. And we did find—I will give you an example of the results of that.

Under that approach and analysis, we have five examples, taking future courthouses, just to illustrate this, on why the ROI approach guaranteed fair return to the Federal Building Fund 6 percent. With Los Angeles, a market rate of $40 a square foot and an ROI rate of $65 a square foot. So in Los Angeles approach, which is obviously a very problematic project, we saw a differential of $25 between the appraisal rental rate of 40 bucks, and the ROI rate of 65. So in the case of Los Angeles, in the case of Mobile, in the case of Nashville, Cedar Rapids and San Diego, the ROI return was higher on a square foot basis than the fair market value approach.

It also—so the ease of calculation, the assurance——

Ms. NORTON. Wait a minute. The 6 percent, is that in perpetuity?

Mr. WINSTEAD. It can be—no, it can be increased. We do review the ROI rate at 6 percent. It is reviewed with OMB as well. But it is calculated on the fair return based on——

Ms. NORTON. But are they going to have to continue to pay into it? At no point would the Court stop paying into the fund the way the people pay rent into the fund?

Mr. WINSTEAD. No. That is correct.

Ms. NORTON. Is that your testimony? That there doesn't come a point where you have paid for it as you would, for example, pay for a mortgage, pay off your mortgage?

Mr. WINSTEAD. No, this LOI pricing is not a mortgage. I think Commissioner Moravek's comments were about their proposal back 3 or 4 years ago when he was Commissioner. This is not a mortgage. This does not expire. The courts proposed——

Ms. NORTON. Now, Mr. Winstead, you help me to understand things, if I can intervene and ask questions. Because you will not find me unsympathetic to the notion that in L.A. and places like that there may need to be some exceptions as to how we go about building. After all, my colleagues come up to me, you know, pulling their hair out in places like that. Was this done for the courts generally?

Mr. WINSTEAD. No, we apply ROI pricing to other——

Ms. NORTON. Was this done for the executive committee of the courts? Was that who you dealt with for courts to get this new recalibration of the formula? Or were you talking about recalibration of the formula for specific courthouses?

Mr. WINSTEAD. No, for application of ROI going forward.

Ms. NORTON. For all courts.

Mr. WINSTEAD. Yes. But still——

Ms. NORTON. Was this done—okay. Excuse me. Not finished with that answer? Don't want to cut you off. Was this done by MOU?

Mr. WINSTEAD. It was done——

Ms. NORTON. How is that recorded?

Mr. WINSTEAD. It is in—I know we—it was recorded in a document in February of this year that we strongly——

Ms. NORTON. Drawn up by GSA?

Mr. WINSTEAD. Yes, and we did have discussions about the ROI.

Ms. NORTON. You know, Mr. Winstead, if we may be so humble, when you are talking about—well, maybe as to ask for a copy of the document? Not only did you not inform this Committee, but we have received none of the information you describe.

Mr. WINSTEAD. I would be happy to make sure——

Ms. NORTON. Did you do an analysis on the impact on the Federal Building Fund that you say you are so concerned—that very Federal Building Fund that you say you are as concerned about as I am, on the long-term effect on this change for all courts, whether located in places like L.A. or low-cost areas of the country? Did you do an analysis of the long-term effect on the Federal Building Fund?

Mr. WINSTEAD. Yes, ma'am, we did.

Ms. NORTON. And what is it then? What is it? Does it hurt, help or have no effect?

Mr. WINSTEAD. It does not have—it benefits—I mentioned these five projects that we have applied ROI to, the revenue base with

L.A., Mobile, Nashville. There is a higher return on the ROI pricing. And we do have—Tony Costa and our financial people, when we were looking at this option, because of increased costs and the appropriateness and return of the Federal Building Fund, we did do analysis on impact to the Federal Building Fund, and we had——

Ms. NORTON. Submit that analysis within 30 days, please.

Mr. WINSTEAD. Oh absolutely. I do believe that we had—and I will make sure that we get everything. But I do think we shared discussions of ROI approach, but I will make sure you have everything, both letters and correspondence, on this.

Ms. NORTON. Mr. Winstead, the staff said you shared it, and we said it was not a good idea, and we told you it wasn't a good idea. And you went ahead and did it without informing us that you were going to do it and without submitting any indication that you were proceeding to work directly with the courts to change the formula for the biggest user.

Look, again, we have been around the mulberry bush. We understand the terrible problems that some parts of the country have.

Look, over here we are dealing, as I speak, with people in jurisdictions like L.A., San Francisco, Washington, D.C., and Boston, arguing that this new housing bill ought to allow for—ought to apply to housing up to, I think, you know, beyond what we would ever think of before, 700,000, a rather large number.

So we understand that there may be reasons. Probably they are negotiating, as I speak, whether or not that ought to apply all over the country or only in districts where the new housing bill that is now being put through the Senate or whether only in those districts to which it applies because of the cost of housing.

I use that analogy to make this point. The Committee is not insensitive to the need for exceptions to Federal policy. You have made no exception. You have drawn a new policy to apply across the board. That is—and you have informed, without informing the Subcommittee. That is as close to a cardinal sin that can be committed against a Subcommittee. To hear from the Subcommittee, not a good idea, go ahead and do it, submit no indication that you are doing it, and no background information invites the Subcommittee to take corrective action.

Mr. WINSTEAD. Well, I will get you all the information——

Ms. NORTON. You need to get us all the background information you can——

Mr. WINSTEAD. Certainly I will and also——

Ms. NORTON. Because we will not allow this to stand unless it can be justified. So be on notice, anybody who wants to go ahead and do something as structural as this—that is the only way to characterize it—the kinds of things you generally do by legislation, make a gross exception for one party, with other parties having to do what they have been doing, when you make that kind of decision, not only should you inform the Subcommittee——

I believe only the Committee should be making that decision, and I believe so because the Federal Building Fund is close to crisis. I believe so because I have heard nothing from you to indicate you know what to do about it, and I believe so because it is a change of mammoth proportions because it applies to all courthouses and because the courts are the largest user of the Federal Building Fund.

I have made my case. I haven't heard your case for an across-the-board exception; and unless we hear the case for it, you are on notice it will not stand. I will leave that, because we will look at your materials.

And I can be convinced of anything. You could easily have convinced the Subcommittee about L.A. and similar places. The burden is on you to overcome the presumption against applying such a formula across the board because the courts said so. And the burden is on you to explain why other Federal agencies ought to bear that burden for the courts while they do not accept their proportionate share while using disproportionately the Federal Building Fund.

You have got to understand our own history with these people. They have come up here asking for outrageous exceptions for the Federal Building Fund, and we have said to them—looked them right in the face and said no. So they know the Subcommittee opposes it.

So you ought to tell the courts, this is on such shaky ground that it will not stand. We are not going to—unless—again, since they are directing courthouse construction, unless they can come up with a better answer than I have heard here today for making a huge exception to Federal law and policy—and I emphasize law—the law says, you all pay. You pay the same amount and, guess what, ultimately, you all will benefit. Some of you will never get a new building, but I tell you, you are going to get your repairs done more quickly. So we don't want to hear it, that you don't want to contribute in a cooperative fashion.

All I know is the impact will be not so much on construction but on the very issue we raised, that you have to abandon Federal property because you cannot do repairs. I don't know how this is going to help you to do repairs for all the other people who are paying into the Federal Building Fund and getting no discount the way the courts are, and yet not getting their repairs done, and yet not getting a new building. Very, very distressing.

Of all the things we learned about preparing for this hearing, the failure to notify us of something we told you not to do and then going ahead and doing it, when the policy of this Committee, under Republicans and Democrats alike, has been equal, this is the most distressing thing that we learned about in preparation for this hearing. We are not going to take it. So if you all are contemplating doing anything else like that on your own, you ought to go back and rethink it right now.

Let me go on. Speaking of courts, we have had to fight them, so we know you do. I once had to tell the judge who was in charge of them all what separation of powers meant, because she actually informed me that they could actually have a say in building courthouses—no say, much expertise, much background, but no say. The say is with you and the say is with the Congress of the United States.

Now we have been on the courthouses and getting nowhere—or at least not anywhere that anybody would want to write home about—about their design guide. We have now received, finally, a new design guide, and included are a series of actions to make the guide different from the previous guide.

The whole point was to reduce costs, control costs for the out-of-control courthouse sector. Because they essentially were driving the ship. They have been driving the ship ever since I have been in Congress. Well, I haven't been in the Chair until now. They are not going to drive this ship. And if they think—we will undo the things they have done. The horrendous things that we have uncovered are close to the kinds of things you penalize other Federal agencies for doing, like building kitchens and extra kitchens and extra facilities, extra fitness rooms.

You know, you give—who wouldn't let them do it? Why not do it? So they don't have any credibility with me. And you know what? When it comes to building, they don't have any power.

One revision calls for ″reduced chamber spaces″, but it doesn't tell us what the old chamber space was or what the new number is, what the potential cost savings are. What role did GSA play in the design guide?

Mr. WINSTEAD. Madam Chairman, we worked closely with the courts on the design guide, and it was an attempt to, obviously, focus in on the building requirements of a courthouse and looking at efficiency and some things like law libraries that are no longer as relevant as they were in old courthouses because of the practice of law, as you know, being online, to a large extent.

But the 2007 design guide of the U.S. courts was aimed at reducing and focusing in on——

Ms. NORTON. Reducing what?

Mr. WINSTEAD. The space requirements.

Ms. NORTON. How about aimed at reducing cost, Mr. Winstead?

Mr. WINSTEAD. Yes, cost.

Ms. NORTON. What is the cost reduction for the new design guide space requirements versus the old design guide space requirements? That was the whole point, to reduce the high cost of space for courthouses, not just reduce the space. The two go together, of course. What is the reduction of space?

Mr. WINSTEAD. The analysis that we have done to date in the Office of Chief Architect, with our project teams, is that the implementation of the design guide will save approximately 2 percent in terms of total space usage by the court. So we are actually—the new design guide will, in fact—the total square footage for traditional courthouse——

Ms. NORTON. So what's the square footage?

Mr. WINSTEAD. Sorry?

Ms. NORTON. In other words, there ought to be a standard square footage for courthouses of different kinds. You know, that shouldn't be up to you. Hey, I want a big one. I want a small one. Is there a standard square footage you are looking toward?

Mr. WINSTEAD. No——

Ms. NORTON. If there is a standard square footage—as with everything else in life—I don't believe in cookie cutter or anything. There out to be—this is the standard. You can overcome the standard by showing the reason why. Is that what the design guide allows or not?

Mr. WINSTEAD. Yes. It is an effort—we made several—we made—in the design guide drafting with the AOC—they have, actually, since 1991, published this design guide. We actually spent—provided 13 pages of 128 suggestions in 2004, 2005 and 2006 aimed at establishing a working group, and we basically looked at less probate.

Ms. NORTON. Who is in on the working group?

Mr. WINSTEAD. Our team, the head office, the Office of the Chief Architect and construction and the AOC facility Committee and a special group, obviously, their chief executive group, that is in charge of our liaison, our rent and the rent issue. We actually made a number of these examples. I will just share with you.

We located probate and pretrial and less expensive space. We looked at base requirements on true need consistent with the current workload and real estate growth trends.

I will tell you that, as I go around to meet with judges in and around the country, one of the questions I ask, not only how is our current team doing in managing that courthouse and how is that operating, how does it meet your need, but I also ask, what is the case load burden? What is the case load in courts? You know, it generally is going down because of mediation and settlement out of court versus the cost of litigation.

So what I am saying, a lot of these recommendations—we institutionalize a lot of systematic methods for courtroom sharing.

Ms. NORTON. Say that again? I am sorry.

Mr. WINSTEAD. We instituted a systematic methodology for courtroom sharing. As you are well aware on this Committee——

Ms. NORTON. A systematic what?

Mr. WINSTEAD. Methodology.

Ms. NORTON. Yeah, well, what is it?

Mr. WINSTEAD. Based on past use, obviously, and judgeships coming on stream.

Ms. NORTON. Excuse me, past use?

Mr. WINSTEAD. We are still operating under both the San Diego resolution which you all passed here in terms of courtroom sharing. I know they are still doing a report on that in terms of workload.

We eliminated a majority of the library space because of what I said before. We reviewed lighting criteria to try to include the same standards, that they and GSA had the same standards. We revised a requirement for carpet. Instead of a 42-ounce carpet, to something that have greater choices. We reduced the expectation for elaborate millwork, trying to work with the courts to save money in both their concern for rent. We capped the courtroom ceiling heights at 16 feet. We reduced the minimum——

Ms. NORTON. You will help us—not by that kind of list——

Mr. WINSTEAD. Okay.

Ms. NORTON. —but by—important as it is, I don't want to minimize that. You will help us by equating square foot to reduction in costs. I want to see that, please.

Mr. WINSTEAD. All right.

Ms. NORTON. That I will give you 60 days to do, because it looks like it hasn't been done.

We—for example, we don't know what reducing built-in bookcases would be. I mean, I clerked for a Federal judge, and I am not sure you save a lot of money.

Mr. WINSTEAD. No, but the reduction of library and probate space.

Ms. NORTON. But a billion bookcases.

Mr. WINSTEAD. No, we are not going to save a lot of bookshelves.

Ms. NORTON. I mean, any office has to have some bookshelves. I don't even know how that would even save money.

Mr. WINSTEAD. Well, we are talking about reducing the library space, basically eliminating it.

Ms. NORTON. Okay, my information was built-in bookcases, reducing the library space because they can find that elsewhere. They all do have books in their offices as well. They are all Federal courts. They don't need access to torts and every State law there is. So I understand what you are saying.

We are down to that kind of nitpicking, because we have that kind of lack of money.

Eliminate jury boxes for bankruptcy courtrooms. We don't know anything about that unless you equate it to savings.

We are pleased that you have gone through this process. Now, you don't want been to lose the credit by leaving us without any understanding of what it does for costs, particularly since the Federal Building Fund is deeply implicated and since you have given a pass to the courthouses on it, as we learned.

So, if you would, within 60 days prepare a cost-saving analysis based on these space-saving analysis. You are moving us forward in a very tough area that the courts have resisted, and I very much appreciate that.

Ms. NORTON. Let me ask you quickly—oh, my goodness—about security standards. We now have a total, you-are-on-your-own agency had to do with security wherever you want to. You add costs to the project by apparently designing your own security standards.

I have had a terrible experience, and I am going to have a hearing on this one, and that is, very kindly, the Transportation building—it took us two decades, I guess, because they were working before both of us got here. It is up.

We learned about the security because we have worked with them. We had an event there. It is a beautiful building. We were very pleased with the event, very pleased with their staff and how they handled it. They have entrances on both sides.

Now, mind you, this was—would have been even for Federal workers. We had an event. Frankly, it was an event—your folks came, were extremely helpful to us to make sure that we were looking for space all over the city, including space, would you believe, 5 minutes from the Capitol, because it isn't in the middle of town or K Street, had been avoided.

So we are simply trying to do the kind of marketing and hope that GSA took note because that is the kind of marketing we expect them to do.

The GSA was wonderful in setting up something outdoors for us for breakfast, indoors, and then someone proposed to staff that they do a walking tour around the building and you could then see what they are going to do. I said, are you crazy?

In NoMa, it was precisely the site of some not-yet-built structures that was a deterrent to many agencies. Some of them still don't understand that this is going to be the only new part of town.

So the last thing—even though some of these buildings and the mall are going to be up, frankly, in 2009, the last thing you want to do is to give them a walk anywhere near that—well, you know, on one side there is a place that they have concerts—of course, there are no concerts going on now. But all over here is where this bill the GSA worked with me on, the Federal Center bill, all that is just being built. So I say they would have to be out of their mind to, say, taking a walking tour, which would include looking at those spaces.

Then we walk all around the building—what street would that be? M Street. By the way, if you are a race walker the way I am, although not in high heels, you might say, well, this is an exercise. Of course, you are doing that in the heat of July in Washington.

So I—you know, I came over to do my own site inspection; and I said to the people, are you crazy, what about a door? This was to be attended, yes, by some developers, but mostly by Federal workers. They were set up for people to come in on the other side. Even though this was mostly Federal employees, that was a way to get people to walk all around a huge building and come in on the side they wanted to.

Upon further investigation, I learned that this low-target building—al Qaeda is—and all the chatter we hear on the Homeland Security Committee has not yet focused on the Department of Transportation. We also learned that you could get in the building with, if you are a Federal employee, show your ID.

But if, for example, you were, like the BID building—the BID is each part of the city now has a business association; and, in fact, the GSA, the Federal agencies are part of it because they keep the area up. It is a terrific thing, with great cooperation from GSA and its buildings.

Well, the person there, who is a neighbor, could not enter the Department of Transportation unless somebody came down, couldn't enter—who was an employee—to bring them in. That means, of course, nobody can go to the cafeteria.

The thing that most got me was not so much the Federal workers but 20 million people who come to visit their Member of Congress every year, some of whom will find their way down there and will say, wow, I have got to go to the john. Here is a Federal building.

I am going to alert you, before you hear from some Member of the House and Senate, you try denying entrance of a taxpayer to a premise that taxpayer pays for, and you will see smoke coming out of this building. That comes because you have been sitting on a Committee that has allowed people to have their own way when it comes to security transactions, whether it is high or low security. I need an explanation for that when you have what amounts to abuses of people entering the business for ordinary purposes.

I can say to you that I have seen different policies in agencies that I regard as higher targeted or security agencies, have seen—the most stringent policy I have seen is at the Department of

Transportation. I need you to explain how that could have possibly happened.

Mr. WINSTEAD. Well, I do believe, Madam Chairman, it is, you know—the situation that you mention is frustrating. I know it was raised again on June 6.

Ms. NORTON. How did it happen? Who made the decision?

Mr. WINSTEAD. Well, the Building Security Committee, of which GSA has a part, as well as, obviously, the Department, DHS, and the Federal Protection Service, and the tenant agency, DOT, sets these standards for security in buildings, depending upon the IFC standards and the security rating of that building, 1 to 4.

Ms. NORTON. What is the security rating of the—we know it is all these Federal agencies, headquarters, level 4, but that is not a security rating. Don't tell me they have the same security rating as the FBI.

Mr. WINSTEAD. Yes, as you well know, this is a leased facility, but it has been rated. It is a new facility. It is level 4.

Ms. NORTON. All right. Mr. Winstead, you will never get away with answering my questions around the mulberry bush, so let me put it directly to you.

Do you think that is appropriate for the Department of Transportation—that kind of requirement I described to you, is that appropriate for the Department of transportation?

Mr. WINSTEAD. Madam Chairman, a level 4 is a high——

Ms. NORTON. I am asking you—let me ask it again. Is it appropriate for the Department of Transportation and the FBI to have the same requirements for how you enter the building, who gets in and what you have to show in order to get in? Is it your view that they should have the same requirements?

Mr. WINSTEAD. Madam Chairman, it is a level 4, the DOT building.

Ms. NORTON. Is it your view that at least these two buildings, hypothetical, should have the same requirement?

Mr. WINSTEAD. I am concerned about the inconvenience that level 4 at that facility is creating and the evidence of your event over there the other day and what it created.

We follow the lead of the Federal Protection Service in their evaluation of the security leads for our tenant agencies. Federal Protection Service, as you well know, is a part of DHS. I know you had a hearing recently on the Federal Protection Service. It is, you know, a headquarter agency. It is the DOT headquarters. There is a large staff.

Ms. NORTON. So your answer is, whatever they say, you follow their lead?

Mr. WINSTEAD. No. I think this area deserves—you are correct. The biggest concentration of Federal buildings is in your district. I think we need to look for aggressively—and you suggest this Committee is going to do that—at these kinds of issues, the accessibility of the public. This a 1.2 million-square foot leased headquarters of a Cabinet-Level agency.

Ms. NORTON. Could there be, to the greatest extent possible—notice how I have said that—uniformity with respect to these policies, bearing in mind the different security needs and rankings of the agency?

Should there be, to the greatest extent possible, a presumption about getting into Federal buildings, a presumption that all enter until you show you have a different need because of security? Would that be the understanding to begin with?

Mr. WINSTEAD. Absolutely. It makes a lot of sense to have—and I am concerned as you are that——

Ms. NORTON. Mr. Winstead, I don't know who this Committee is, but all of you are going to be before us. Because we are going to have not just GSA—it is not just you. We are going to have you all before us, and we are going to lay out the record of the differences.

We want the taxpayers to hear about how, when they can go in some buildings and not other buildings—we want them to know that you can't go in the Department of Transportation at all. We want to know that regardless of—unless your emergency, I guess, is one, a health emergency, if it is only that you want to use the bathroom, you can't go.

We want to tell them that they built a gorgeous cafeteria and that only those inside can use it. We want them to know about cafeterias, including that in the House of Representatives that all of them can use, and then we want to ask all of those who have decided that the agency head—you know good and well that is who is making the decision, and not your Committee—should decide security policies.

We want you to defend that. And I wanted to not close this hearing without letting you know how outrageous it was that this happened at a building that no one would consider to be a high-security building, notwithstanding its status as a headquarters building.

And I wanted you to know how unacceptable it will always be for a taxpayer to be kept out of a building, and that is what would happen to an ordinary taxpayer. There would be no way for that taxpayer to get in the building.

That taxpayer would say, I am sorry, I would like to use the bathroom. That would not let that taxpayer into the building. That taxpayer would have to know an employee. That employee would have to come down. That is indecent.

It is so unacceptable that you would think that the Committee would say we begin with this, free entry, because that is how it always was before Oklahoma City. Now, the things that all of you, at the very least, must do, to guard the security of the employees and visitors——

Now, beyond that minimum—this is really not rocket science. Beyond that minimum, there are differences among you. In consultation with the agency and security experts, those differences would have to be laid out.

If I may say so, under no circumstances, at least in the District of Colombia, could I envision a circumstance where an ordinary citizen could not cross the threshold. If there is such a case, you need to come and tell us about that case.

This is the most high—except for the White House. Now that is the only place I know where that rule obtains, and I will grant that to the President of the United States.

But I regard this as a personal insult to taxpayers, and I am hearing their insult to you before—one of these days, if we were to let this stand, there would be something that caused a taxpayer to run straight to the press and say I tried to get in XOY building, and they said security says that I can't even go into a building that I, as a taxpayer, am responsible for. Don't let it get to that the way it had to get to holdover leases in the newspapers.

I have to leave and, in fact, I know I have exhausted you with these questions. There are questions for the record, this is where the National Capital Region—more than half the Federal presence is here. I would like to know the holdover status, in detail, of every holdover lease in the National Capital Region, how long held over, what the cause of the holdover is, when do you expect the holdover to be released. I want that within 30 days.

And I would like to supply—we would like you to supply the Committee with a definition of these terms: ″new lease, succeeding lease, replacement lease, consolidation lease, and superseding lease″.

Part of what you have had to go through today is that I have sat through 17 years on this Committee with many frustrations. Now that I am the Chair of the Committee I feel a need and an obligation to try to go at some of these things. I feel a very special pressure in this economic climate and I feel special pressure in light of the PAYGO rules that the Congress of the United States has, I think, correctly adopted.

Thank you very much for your testimony, Mr. Winstead; and I look forward to look working with you on these issues.

Mr. WINSTEAD. Thank you, Madam Chairman. I appreciate it.

[Whereupon, at 12:30 p.m., the Subcommittee was adjourned.]

Subcommittee on Economic Development, Public Buildings and Emergency Management

Hearing on "General Services Administration's Fiscal Year 2009 Capital Investment and Leasing Program"
Friday, July 11, 2008

Statement – Congressman Jason Altmire (PA-04)

Thank you, Chairman Norton for calling today's hearing to discuss the General Services Administration's (GSA) Capital Investment and Leasing Program (CILP).

This Subcommittee has a responsibility to periodically review the GSA to ensure that it is operating in an effective and efficient manner. Created in 1949, this agency has management and oversight responsibility for over 1,500 federal buildings and 7,100 leased properties, therefore, any mismanagement could lead to the wasteful spending of millions of taxpayer dollars.

This hearing provides us with an opportunity to review the GSA Capital Investment and Leasing Program (CILP), which was established to maintain the federal government's real property assets. I look forward to hearing Commissioner Winstead's thoughts on this program and discussing steps that can be taken to improve the CILP.

Madam Chair, thank you again for holding today's hearing.

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The Honorable Sam Graves, Ranking Republican Member
Subcommittee on Economic Development, Public Buildings and Emergency Management

Hearing on "General Services Administration Capital Investment Program: Fiscal Year 2009"

July 11, 2008
[WHEN RECOGNIZED]

Thank you, Chairwoman Norton, for holding this hearing on the General Services Administration Capital Investment and Leasing Program for Fiscal Year 2009.

I also want to thank our witness for being here today to discuss the proposed capital investment projects.

The length of time it takes to move forward on new projects has resulted in higher costs to the government. Often the costs for construction, for example, outpace the government's process of proceeding on a project. And, this Committee is part of that process. The Committee received many of the prospectuses for these projects in February. I am pleased we are holding this hearing today and I hope we can approve the committee resolutions this month.

Another issue that has affected the proper management of Federal property is the increased reliance on leasing by the Federal government.

The Government Accountability Office has identified the Federal government's reliance on costly leasing as a key concern that led to federal real property being added to the GAO high risk list.

GSA predicts that, this year, it will lease more space than it owns. In a GAO report released in January, it noted that, in four of seven GSA leases it analyzed, leasing was more costly over the long term than construction by an estimated $83 million over 30 years. In fact, in one proposal that is before us today, GSA proposes moving a Federal entity in Billings, Montana out of a historic government-owned structure into long-term leased space.

Out of over 30 prospectuses that we have received, more than half are leases. Construction only accounts for major projects such as the Food and Drug Administration consolidation or modernization projects like those at the West Wing or the Eisenhower Executive Office Building.

Even though Congress, in the 2005 Consolidated Appropriations Act, provided GSA with flexibility that could help it better manage federal property, GSA has not taken full advantage of these new authorities.

One key problem is that the scoring rules used by the Office of Management and Budget for Federal projects drive government agencies to lease. A proposal to construct a new project or to purchase property must reflect the full cost of the government's obligation upfront. Short-term operating leases, however, only need to reflect costs for the first year plus any cancellation costs. The result is that leasing looks cheaper for long-term needs, but many times is actually more expensive.

There are also other questions about specific authorization requests. For example, the prospectus for the Department of Homeland Security's consolidation at the St. Elizabeths campus requests approval for over $1.6 billion, but yet only a fraction of that amount is actually needed in Fiscal Year 2009. Such a request raises concerns regarding proper oversight of such a costly and significant project.

While today's hearing is focused on the projects included in the Capital Investment and Leasing Program for Fiscal Year 2009, there are over-arching issues that must be addressed in order to cut-down on costs and ensure that common-sense decisions are made regarding the space needs of the Federal government.

I would like to thank Chairwoman Norton and our witness today.

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

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PREPAREDNESS, AND RESPONSE

STATEMENT OF
THE HONORABLE ELEANOR HOLMES NORTON
CHAIR, SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND
EMERGENCY MANAGEMENT
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
GSA FY 2009 CAPITAL INVESTMENT AND LEASING PROGRAM
JULY 11, 2008

Welcome all especially Public Buildings Service Administrator, David Winstead, to today's hearing on the GSA Fiscal Year 2009 Capital Investment and Leasing Program. The program represents a wide array of federal agencies located throughout the United States that need office space and facilities' to further their mission. Since I've been a member of this subcommittee this annual hearing has had a perfunctory and bureaucratic quality. I believe an annual request for funding provides an opportunity and an obligation to review the agency that is requesting more taxpayer dollars. The subcommittee oversight of this program this year will feature the necessity for GSA to think more self-critically and innovatively about the need for comprehensive reform of the agency's leasing and construction processes, with particular focus on making both more efficient and less costly to the federal government and the private sector alike. We are particularly disappointed that GSA has failed to use the authority to pursue innovative deals for construction on federal land that Congress passed in section 412 of P.L. 110-447, the Omnibus Appropriations of 2005 for more efficient approaches to construction contracts. The subcommittee will not continue to tolerate GSA's reluctance to examine all the options available to bring construction and leasing processes into the 21st century.

GSA has submitted a request for $620.1 million for construction projects in FY 2009. The largest project is an amended prospectus for $331.3 million for the consolidation of the Department of Homeland Security headquarters on St. Elizabeth's West campus and acquisition of a parcel of land for site access. The construction portfolio also includes funds for two land ports of entry at San Diego, and Portal, North Dakota. The FY 2009 repair and alteration program includes approximately $692.3 million for work to be done on several projects, including the Eisenhower Executive Office Building Phase III, Dirksen United States Courthouse, Chicago, and the West Wing Infrastructure Systems Replacement.

The 20 leases in FY 2009 lease package include leases for the Internal Revenue Service, the Federal Emergency Management Agency, the Department of Health and Human Services, the Department of Interior, the Department of Defense, the Department of Homeland Security, and the Federal Aviation Administration. The 2009 capital investment program is relatively small measured against past fiscal year programs. In recent years, the construction program has been reduced to special use spaces such as land ports of entry and courthouses, but very little general purpose office space. The subcommittee is concerned that recent trends towards leasing buildings because of neglect of valuable federally owned property has led to a steady shrinking of the Federal Building Fund, which in turns limits the federal government's capacity both to maintain existing buildings and to construct new inventory. When federal agencies make rent payments to the Federal Building Fund, it operates as a self-replenishing revolving fund, generating income for the Federal Building Fund to the greater benefit of all federal agencies under GSA control.

Our major concern centers on federal tenants leaving buildings owned by the federal government for leased space, with a resulting loss of vital income to the Federal Building Fund. Last year GSA submitted three prospectuses to move from federally owned sites to leased space. GSA allowed, in particular, the National Archives and Records Administration building in St. Louis to go from disrepair to disintegration and then GSA focused on the relative expense of rebuilding vs. leasing new space, when the failure was years of neglect of the building. Making repairs a much higher priority when the inevitable prospect is loss of federal occupancy of a federal property would help resolve continuing losses to the Federal Building Fund. We declined to approve the Billings, Montana Courthouse prospectus, which moved from a government owned courthouse to a leased courthouse. As a matter of security and policy the federal government always requires court houses to be built and housed on federal property. The courthouse proposal vividly highlights the distressing portrait of the condition of an essential government function.

The health of the Federal Building Fund is also threatened by the reduction of real estate experts at GSA because of retirement and inability to attract the necessary new talent. Lack of experts led to serious problems such as "holdover leases." In this case, the lack of trained GSA personnel is leading GSA to unfairly sit on leases rather than to finding new space or renewing their existing leases. In turn, federal leaseholders in today's tight credit market, are stuck with stagnant rent rates making it difficult to get necessary financing for repairs for the federal tenant or, alternatively, to get a private tenant. The subcommittee must help GSA analyze the root causes of these and many other agency problems and must require GSA to pursue feasible steps to attract the personnel needed to accomplish the agency's mission.

The subcommittee initiated reform with our first hearing this session on February 27, 2007. The subcommittee held a site hearing on GSA's delineated area policy, resulting in the provision we now require that directs GSA to inform the committee when the delineated area of a prospectus is not the same as the solicitation area. The 2007 hearing showed that agency abuses of the delineated area process had resulted in redlining an area shopping for space, here and elsewhere, with greater cost to taxpayer and needless cost and delay to private sector. The change we required has already had desirable effects, leading the way to a true reform agency at GSA. The committee intends to retain this provision, but it was at best a tiny step toward reform and hardly represents the wholesale reform GSA leasing requires.

To set the table for comprehensive reform the subcommittee held a hearing on June 8, 2008, on the GSA leasing and construction process and the necessary steps to make both more efficient and thus, less costly for all concerned. The subcommittee is in the process of thinking through changes that the June 8th hearing demonstrated were necessary for the GSA leasing and construction process.

We look forward to hearing testimony about the 2009 GSA Capital Investment and Leasing package before the Committee.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
CHAIRMAN, HOUSE TRANSPORTATION AND INFRASTRUCE COMMITTEE
GSA FY 2009 CAPITAL INVESTMENT AND LEASING PROGRAM
JULY 11, 2008

I look forward to examining the GSA FY 2009 Capital Investment and Leasing program today. The President's budget request for Public Building Service at General Services Administration for FY 2009 includes $620.1 million for new construction, including $331.3 million for consolidation of the Department of Homeland Security.

The alteration and repair program includes approximately $692.3 million worth of work to be done on several projects. These projects include the Eisenhower Executive Office Building Phase III, Dirksen United States Courthouse and West Wing Infrastructure Systems Replacement. There are also 20 leases in the GSA Leasing program located across the United States, with the bulk of the leases being located in the National Capitol Region.

The Capital Investment and Leasing program has continually remained of great concern to me in my role of oversight of GSA. As I have watched the GSA portfolio trend from mostly federally owned space to mostly leased space today, I am genuinely alarmed that GSA is losing its ability to effectively manage the federal real estate portfolio. The essential element of the Federal Building Fund is rent paid by federal agencies in federally owned space . Lease payments are a pass through and do not support the Fund as payments in owned space.

The GSA trend to housing federal agencies in leased space has significantly reduced the amount of payments made to the Federal Building Fund which is used as a funding source for new construction and funds for maintenance of the federal estate portfolio. Although the federal government is currently operating at a deficit it is important for GSA not to operate in a short sighted manner in its role of asset manager for the Federal government's real estate portfolio. By not maintaining a higher owned to leased ratio GSA is crippling its ability to maintain its assets. A 2007 GAO report estimated that GSA has $6.6 billion backlog in repairs which indicates that GSA has a significant interest in maintaining the strength of the Federal Building Fund to have the funds necessary to address this backlog in repairs to facilities in the federal building inventory.

I strongly urge the members of this subcommittee to continue its vigorous oversight of the GSA Capital Investment and Leasing Program. This committee will continue to push the GSA to use all the authority it has at its disposal to maintain the federal inventory.

STATEMENT OF

DAVID L. WINSTEAD

COMMISSIONER

PUBLIC BUILDINGS SERVICE

U.S. GENERAL SERVICES ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

JULY 11, 2008

Good morning, Madam Chair, Ranking Member Graves, and Members of the Subcommittee. My name is David L. Winstead and I am the Commissioner of Public Buildings at the U.S. General Services Administration (GSA). Thank you for inviting me here today to discuss GSA's fiscal year 2009 Capital Investment and Leasing Program.

GSA's Public Buildings Service (PBS) is one of the largest and most diversified public real estate organizations in the world. Our inventory consists of over 8,600 assets with over 347 million square feet of rentable space across all 50 states, 6 U.S. territories, and the District of Columbia. The majority of our space is concentrated in large commercial markets such as Washington, DC, New York City, Chicago, Atlanta and Los Angeles. Our portfolio of public buildings includes primarily office buildings, courthouses, land ports of entry, and warehouses. It is the PBS mission to provide superior workplaces for federal customer agencies at an economical cost to the American taxpayer.

In support of our mission, PBS is charged with the responsibility of managing the Federal Buildings Fund (FBF) that was created by Congress in l972 to finance PBS' real property activities. Using a market-based user-fee and cost reimbursement approach, the FBF funds the space needs of more than 500 executive branch organizations as well as the space needs of the Judiciary and Members of Congress. Congress appropriates funds to our customer agencies who, in turn, pay into the FBF the equivalent of commercial rent for the space they occupy. Customer payments into the FBF are used to rent space from the private sector, repair and modernize government-owned facilities, and fund new federal construction in support of our customers' agency missions.

PBS continues to demonstrate strong operational performance. As of the second quarter of 2008, 81% of our government-owned assets are achieving a positive flow of rent revenue less expenses (excluding depreciation) and the percentage of vacant space in our owned inventory continues to be below private sector standards. Our cleaning, maintenance, and utility costs also continue to outperform private sector benchmarks.

Before I address our FY09 capital program, I would like to share several accomplishments that address critical contractor and customer challenges we face. First, I have established a new organization within PBS dedicated solely to lease acquisition. Given the business volume, complexity of this work, and significant stakeholder interest, I have made this one of our highest priorities. This new office, headed by a former chief legal counsel for PBS, will primarily focus on improving the real estate leasing program, including consistency and efficiency in lease acquisition, as well as achieving below market rents. This new group just held a widely-attended industry roundtable on lease-construction to help improve the procurement efficiency and taxpayer value in these projects. Secondly, we have also strengthened the Construction Excellence program within PBS's Chief Architect's Office, so that estimating, project variance and tracking, as well as project execution is more uniform across the country. As a result of client surveys with the Courts, FBI, IRS, DHS, VA and others, the leadership of PBS's eleven regional offices has strengthened the consistency of customer interface with PBS professionals through our National Program Management initiative. Lastly, we are providing our employees with the best management and IT tools, such as e-Lease, Transaction Management Playbook (TMP), and Building Information Modeling (BIM), which will strengthen their ability to address client needs well into the future.

Given these management efforts, as well as our increasing portfolio needs, I am pleased to be here today to request your authorization of the individual projects that make up our FY 09 capital program. We believe these projects are the ones that will best meet the needs of our customer agencies.

We have analyzed these projects and determined that they are consistent with our overall portfolio objectives:

- Optimizing the value of our portfolio of owned assets ;
- Directing capital resources primarily toward performing assets and developing workout or disposal strategies for under- and non-performing assets;
- Maintaining the continued functionality of our buildings and safeguarding the health and life-safety of their occupants;
- Providing quality workspace in support of the mission-related goals of tenant federal agencies;
- Achieving the energy efficiency and environmental goals of the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007; and
- Fulfilling our responsibilities under the National Historic Preservation Act to protect and preserve our historically significant public buildings.

REPAIRS AND ALTERATIONS

GSA is the steward of 1,513 federal buildings, which have a replacement value of about $39 billion. We are requesting a Repairs and Alterations program of $692 million to maintain and improve those properties that are in GSA's inventory for which there is a continuing federal need and that are capable of being economically self-sufficient.

The highlights of GSA's fiscal year 2008 Repairs and Alterations Program include:

- $350 million for the Basic Program;
- $91 million for the Limited Scope Program;
- $215 million for Major Modernization; and
- $37 million for the Energy Program.

Because we are using finite taxpayer resources, we evaluate and rank our repairs and alterations proposals based on the following criteria:

- Financial return and life-cycle cost;
- Project timing and execution risk;
- Physical urgency based on building condition; and
- Customer urgency based on mission requirements and overall satisfaction levels.

The projects before you today have passed these criteria and reflect sound investment in the owned portfolio.

The Energy Program is a small but crucial part of our Repairs and Alterations request. The Energy Independence and Security Act of 2007 ("EISA") sets challenging goals for the Federal Government and for GSA. Beginning in FY2010, it requires GSA to reduce consumption of fossil fuel-generated energy in new buildings, major renovations, and lease construction and by 2030, it requires GSA to totally eliminate fossil-fuel consumption in our new buildings, major renovations and lease construction projects.

EISA also accelerates the rate at which we must reduce energy consumption in our inventory as a whole to 3% per year and specifically requires more energy and water retrofits in our existing buildings. To meet these goals, we are requesting $37 million for the implementation of energy and water retrofit projects in government-owned buildings during FY2009.

GSA is currently identifying energy and water retrofit projects required by EISA through surveys and studies in federal buildings throughout the country. These projects will have positive savings-to-investment ratios, will provide reasonable payback periods, and may generate rebates and savings from utility companies and incentives from grid operators. Projects will vary in size, location, and delivery method. They will include installation of high-efficiency HVAC systems, efficient lighting and controls, variable air-flow systems, building automation control systems, and other energy saving technologies. Based on previous experience, we estimate annual energy savings at 366 billion BTUs and $6 million resulting from projects funded with this request in FY 2009.

NEW CONSTRUCTION

We are requesting a Construction and Acquisition of Facilities Program of $620 million. Our request includes funding for site acquisition, design, infrastructure, construction, and the management and inspection costs of six federal facilities. PBS traditionally pursues a construction and ownership solution for special purpose and unique facilities that are not readily available in the real estate market. In addition, we recommend new construction where there is a long-term need in a given locality

GSA is working with the Department of Homeland Security (DHS) to consolidate its headquarters in the National Capital Region (NCR). DHS's current facilities are dispersed across more than fifty locations in NCR. This is adversely impacting critical communication, coordination, and cooperation across DHS's many components. A unified, secure campus that brings together DHS's executive leadership and operational management will enable more efficient and effective execution of DHS's incident management and command-and-control functions and will also result in significant taxpayer savings in the long run.

Funds we are requesting for FY2009 will enable GSA to start construction of the U.S. Coast Guard's new headquarters at St. Elizabeths as well as begin design of the project's second phase. The Coast Guard will be the vanguard of DHS to occupy the site. DHS's headquarters should be in the next phase of development, with additional departmental components to follow in the third phase.

The highlights of GSA's fiscal year 2009 New Construction Program include:

- $331 million for the Coast Guard Consolidation and Development of St. Elizabeths Campus in Washington, DC;
- $79 million for the Food and Drug Administration Consolidation at White Oak, MD;
- $19 million for infrastructure activities at St. Elizabeths West Campus and the Denver Federal Center;
- $7 million for acquisition of an additional ingress/egress point to the St. Elizabeths West Campus; and
- $74 million for the design and/or construction of two land ports of entry.

LEASING PROGRAM

To meet the space requirements of our clients, GSA has entered into more than 8,500 private sector leases in 7,100 locations nationwide. At 176 million square feet, leased space comprises more than half of our total portfolio square footage. We are pleased that the vacant space within our leased inventory has been at or below 1.5 percent for the last six years, well below the national industry average of 12.9 percent. We strive to keep leasing costs at or below market levels and have developed comprehensive strategies to do so, including the standard use of industry benchmarks and market surveys to comparison shop for the best value for our customers. This year we have submitted 20 lease prospectuses for your consideration. This submission represents almost half of our above-prospectus lease requirements for FY2009. Due to the volume and complexity of requirements, we will submit at least one more set of prospectuses separately for your consideration shortly.

CONCLUSION

GSA continues to work with our customer agencies to meet their mission requirements within their financial constraints by consolidating requirements, reducing underutilized space, and minimizing tenant improvement costs in expiring space assignments. At the same time, we continue to work with stakeholders such as this Subcommittee to capitalize the requirements of our aging inventory and the growing and increasingly specialized needs of our customers.

GSA continues to reduce our asset liabilities by concentrating reinvestment in core assets and disposing of underutilized assets.

Madam Chair, Ranking Member Graves, this concludes my prepared statement. I will be pleased to answer any questions that you or any other Members of the Subcommittee may have about our proposed fiscal year 2009 Capital Investment and Leasing Program, or any other aspects of the Public Buildings Service.

Subcommittee on Economic Development,
Public Buildings and Emergency Management
House Committee on Transportation and Infrastructure

Questions for the Record

What is GSA's 5-year framework for responding to feedback from the private sector on FBI build-to-suits?

1. FBI-PBS Industry Days. GSA's Public Buildings Service (PBS) hosted an FBI Industry Day in Washington, DC, on June 19, 2007, and in San Francisco on February 6, 2008, to educate developers, architects and general contractors on the requirements for lease construction. Since September 2001, the FBI has increased facility security requirements in support of their specialized task forces and anti-terrorism initiatives. The Industry Days were designed to specifically educate GSA's industry partners on the FBI's latest construction requirements and GSA's two-phase source selection and lease construction bid process. In addition, FBI officials provided an overview of how facility design and layout plays a pivotal role in the FBI's new mission.

2. Lease Construction procurement best practices workgroup. This group is responsible for identifying best practices in managing lease construction procurement projects. In an effort to identify security costs, GSA changed the solicitation requirements with the issuance of the Security Unit Price list on August 22, 2008. Offerors must now quote unit prices on all security countermeasures identified in the Solicitation for Offers (SFO) as "Building Specific Security" or "Tenant Improvement" security requirements. For FBI lease construction, GSA is establishing a process to capture these security unit prices in order to develop benchmark cost estimates and a unit cost database for security countermeasures identified in the SFO. With access to this information, GSA realty associates will be able to educate customer agencies concerning the cost of security countermeasures early in the lease project to avoid budget issues and "bid busts" later in the project. Also, GSA will have reliable cost data to use as a basis for recommending changes to OMB on how lease security standards are addressed in lease prospectuses and to help agencies understand their financial contribution (i.e., payment obligations funded through GSA Reimbursable Work Authorizations).

   In addition, the lease construction group will examine successful prospectus level lease projects for the FBI and similar agencies to identify and recommend successful procurement strategies for GSA regions to follow. This group will also look at ways to increase competition for lease procurements with limited interest. Once these best practices have been identified, we will ask industry for feedback.

3. GSA is working with the FBI to procure a contractor to evaluate value-engineering opportunities in FBI field offices. The contractor will also evaluate each of the FBI projects with current approved prospectuses or submitted prospectuses to determine whether construction and other project cost estimates are still reliable in light of the change in financing and the general increase in construction costs.

GSA's 5-Year Framework For Responding To Feedback From The Private Sector On FBI Build-To-Suits
Tasks
FY 2009
1. Continue with project delivery for projects awarded under construction.
2. Continue work with FBI to review projects approved but where award has not been made to confirm viability of approved prospectus for purposes of construction costs and prospectus rent caps.
3. Task contractor to validate assumptions on approved prospectus projects as well as pending projects and to value engineer SFO for possible savings.
4. Consider alternatives to turnkey approach on a pilot project basis.
5. Educate/outreach for financing sources.
6. Review contractor findings on projects reviewed and adjust accordingly.
FY 2010
1. Continue to monitor projects and implement changes based on findings.
2. Continue with alternative delivery tool project.
3. Monitor progress.
4. Keep stakeholders informed.
5. Pursue prospectuses for next round of projects.
FY 2011 and Beyond
1. Continue with program.

What is GSA's 5-year framework for responding to private-sector feedback generally?

1. Lease Construction Industry Roundtable. GSA hosted a Lease Construction Industry Roundtable on June 11, 2008 in Washington, DC to obtain industry feedback on current and proposed lease construction procurement, construction, and financing practices. Approximately 90 private sector developers, architects and construction managers attended and actively participated by giving their feedback on questions asked by the presenters. Topics of discussion included the site selection process; procurement methods, the credit tenant lease, and

improving design and construction management quality in lease construction projects. Feedback from attendees indicates that the Roundtable was a success.

GSA is considering the industry comments received from this roundtable and is incorporating many of the proposals into its lease construction program.

2. Guidelines and Process for Consistent Implementation of Lease Construction Design Excellence Program. GSA organized a work group comprised of regional and central office subject matter experts to develop lease construction processes and tools, including lease construction SFO language to support those processes. GSA will obtain feedback from the private sector on the generic lease construction SFO language. The group began work in April 2008 and plans to issue standardized lease construction processes and tools by the end of the 1st quarter of Fiscal Year 2009. The work group is divided into the following subgroups:

   - Site selection subgroup. This subgroup is developing a sample site option agreement and a land market survey for use either with developer provided or assignable option sites.

   - Procurement subgroup. This subgroup is developing a source selection factor matrix as a discussion tool to use with customer agencies when planning lease construction procurements.

   - Finance subgroup. This subgroup is developing a scope of work to acquire financial advisor services to assist lease contracting officers in evaluating financing arrangements and capitalization rates and in developing negotiation strategies. This subgroup is also focusing on finalizing policy regarding the use of the credit tenant lease and evaluating other financing models. .

   - Construction subgroup. This subgroup is improving the construction excellence process and developing tools to aid in bidding and construction analysis.

   - Business process subgroup. This subgroup is mapping the overall lease construction process, mapping the supporting processes and meshing them together into an overall standardized lease construction process. In addition, the business process subgroup will support the National Program Management Team to develop plans to monitor the success of the standardized processes and resolve problems that arise in the processes following implementation.

3. Market Education. GSA intends to pursue meetings with lenders to educate them on federal lease transactions.

4. GSA is considering alternative means of project delivery and is continuing to engage private industry in these discussions.

GSA's 5-Year Framework For Responding To Private-Sector Feedback Generally
Tasks
FY 2009
1. Complete work on lease construction working group regarding standardized lease construction SFO with appropriate measures.
2. Brief PBS Regional Realty Services Officers (RSOs) and Assistant Regional Administrators (ARAs).
3. Issue applicable Realty Services Letter (which transmits changes in realty policy and procedures to GSA realty practitioners) and training.
FY 2010 and Beyond
1. Consider alternative delivery/acquisition approaches.
2. Outreach to financiers and lenders to educate them on GSA offerings.
3. Complete work on ePM (electronic project management tool).
4. Address training needs for realty specialists.
5. Assign GSA property development specialists to project teams as necessary.

<u>Hearing</u>
Friday, July 11, 2008
10:00 A.M.
Room 2167 Rayburn House Office Building

<u>General Services Administration's Fiscal Year 2009 Capital Investment and Leasing Program (CILP)</u>

QUESTIONS FOR THE RECORD

<u>QUESTION 1:</u> Submit an analysis of how granting the U.S. Courts a Return on Investment (ROI) rental rate affects the Federal Buildings Fund. How many courthouses are currently paying rent under ROI pricing?

ANSWER:

The U.S. General Services Administration (GSA) is currently using ROI pricing scenarios for the U.S. Courts in 29 of 327 (8.9%) locations. GSA is moving toward converting all ROI pricing to a single, updated and consistent model. Approximately eight additional projects in the construction pipeline are anticipated to be billed under ROI.

There is a positive net impact on the Federal Buildings Fund (FBF) for existing and future courthouses billed under ROI. In cases where the ROI is indicated by the hurdle test, the ROI approach provides a better return than would market rates. The current hurdle rate analysis requires the rent to exceed 6% of the property value. If market-based rent does not generate that return, then the rent is priced using ROI. For GSA, ROI provides realistic returns for many properties that are atypical for their markets where market-typical rents would not support the investment.

While the ROI model may reduce the future long-term potential for rent increases, it provides predictable rents for GSA customers while also providing GSA with immediate returns and an income stream expected to generate a greater net present value (NPV) with less risk.

Background
The Administrator has the authority to set rents for GSA's Federal tenants. These rental rates are required to approximate commercial rates for space and services (40 U.S.C. §586). Rents paid for occupying GSA space support the FBF, which sustains the operation, maintenance and construction of buildings in GSA's portfolio.

Rental rates for occupying GSA space are determined by one of two principal methods: 1) rent appraisals and 2) ROI pricing. While appraisal-based pricing is used for the vast majority of PBS properties, ROI pricing has been implemented for a variety of properties that are not well supported by the typical appraisal-based pricing methodology. Land

Ports of Entry (LPOE) and courthouses are among the properties that are often better served by ROI pricing.

As a result of an increasing focus on the performance of individual assets, GSA has examined the financial performance of all properties in its portfolio. GSA has concluded that a well-developed ROI pricing model is preferable for establishing rents for some classes of properties. Generally, ROI pricing provides better asset management results and more consistent financial returns for expensive, highly customized properties that are unusual for their markets, especially in markets with limited data from which to develop appraised rates. ROI pricing is a commonly used commercial practice for setting rents on special classes of assets or in certain markets.

In February 2008, the Administrative Office of the U.S. Courts (AOUSC) signed a Memorandum of Agreement (MOA) with GSA regarding the pricing of space occupied by the U.S. Courts. The MOA set forth a decision-making protocol and established methodologies for pricing rents. The MOA provides clarification of previously existing ROI policy, describes that policy as it relates to courts-occupied properties, and provides a framework for continuing ROI pricing where appropriate.

Certain courts-occupied properties are to be priced using the ROI methodology in accordance with both the MOA and market based hurdle tests. While the vast majority of the PBS portfolio is priced on the basis of rent appraisals, ROI pricing is a more realistic tool for many of the courts-occupied properties. ROI pricing provides an adequate return to the FBF, particularly for costly newer properties and for atypical properties in rent-constrained markets.

In part, the MOA requires all new federally-owned courthouses to be priced under ROI. It is our experience and expectation that courthouse costs exceed, and will continue to exceed, market norms, and that ROI pricing will be beneficial to the FBF for those properties. The MOA will be reexamined by both parties in 10 years. GSA continually examines the ROI pricing model and can update it under the terms of the MOA. GSA will be continually evaluating the impact of using ROI pricing for applicable properties.

Fiscal Considerations and Implications
Rents paid to GSA for occupying GSA-controlled space are critical to the FBF. ROI pricing provides a means of establishing rents that adequately support the FBF and provide GSA a reasonable return on investment in situations where construction costs or market considerations make appraisal-based pricing unrealistic.

ROI pricing provides a predictable lease rate structure consistent with GSA's return requirements and is the only practical methodology in markets where market-based rental rates would not support adequate rents. The GSA ROI methodology follows approaches used in the marketplace to establish rents for highly customized buildings.

The initial hurdle rate analysis overwhelmingly points to the advantages of ROI pricing for new construction where costs generally exceed levels that local markets support.

Overall, using ROI pricing, particularly in the case of new construction in rent-constrained markets, provides a net benefit to the FBF.

GSA's ROI model, like similar models used in the private sector, is a lease framework and does not amortize costs or create an ownership interest for the tenant. Under ROI pricing, GSA owns and controls the property throughout the term of the lease and afterward, as is the norm with all Federal tenancy in GSA buildings.

ROI pricing provides returns on actual capital costs (and subsequent capital costs) that have been increasing at a greater rate than rents. While opportunities for market-based rent increases are limited in this model, the rent requirements are consistent, predictable and satisfy GSA's return requirements.

The ROI model provides immediate positive returns. In some cases, the structure of the model may limit future rents to less than market appreciation, but the greater near-term revenue provides a stronger net present value than would market rates and eliminates the risk of decreasing rents, which is substantial in some markets.

The ROI model allows for full recovery of operating expenses by GSA, and eliminates some of GSA's exposure in the area of energy and maintenance costs, thus providing tenant incentives for savings in those areas.

Market Rates vs. ROI Rates
It is important to recognize the fundamental basis for selectively choosing the ROI methodology. A focus on asset management led GSA to recognize that some buildings would never provide a reasonable return on investment in limited markets using the typical rents found in those markets. The ROI pricing alternative provides an immediate and sufficient return, as is required by typical market participants.

ROI pricing provides a realistic alternative for pricing rent in markets that have limited data that would be useful in establishing appraisal-based rates for atypical buildings, such as in many rural areas with limited office space.

Our Fair Annual Rental (FAR) appraisals provide rent estimates based on office rates, which act as a proxy for market-based rates for our buildings. Frequently, the construction and amenities of courthouse buildings are substantially superior to other buildings in the market. In addition, available market data is frequently insufficient to provide supportable appraisal-based rates. In these cases, appraisal-based rates are particularly subjective, leaving many opportunities for inconsistencies and disputes within and across markets.

The ROI pricing strategy reflects the methodology used in the private sector to establish rents for highly customized buildings in locations that would not otherwise support such construction. Those investors would estimate their capital investment, expenses, and base their rents on the required return. In this regard, GSA's ROI pricing reflects the actions of typical market participants.

Rent Appreciation and Construction Cost Appreciation

ROI pricing provides rent stability, an attractive characteristic to both GSA and its customers. GSA receives a return on investment consistent with its requirements while tenants are not subjected to the inconsistencies of smaller or fluctuating markets. Cost increases have been outpacing rent increases in many markets, and typical market rents would not support the frequently expensive construction that goes into courthouse buildings. While there are many ways to measure cost and rent increases, most of the data available indicates that increases in construction costs have been outpacing increases in rents over the last 20 years, effectively reducing returns.

The advantage of stronger income (greater than market rent) in the earlier years of a building's lifecycle outweighs forfeiting later speculative rent increases. In the short term, GSA receives predictable income as based on the level of investment, which enhances NPV. In the long term, rates are more stable and are less subject to market swings in either direction than in the appraisal-based models that require frequent updates. Though speculative investors with greater risk tolerance might have other goals, stability and predictability are important to GSA and to our Federal customers.

Summary

GSA's goal is the strength and stability of the FBF. ROI pricing allows GSA to achieve realistic returns in situations where reasonable returns would not otherwise be possible and where market data would not support or allow for appraisal based rates. ROI pricing addresses many of GSA's customer needs for rent stability, predictability and transparency for certain classes of properties, and advances GSA's goal of responsible asset management.

The use of ROI pricing is one tool GSA uses in managing its extensive and varied portfolio. GSA will continually monitor and improve portfolio management wherever possible. In the case of the affected courts-occupied properties, the use of ROI pricing provides GSA with consistent returns and provides the courts with the predictability and rent stability they need to manage their occupancy.

<u>QUESTION 2:</u> Submit an analysis of a 2% reduction in space and the cost reduction expected with the new Courthouse Design Guide.

ANSWER:

We applied the standards in the new U.S. Courts Design Guide – updated in 2007 to replace the 1997 U.S. Courts Design Guide - to the three projects that are currently being designed using the new design guide – in Harrisburg, PA; Charlotte, NC; and Toledo, OH. This analysis indicated space reductions of 4,780 gross square feet (2.44% of the building excluding inside parking) in Toledo; 6,527 gross square feet (2.64% of the building excluding inside parking) in Harrisburg; and 10,644 gross square feet (3.05% of the building excluding inside parking) in Charlotte. The reductions were in resident district, magistrate, and bankruptcy judge chambers; Alternate Dispute Resolution suites (which were deleted altogether by the Design Guide); library space; and staff office space. The potential cost savings are estimated to be approximately $2.1 million (2.09% of the estimated construction cost of the building, including inside parking) in Toledo to $4.9 million in Charlotte (2.69% of the estimated construction cost of the building, including inside parking). See the attached table for a breakdown of the space reductions in each of the three courthouses.

<u>QUESTION 3:</u> What does the reduction in square footage mean in potential cost savings for chamber space and library space in courthouse?

ANSWER:

Both the 1997 and the 2007 U.S. Courts Design Guide specify the allowable net square footage for chamber and library space in U.S. courthouses. The reductions in maximum square footage for the different types of chamber space and baseline square footage for space types within libraries are shown in the accompanying spreadsheets. The cost savings associated with these space reductions are shown using construction costs for courthouses in the Washington, DC metropolitan area. Washington, DC construction costs are used by GSA and Congress to form baseline dollar amounts for benchmark budgets and are adjusted up or down depending on construction costs in the city in which a specific courthouse is being built.

2007 U.S. Courts Design Guide Reductions
Harrisburg, PA; Charlotte, NC; and Toledo, OH

GSF Reductions	**Harrisburg**	**Charlotte**	**Toledo**
Chambers	-2,030	-2,586	-1,780
Grand Jury	116	116	116
ADR	-1,030	-2,058	-1,030
District Clerk Staff	-614	-862	-573
Probation Staff	-278	-713	-392
Pretrial Services Staff		-515	-148
Bankruptcy Clerk Staff	-609	-1,382	
Satellite Library	-2,082	-2,644	-973
Total GSF Reductions	**-6,527**	**-10,644**	**-4,780**
Percentage GSF Reductions	**-2.64%**	**-3.05%**	**-2.44%**
Total GSF	**247,604**	**349,385**	**196,022**

	FY 2011	**FY 2011**	**FY 2012**
ECC 1997 Design Guide	$112,728,000	$182,568,000	$101,117,000
ECC 2007 Design Guide	$110,141,000	$177,660,000	$98,999,000
ECC Reductions	**$2,587,000**	**$4,908,000**	**$2,118,000**
Percentage ECC Reductions	**-2.29%**	**-2.69%**	**-2.09%**

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Reductions Harrisburg, Charlotte, & Toledo 10-21-08

2007 Design Guide Changes
Library Space and Cost Reductions Analysis

Satellite Libraries		Design Guides			
Space **(NSF)**		1997	2007	Change	
Public Entry/Lobby		150	100	-50	
Circ/Reference Desk		150	200	50	
Periodical Area		200	200		
Reference Catal		100		-100	
CALR - Public		100	96	-4	
CALR- Staff		100		-100	
Stack Area		1,500	1,500		
Study Area-Table		280	280		
Sturdy Area-Carrel		140	128	-12	
Court Personnel Work area		210		-210	
Professional Staff		150	150		
Technical Staff		70	64	-6	
Fax Area		10	10		
Copier- Public		40	40		
Copier-Staff		40	40		
Microform Public & Staff		100	100		
Supplies Storage		100	100		
Technical Services Area		200	200		
Microfiche Duplicator		55		-55	
Coat Storage -public		10		-10	
Coat Storage-Staff		10		-10	
Storage Area		200		-200	
Mailroom		75		-75	
Freight Mail Receiving		75	100	25	
Shelving Area		100	250	150	
TOTAL NSF		**4,165**	**3,558**	**-607**	
Circ Factor		1.3158	1.3158	1.3158	
TOTAL USF	**(NSF x Circ Factor)**	**5,480**	**4,682**	**-799**	
TOTAL GSF	**(USF/0.67)**	**8,180**	**6,987**	**-1,192**	-15%
DC 2009 GSF Cost				$337	
Approximate DC Total Cost Reductions				**$402,000**	

2007 Design Guide Changes
Chambers Space and Cost Reductions Analysis

CHAMBERS		1997 Guide	2007 Guide	NSF - % Reduction	Circulation Factor	USF Reduction	Efficiency Factor	GSF Reduction	DC GSF 2009 Cost	Approx. DC Cost
Appeals	Resident	2,480	2,060	420 - 17%	1.2048	506	67%	**755**	$387	**$292,000**
	Non-Resident	900	602	298 - 33%	1.2048	359	67%	**536**	$387	**$207,000**
District		1,840	1,670	170 - 9%	1.2048	205	67%	**306**	$387	**$118,000**
Magistrate/Bankruptcy		1,410	1,340	70 - 5%	1.2048	84	67%	**125**	$387	**$48,000**

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Chambers Space and Cost Reductions Analysis

JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

CHIEF JUDGE JOSEPH F. BATAILLON
U.S. DISTRICT COURT FOR THE DISTRICT OF NEBRASKA
CHAIRMAN, COMMITTEE ON SPACE AND FACILITIES

BEFORE

THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

ON

GENERAL SERVICES ADMINISTRATION
CAPITAL INVESTMENT PROGRAM: FY 2009

JULY 11, 2008

Madam Chair, Representative Graves, and Members of the Subcommittee:

Thank you for the opportunity to submit a statement regarding the General Services Administration (GSA) fiscal year (FY) 2009 capital investment and leasing program. The Judiciary has only three projects in GSA's budget request this year: one courthouse construction project in San Diego, California, and two courthouse repair and alteration projects, one in Chicago, Illinois, and the other in New Bern, North Carolina. We support these projects and ask the Subcommittee to authorize them. We also ask the Subcommittee to authorize a build-to-suit lease proposed by GSA for a new court facility in Billings, Montana, and to authorize five courthouse construction projects proposed by the Judiciary for FY 2009, but not included in the budget request. Further details on all of these projects are provided below.

San Diego

In September 2003, the Judicial Conference of the United States declared the San Diego, California project a judicial space emergency in recognition of the effect of aggressive border enforcement initiatives on the court's facilities and the serious security and operational problems at the location. The Judiciary is grateful for the funding provided to date by Congress to construct the San Diego courthouse. Due to the tight construction market in Southern California and unprecedented increases in the costs of building materials, however, GSA is requesting authorization and an appropriation in FY 2009 for an additional $110.362 million to complete the project. The funding previously provided in FY 2006 was consistent with GSA's estimate at that time of what it would cost to build the annex. No bids, however, were received that fit within this budget.

The court worked with local and Washington, DC-based GSA officials and the architect to reduce the size of the courthouse, going so far as to eliminate five floors of the building, including nine courtrooms, in an effort to bring the project within budget. Those reductions, in fact, were made prior to the Subcommittee's last authorization of the San Diego courthouse. Unfortunately, the funds were not forthcoming at that time, and continued rapid escalation in the San Diego construction market has increased the funding now required to complete the project. The site in San Diego has been cleared and is ready for construction, and the design is complete.

The Judiciary, therefore, urges the Subcommittee to act favorably on GSA's request to authorize the additional funding for the San Diego project, and again notes that the scope of this project has not changed since the committee's last authorization of the project.

Billings, Montana

In September 2006, the Judicial Conference of the United States declared the project in Billings, Montana a judicial space emergency due to health and safety concerns for the building occupants. This project is a build-to-suit lease. The Judiciary recognizes the Subcommittee's concerns regarding lease-construct buildings. However, the situation in Billings has urgent health and safety implications that must be addressed as soon as possible due to asbestos in the building. The safety of not only the federal employees that work in this building, but also the public who come into the building, is currently being jeopardized.

Specifically, tenants in the current federal building were evacuated twice when severe delamination of asbestos containing materials (ACMs) exceeded the standards set by the Environmental Protection Agency (EPA) for acceptable levels of airborne ACMs. Numerous studies and reports by hazardous material experts confirm the existence of ACMs throughout the building. GSA has yet to determine the cause of the delamination and cannot guarantee that further outbreaks will not happen. The health and safety risks are being taken very seriously by both GSA and the courts, and several attempts to find timely, cost-effective housing solutions have not been successful.

Initially, space was sought in existing commercial buildings, but private-sector landlords were not willing to have prisoners taken through public elevators and corridors. GSA looked at large warehouse-type buildings for housing the courts and U.S. Marshals Service (USMS), but the security requirements for holding cells and sallyports became cost prohibitive for a short-term solution. The scarce availability of buildings with sufficient square footage has made it even more difficult to find existing space that could be made secure without expending large amounts of money. After numerous attempts to find a housing solution in existing space, GSA has determined that a stand-alone leased courthouse was the best solution for the court. The city of Billings has been very cooperative in finding a suitable site in the downtown area, and GSA is close to finalizing negotiations. For these reasons, we strongly urge the Subcommittee to authorize the prospectus lease in Billings for a safe, secure building for the court.

Repair and Alterations Projects

Finally, the Judiciary supports GSA's FY 2009 request to authorize and provide appropriations for repair and alterations projects in Chicago, Illinois, and New Bern, North Carolina. Both of these projects are important to the Judiciary and will provide much needed improvements to the existing buildings in each location.

Other Courthouse Projects Not Included in GSA's FY 2009 Budget Request

The Judiciary asks that, in addition to the building projects included in GSA's FY 2009 budget, the Subcommittee also consider for authorization the five courthouse construction projects proposed for FY 2009 on the five-year courthouse project plan approved by the Judicial Conference of the United States. These projects are:

- Austin, Texas (additional site/design and construction - $114 million)
- Salt Lake City, UT (construction - $168 million)
- Savannah, GA (additional design - $2 million)
- San Antonio, TX (site - $18 million)
- Mobile, AL (additional site and construction - $181.5 million).

We thank the Subcommittee for its continued support of the courthouse construction program, and we would be glad to answer in writing any further questions you may have with regard to our requests.