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IMPLEMENTING THE FEDERAL ASSETS SALE AND TRANSFER ACT (FASTA): MAXIMIZING TAXPAYER RETURNS AND REDUCING WASTE IN REAL ESTATE

(115–20)

HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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- Report, "The Foreign Emoluments Clause and the Chief Executive," No. 2017-12, June 2017, by Andy S. Grewal, University of Iowa, College of Law 86
- Article, "Business Transactions and President Trump's 'Emoluments' Problem," by Seth Barrett Tillman, Harvard Journal of Law & Public Policy, Vol. 40, No. 3 86
- Letter of September 16, 1974, from Hon. Howard W. Cannon, Chairman, U.S. Senate Committee on Rules and Administration, to Hon. William B. Saxbe, Attorney General of the United States, U.S. Department of Justice 86
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Committee on Transportation and Infrastructure
U.S. House of Representatives
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July 7, 2017

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Economic Development, Public Buildings, and Emergency Management
FROM: Staff, Subcommittee on Economic Development, Public Buildings, and Emergency Management
RE: Subcommittee Hearing on "Implementing the Federal Assets Sale and Transfer Act (FASTA): Maximizing Taxpayer Returns and Reducing Waste in Real Estate"

PURPOSE

The Subcommittee on Economic Development, Public Buildings, and Emergency Management will meet on Wednesday, July 12, 2017, at 10:00 a.m. in 2167 Rayburn House Office Building, for a hearing titled "Implementing the Federal Assets Sale and Transfer Act (FASTA): Maximizing Taxpayer Returns and Reducing Waste in Real Estate." The purpose of the hearing is to examine the implementation of the *Federal Assets Sale and Transfer Act* (FASTA) and how it will address impediments in the normal property disposal process that impact the return to the taxpayer. Witnesses include representatives from the U.S. General Services Administration, the Department of Veterans Affairs, the City of Pittsburgh, Pennsylvania, and Citizens for Responsibility and Ethics in Washington.

BACKGROUND

Problem of Excess and Underutilized Real Property

In 2003, the Government Accountability Office (GAO) placed federal real property management on its list of "high risk" government activities, where it remains today. Among the reasons GAO lists federal real property as high risk is "excess and underutilized real property" and "unreliable property data." While significant attention has been paid to addressing these issues, GAO noted in its most recent "High Risk series" report that, "federal agencies continue to face long-standing challenges in several areas of real property management, including...disposing of excess and underutilized property effectively."[1]

[1] *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, GAO-17-317, February 2017, p. 77.

Attempts to address this issue span across various administrations dating back decades. Most recently, in 2011, the Administration submitted proposed legislation to Congress to sell or dispose of unneeded properties through a pilot program.

Since 2011, the Committee held a number of hearings examining this issue and possible solutions. A June 2015 Committee hearing brought to light key hurdles to disposing of federal real property, including:

- Upfront costs to agencies – Preparing the properties for disposal costs money. For example, there are costs related to surveys, environmental assessments, and cleanup.
- Cumbersome disposal process – The current disposal process can be cumbersome and time-consuming, particularly for larger, more valuable assets, creating a disincentive for agencies to dispose of unneeded properties.
- Land-banking of high value assets – Either as a result of the costs, disposal process, or because an agency believes it may require space at some unspecified point in the future, agencies may hold on to higher value assets.
- Real estate activities may be required – Many valuable properties used by agencies may be underutilized; however, in order to make properties available for sale or disposition, money may be needed to relocate, consolidate, or acquire space to move the agency operations.

To help resolve these concerns, Congressman Denham introduced the bipartisan FASTA, along with then-Chairman Jason Chaffetz of the Committee on Oversight and Government Reform. Similar legislation was introduced in the Senate by Chairman Ron Johnson of the Homeland Security and Governmental Affairs Committee. On December 16, 2016, FASTA became law.[2]

Issues

Federal Assets Sale and Transfer Act (FASTA)

FASTA creates a six-year pilot program to sell up to $8 billion worth of underutilized and vacant federal properties. The law establishes an independent board to recommend properties for sale and redevelopment to the President. Once approved, the executive branch is authorized to implement the recommendations and carry out the sales.

FASTA accomplishes a number of goals, including selling or redeveloping high value assets that are underutilized to obtain the highest and best value for the taxpayer; consolidating the footprint of federal buildings and facilities; and reducing the operating and maintenance costs of federal civilian real properties.

FASTA streamlines the disposal process by waiving many of the steps and reviews required under the normal disposal process and establishes a fund into which proceeds are deposited to cover costs associated with preparing properties for sale.

[2] Public Law No. 114-287.

Establishment of the Board

The President must make appointments to the independent Public Buildings Reform Board established by the legislation. The board consists of seven members. The chairperson is Senate-confirmed, while the remaining six are appointed on the recommendation of House and Senate leadership.

Resourcing the Board

While GSA and federal agencies are required to develop recommendations of sale and consolidation for consideration by the board, the board is not bound by those recommendations. In order for the board to effectively evaluate agency proposals and develop its own recommendations, FASTA authorizes a variety of resources for the board.

The legislation authorizes an executive director and staff detailed from other federal agencies. It also allows the board to use GSA contracts to hire outside experts to assist the board in carrying out its duties.

Rounds of Property Recommendations

FASTA directs the board to make three rounds of recommendations. The legislation requires the first round to identify and recommend the sale of at least five federal civilian properties with a combined estimated fair market value of between $500 million and $750 million. The second and third rounds of board recommendations may propose consolidations, exchanges, sales, or redevelopment of federal properties to allow for sales of more than $7 billion.

Other Reforms

FASTA codifies the Federal Real Property Database and requires it to be accessible to federal agencies and the public. In addition, FASTA authorizes agencies to retain the proceeds from real property sales after the six-year pilot program expires.

WITNESS LIST

Mr. Tim Horne
Acting Administrator
U.S. General Services Administration

Mr. Brett Simms
Director
Capital Asset Management Service
U.S. Department of Veterans Affairs

Mr. Kevin B. Acklin
Chief of Staff
Office of Mayor William Peduto
City of Pittsburgh, Pennsylvania

Mr. Richard W. Painter
Professor of Law

IMPLEMENTING THE FEDERAL ASSETS SALE AND TRANSFER ACT (FASTA): MAXIMIZING TAXPAYER RETURNS AND REDUCING WASTE IN REAL ESTATE

WEDNESDAY, JULY 12, 2017

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 2167 Rayburn House Office Building, Hon. Lou Barletta (Chairman of the subcommittee) presiding.

Mr. BARLETTA. The subcommittee will come to order.

Thank you for being here today. I called this hearing because I wanted to ensure Chairman Denham's bill, the Federal Assets Sale and Transfer Act, or FASTA, which will cut waste and get rid of properties faster, is a complete success.

During a recent visit to Pittsburgh, I was reminded of the importance of this legislation. The Pittsburgh VA facility is a prime example as to why FASTA was needed. This 160-acre facility was closed back in 2013, but only recently reported as excess by the VA.

The city of Pittsburgh currently has dozens of law enforcement and emergency management functions scattered across the city on very valuable properties that could be better used to drive economic growth and jobs. If acquired by the city, the vacant VA facility would encourage economic development by allowing the city to move and consolidate these scattered functions to one location.

I personally toured this facility and know the longer it sits vacant the more it will deteriorate. So far this fiscal year, the Federal taxpayer has spent at least $300,000 to simply maintain this vacant property. You would think the Federal Government would have a procedure in place to quickly dispose of this property.

Unfortunately, the Federal process is cumbersome and costly. What would take a short time to get done in the private sector takes years in the Federal Government. As a result, the Federal Government sits on vacant and underutilized, high-value assets. If sold and redeveloped, these properties would spur economic development and create jobs in the communities where they are located.

A recent example is the Volpe National Transportation Systems Center in Cambridge, Massachusetts. The DOT facility sits on a small portion of a 14-acre site, walking distance from downtown

Boston and next to MIT. That property is now going to be redeveloped in a deal benefitting the Federal taxpayer by $750 million.

The DOT will get a new building. MIT will redevelop the property, and the local community is looking forward to the economic growth that it will generate.

To facilitate more projects like this, FASTA waives many of the hurdles that prevent the Federal Government from selling property quickly and provides a funding mechanism to free up even more properties through consolidation. And GSA's role in this is critical.

For this to work, the Board created in FASTA must have resources to identify these opportunities and develop recommendations. To that end, FASTA authorizes the Board to use GSA contracts to hire real estate experts. FASTA authorizes GSA to detail staff and provide other support to the Board. For FASTA to be successful, these and other resources are critical in helping the Board carry out its duties and develop recommendations to sell and redevelop properties.

I want to recognize and thank Chairman Denham of our Subcommittee on Railroads, Pipelines, and Hazardous Materials for his leadership in getting the Federal Assets Sale and Transfer Act across the finish line last year. I know he worked tirelessly with Members on both sides of the aisle to get FASTA enacted into law.

FASTA, if implemented correctly, will cut waste, save taxpayer money, and spur economic development and jobs. I hope today to learn where we are on disposing of the VA property I toured in Pittsburgh and what GSA is doing to support the implementation of FASTA.

I want to thank you all for being here.

I ask unanimous consent that members not on this subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

I now call on the ranking member of the subcommittee, Mr. Johnson, for a brief opening statement.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman.

And I want to thank the chairman for holding this hearing today. It has the stated topic of implementation of the Federal Assets Sale and Transfer Act, FASTA, which is a worthy topic. This is not, however, the most pressing issue before this subcommittee as it relates to the GSA.

I intend to address some of the issues arising from the lease that is held by President Trump on the Old Post Office.

On March 24th, 2017, GSA released a letter from a GSA contracting officer asserting that the Trump Old Post Office LLC is in full compliance with its lease agreement. I categorically disagree with this conclusion.

The Trump Old Post Office LLC is a corporation completely owned and controlled by President Trump and his three oldest children. The lease agreement explicitly prohibits any elected official of the U.S. Government from serving as a lessee or from obtaining any benefit that may arise from the lease.

Specifically, the lease states that "no member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to

any share or part of this Lease, or to any benefit that may arise therefrom."

The last time I checked, the President of the United States is an elected official. The GSA contracting officer provided no clear legal rationale for his decision on behalf of the American taxpayer. In fact, due to a Freedom of Information Act request, we now know that as early as November 11, 2016, this same key GSA contracting official was casting as, quote, nonsense, end quote, news reports detailing the conflict of interest for the Old Post Office Building.

This determination was presumably before any legal analysis by the Office of General Counsel of GSA or the Department of Justice.

So we are faced with the situation where GSA is negotiating with President Trump's two sons, Donald Trump, Jr., and Eric Trump, on the meaning of the plain language of the Post Office lease agreement.

After repeated requests by the Trump Organization, GSA is now twisting the word "benefit." Forget about the traditional benefit that Trump controlled. GSA now wants us to believe that as long as the Trump Organization creates layers of corporate shells and reinvests the profits of the lease agreement back into the hotel while President Trump occupies the Oval Office and delays receiving his profits until after his Presidency concludes, then there is no benefit.

Although GSA and the Trump Old Post Office LLC have claimed that the President is not benefitting from the lease, he is clearly benefitting from the lease. The President has listed the loan he took from Deutsche Bank to renovate the Old Post Office Building as a personal liability. Under the new operating agreement with the Trump Old Post Office LLC, the President may use his share of the profits to back the Deutsche Bank loan that he lists as a personal liability in his financial disclosure.

It is clear that no matter how many Russian nesting dolls President Trump may utilize to attempt to conceal his improprieties, it remains inescapable that President Trump is still gaining a significant benefit by doing business with the GSA, an agency that he controls, an agency that he is supposed to be leading on behalf of the American taxpayers.

It has also become clear that this private business being run by the Trump family in the Old Post Office Building has been a profitable business. Recent financial disclosures from both President Trump and his daughter, Ivanka Trump, a White House aide, showed that they have received over $20 million in profits from the Trump International Hotel, operating in the Old Post Office Building. It just opened in October, soft opening, and for the first 2 months, I believe, they indicated that there was a deficit. So that means over the last 8 months, profits of $20 million have accumulated.

Because the Trump administration has refused to release financial documents related to the Old Post Office, we have no assurances that GSA has received a percentage of the profits that it is entitled to under the lease agreement. There are no assurances that all of the agreements between the Trump Organization and its vendors are arm's-length transactions and not designed to depress reportable profits.

All of these unanswered questions fall under a cloud of conflict of interest. This committee needs to fulfill its responsibilities and conduct its own bipartisan, independent review of this lease agreement, and I am glad we are getting started on that today.

We need to assure taxpayers that President Trump is not enriching himself while serving in the ultimate position of public trust. As ranking member of this subcommittee, I consider it my top priority, and I look forward to working with the other members of this committee to resolve this issue satisfactorily.

And with that I yield back.

Mr. BARLETTA. Thank you.

I now call on the ranking member of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thanks for this hearing.

Obviously, I have a longstanding concern about the proper disposition at full value of surplus Federal assets, and I am pleased that we had legislation in the last Congress facilitating that, and I am pleased we are having the hearing here today.

But I do want to echo the concerns of the ranking member of the subcommittee. There has been very unprofessional conduct at GSA in recent months. I have sent five inquiries regarding the terms of this lease and have had either incomplete or no responses.

The ranking member mentioned this email to an official associated with President Trump. We are not certain who it was on November 11th, but having a contracting officer saying this very complicated arrangement which involved both the Emoluments Clause and an explicit part of the lease is nonsense, and then he goes on to invite the same official out for coffee and talks about his recent personal trip.

Also, GSA's General Counsel was included and copied on this and took no action. I would find that extraordinary that this person was not recused from any sort of judgment regarding this complicated matter, given that email, and would bring that to the attention of the acting head of GSA.

Given the stonewalling from GSA, given the serious concerns outlined by the ranking subcommittee member regarding the explicit terms of the lease, I have just got to repeat it. "No member or delegate of Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom."

But somehow GSA has determined the fact that the President is a large majority owner and that he owes personally a debt to Deutsche Bank, which could be paid off by profits, and of course, there is a profit-sharing arrangement between the United States Government and the Trump Organization regarding this hotel, they are refusing to produce those documents to show that the Government, for which, Mr. Horne, I believe you do work, is getting its proper share of the profits and benefits from this lease.

Essentially, we have a situation where the President is both the landlord and the tenant, and beyond that, there are even more serious issues regarding the Emoluments Clause of the Constitution.

There have been numerous news stories that foreign governments, particularly the Saudis and others, are steering business to the Trump Hotel to curry favor and, again, lacking any transparency regarding the profits, we do not know what the magnitude of those profits are, and that raises a very, very serious concern.

So today we are introducing a resolution of inquiry that asks for three things:

Guidance and direction to the Acting Administrator of GSA regarding responses to requests for information from Members of Congress. Apparently, Mr. Horne has been told to stonewall the elected representatives of the people of the United States.

All documents associated with the Trump Hotel lease agreement between the Government and the Trump Organization.

And all legal memoranda or opinions regarding the lease agreement, if there are any, or if it has all just been made up by the guy who said that this was nonsense. His determination in a letter is that since the money can only be used by the sons to pay down the debts of the President or to enhance the assets of the President, the President is not a beneficiary.

And, of course, if the hotel were sold, they go on to say, yes, well, the President would get credited his 77 percent share, but he is not a beneficiary. Pretty extraordinary stuff pretty simply resolved by the President divesting himself of this particular investment and this lease, which he apparently has violated.

So I am pleased we are here today. I hope that we can hear some straight answers from Mr. Horne.

Thank you, Mr. Chairman.

Mr. BARLETTA. Today we have two panels. On our first panel, we have Mr. Tim Horne, Acting Administrator, U.S. General Services Administration.

Mr. Brett Simms, Director of the Capital Asset Management Service, United States Department of Veterans Affairs.

And Mr. Kevin Acklin, chief of staff, the Office of Mayor William Peduto, city of Pittsburgh, Pennsylvania.

Members are advised to limit questions directed to Mr. Horne and Mr. Simms to factual matters of a non-political nature. They are both career employees at their respective agencies and will not be able to answer such questions.

I ask unanimous consent that our witnesses' full statements be included in the record.

Without objection, so ordered.

For our witnesses, since your written testimony has been made a part of the record, the subcommittee would request that you limit your oral testimony to 5 minutes.

Mr. Horne, you may proceed.

TESTIMONY OF TIMOTHY O. HORNE, ACTING ADMINISTRATOR, U.S. GENERAL SERVICES ADMINISTRATION; C. BRETT SIMMS, DIRECTOR, CAPITAL ASSET MANAGEMENT SERVICE, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND KEVIN B. ACKLIN, CHIEF OF STAFF, OFFICE OF MAYOR WILLIAM PEDUTO, CITY OF PITTSBURGH, PENNSYLVANIA

Mr. HORNE. Good morning, Chairman Barletta, Ranking Member Johnson, and members of the committee.

My name is Tim Horne and I am the Acting Administrator of the U.S. General Services Administration.

Thank you for the opportunity to testify today on GSA's management of Federal real property and the implementation of the Federal Assets Sale and Transfer Act of 2016.

I have been a GSA employee for almost 25 years, starting off as a facilities management intern at the Denver Federal Center. Later in my career, I held the position of Federal Acquisition Service Regional Commissioner, and I served as the Public Buildings Service Regional Commissioner for GSA's Rocky Mountain Region.

In 2008, I supported then-President-elect Obama as the Director of the Presidential Transition Support Team. I served as the Federal Transition Coordinator for the most recent Presidential transition before being appointed as Acting Administrator.

GSA is working with agencies on multiple fronts to reduce the Federal Government's real estate footprint. GSA agrees with members of this committee about the importance of and is committed to the identification, consolidation, and disposal of nonperforming and vacant Federal real property.

Last year, Congress passed the FASTA to encourage landholding agencies to reduce the number of unneeded and underutilized properties from their inventory. GSA strongly supports FASTA, and we view this as a valuable tool to incentivize agencies to be more efficient and effective in their management of real property.

It also improves the Federal real property disposal process by establishing an independent Board to make recommendations for property disposals, along with other ways to reduce the costs of Federal real property holdings.

Further, the act streamlines the process for identifying and disposing of properties to benefit the homeless.

To help implement the FASTA, GSA, working with the Office of Management and Budget, conducted two data calls to build a more robust Federal Real Property Profile and develop recommendations for disposal and consolidation projects to put forward.

The act expanded the universe of 24 executive branch agencies that previously reported real property data to GSA. A total of 51 agencies have responded to the data calls.

Additionally, to support the implementation of the Board's recommendations, the President's budget requests $40 million in 2018 to be deposited into the Asset Proceeds and Space Management Fund. These funds will support the independent activities of the Board and will be managed as a stand-alone account.

Once the Board is in place, GSA looks forward to working with the chairman and Board members, as well as OMB, to implement the act.

As you know, GSA administers one of the largest and most diversified public real estate portfolios in the country. The agency's portfolio consists of 371 million rentable square feet in 8,700 active assets across the United States. The owned inventory accounts for approximately 49 percent of the portfolio, and the leased inventory is approximately 51 percent of the portfolio.

GSA is taking an aggressive approach to improving utilization of Federal property and reducing our unneeded or underutilized assets. From 2012 through 2016, GSA has disposed of 976 properties,

both those managed by GSA as well as other landholding agencies, generating $273 million in gross sales proceeds. The bulk of the disposals were executed through public sales.

Other property disposals involved negotiated sales, public benefit conveyances, and Federal transfers. For GSA-managed properties, between 2012 and 2016, GSA disposed of 66 properties, generating $88 million in gross proceeds.

Earlier this year, GSA disposed of the Cotton Annex building in Washington, DC. The $30 million sale of this 118,000-square-foot facility, which previously housed the U.S. Department of Agriculture, resulted in a cost avoidance to the Federal Government of almost $7 million over 2 years because GSA no longer needs to make long-term repairs and upgrades to the facility.

However, the Federal Government is not the only participant and benefactor in this process. State, local, and nonprofit partners play a vital role in helping GSA identify and unlock an asset's value and benefit. For example, through a negotiated sale, GSA sold underutilized acreage at the Denver Federal Center to the city of Lakewood, Colorado. The city then developed the property, which now contains a transit hub and hospital that serve the citizens of the surrounding area.

This example showcases that Federal and non-Federal stakeholders benefit when we collaborate together during the disposal process.

In closing, GSA is committed to carrying out its mission of delivering the best value in real estate. When GSA and other Federal agencies more effectively and efficiently manage their real property inventory, we realize improved mission and workforce outcomes, while reducing housing and related costs. These savings can be invested back into agencies' mission-critical work.

I thank the committee for the opportunity to testify today and I look forward to answering your questions.

Mr. BARLETTA. Thank you for your testimony, Mr. Horne.

Mr. Simms, you may proceed.

Mr. SIMMS. Good morning, Chairman Barletta, Ranking Member Johnson, and members of the committee. I am happy to be here today to discuss VA's real property portfolio and our ongoing efforts to reuse or dispose of vacant property.

VA's mission is distinct compared to other Federal agencies. We operate the largest integrated healthcare system in the Nation, with more than 1,700 hospitals, clinics, and other facilities, as well as a variety of benefits and services, and operates 135 national cemeteries nationwide.

Our portfolio consists of approximately 180 million owned and leased square feet and is one of the largest in Federal Government. Unlike many Federal agencies, we own the majority of our portfolio, about 86 percent.

Our portfolio is also aging. The average age of VA's owned buildings is approaching 60 years old.

Lastly, most of our owned assets are large campuses that consist of many different buildings and structures. As you can imagine, managing a portfolio of this size and age is complex and takes a significant amount of resources.

In light of VA's aging infrastructure and an estimated $50 billion capital need over the next 10 years, Secretary Shulkin has made it one of his top five priorities to modernize VA systems.

One of the ways VA is working to support his priority is by getting rid of buildings that are no longer needed to support our mission. We recently identified 430 individual vacant buildings, totaling 5.9 million gross square feet, across campuses nationwide. It costs VA about $7 million annually to operate and maintain these buildings and we want to be able to redirect those resources to serve veterans.

My office, in collaboration with other VA experts, is leading the effort to initiate disposal or reuse actions for these 430 vacant buildings over the next 24 months. These buildings have varying characteristics, including historical status and environmental concerns that impact disposal and reuse options.

Our next steps will be to begin performing due diligence, starting with evaluating for potential reuse. Once due diligence is completed and options are evaluated, disposal or reuse transactions would be initiated.

While we are working on an aggressive timeline to address our vacant buildings, we do anticipate certain impediments that might slow down but not stop the process. Some examples of items that can impact our timelines include: compliance with the National Historic Preservation Act, balancing funding between disposal and operational needs, National Environmental Policy Act compliance, the location and conditions of the buildings on the campus, and stakeholder opposition to the disposal or reuse.

While challenges do exist, we have made progress reducing our vacant and underutilized building footprint. Since 2004, VA has disposed or reused 1,059 assets totaling approximately 8.3 million gross square feet and 932 acres.

One of VA's most successful asset management tools is its enhanced-use lease, or EUL, authority. EUL allows VA to outlease assets to private and public-sector entities to repurpose for supportive housing for homeless veterans. The program has provided significant benefits in terms of cost avoidance, improved facilities, increased healthcare services, creation of jobs, and increased tax revenues for local communities.

Approximately 4.5 million square feet have been outleased, resulting in over 2,700 operational housing units for homeless and at-risk veterans.

VA previously had broader EUL authority that allowed for mixed use redevelopment beyond housing that was consistent with VA's mission and operations. While the broader authority lapsed in December 2011, VA will be submitting draft legislation to Congress to expand the scope of the EUL authority to allow greater reuse flexibility and improve services for veterans.

VA will also leverage the Federal Assets Sale and Transfer Act of 2016 as an additional vehicle to reduce unneeded and underutilized properties from our inventory. In April 2017, we submitted to GSA recommendations regarding properties that no longer met our needs and potentially could be sold for proceeds, disposed, or were candidates for consolidation.

We identified 15 sites consisting of 551 acres and 2.3 million square feet. VA believes this is a robust submission and includes properties with redevelopment opportunities.

VA also completed the data call for real property inventory information as required by the FAST Act. VA looks forward to continuing work with GSA and OMB on this and future FAST Act submissions.

To summarize, VA has a complex real estate portfolio and seeks to maintain an optimal mix of investments to care for our Nation's veterans. The VA welcomes new or expanded tools, including the FAST Act, to improve the effectiveness of our portfolio and where possible reduce waste and save taxpayer dollars.

Mr. Chairman, Ranking Member, and members of the committee, this concludes my statement. Thank you for the opportunity to testify today. I would be happy to respond to any questions you have.

Mr. BARLETTA. Thank you for your testimony, Mr. Simms.

Mr. Acklin, you may proceed.

Mr. ACKLIN. Good morning, Mr. Chairman, Ranking Member Johnson, and members of the committee. It's an honor to be with you.

My name is Kevin Acklin. I am chief of staff to Mayor William Peduto of Pittsburgh. I also chair our Redevelopment Authority. So I'm the mayor's right arm or left arm, depending on which side of the aisle you are on on economic development.

For purposes of today, I am just glad I did not stay last night at the Trump Hotel, I suppose.

So a little bit about the history of Pittsburgh. I am very proud to be here on behalf of our city. When you think about where we are as a city today, I grew up in Pittsburgh. I am actually a third generation worker for the city of Pittsburgh.

Before you call me a political hack, my grandfather was a battalion chief in the city. My uncle was a fire captain, and my brother is a cop. So we're a typical Irish Catholic family. I was supposed to be the priest in the family, but instead went to law school and was a private equity lawyer; went to Boston; moved back to Pittsburgh.

And I came back like many Pittsburghers who grew up there to be part of this economic revolution that we have happening in Pittsburgh. And when I was a kid, if you think of the year 1979, the Steelers won the Super Bowl. The Pirates won the World Series, and our economy collapsed. With the increasing globalization of the steel industry, we lost about one-third of our workforce, 30 percent unemployment. That is why our Steelers travel so well. Perhaps in your districts you have Steeler bars because we lost a whole generation of workers.

But if you think about the legacy of innovation of that first Industrial Revolution, the titans of industry, the Carnegies and the Mellons left us a great legacy. They seeded investments in Carnegie Mellon University. We have a great foundation community, and that has been the investments upon which we built this new economy.

That is why we are a leader in autonomous vehicles, where that technology that started 20 years ago, the smart folks at Carnegie Mellon were doing robotic vehicles back in the late 1970s and early

1980s, and we are now just at a point where we are looking to take advantage of that growth.

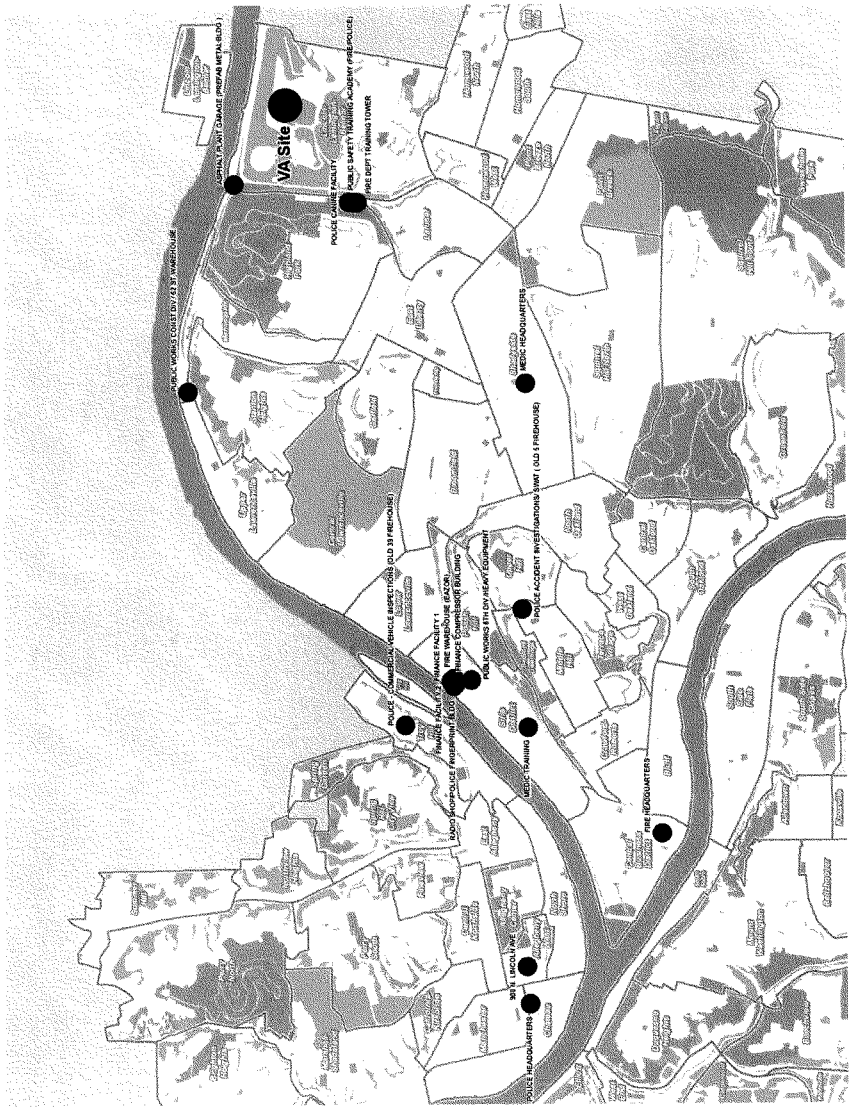
And we consider ourselves to be stewards of that public wealth that has been left to us, and we stand on the shoulders of those legacies and generations of Pittsburghers who came before us.

So with that, how we approach government in Pittsburgh is we think about that very creatively in terms of looking at how we provide services and return of the social compact, taxpayers paying money for services they receive. One of the first things we did in this administration was we commissioned a facilities study. Believe it or not, 4 years ago the city of Pittsburgh did not even have a comprehensive list of all the facilities that we owned. We did not know all of the different buildings. They were siloed in different departments.

So that was the first thing that we did, was take a comprehensive inventory about that to understand how we can relocate. Now that we are perhaps the first administration that is charged with managing growth—prior mayors were charged with managing decline—how do we best utilize these public assets to build economic development, to improve the quality of life for our residents in the city, to invest in affordable housing in neighborhoods using this vacant and abandoned property that we have, and to create jobs and economic growth?

And one of the first things that we saw, if you can put up the first slide, is we had a number of areas in the city, the blue dots, where we are doing things in the city of Pittsburgh perhaps, for example, parking garbage trucks every day on very lucrative, perhaps developable riverfront property in areas of the city.

[insert slide 1]


PUBLIC WORKS COAST DIV #13 ST. WAREHOUSE
ASPHALT PLANT GARAGE (PREFAB METAL BLDG.)
VA Site
POLICE CANINE FACILITY
PUBLIC SAFETY TRAINING ACADEMY (PRE-POLICE)
FIRE DEPT. TRAINING TOWER
MERIC HEADQUARTERS
POLICE COMMERCIAL VEHICLE INSPECTION (OLD 39 FIREHOUSE)
PUBLIC WORKS 5TH DIV HEAVY EQUIPMENT
S POLICE ACCIDENT INVESTIGATIONS SWAT (OLD 5 FIREHOUSE)
POLICE FACILITIES
FIRE WAREHOUSE (EAZOR)
GARAGE COMPRESSOR BUILDING
GEDC TRAINING
FIRE HEADQUARTERS
500 N. LINCOLN AVE
POLICE HEADQUARTERS

We do not have a comprehensive single place where our public safety training facility could be located. We have police officers and firemen come to the city, relocating in trailers that flood when there is a flood, not the best way to invite your public servants to put their lives on the line.

So the outcome of this study was to identify, as the Administrator mentioned, which properties that we own in the city that we want to convert to a higher and better use, again, to serve the residents of the city in a better manner and to build the tax base.

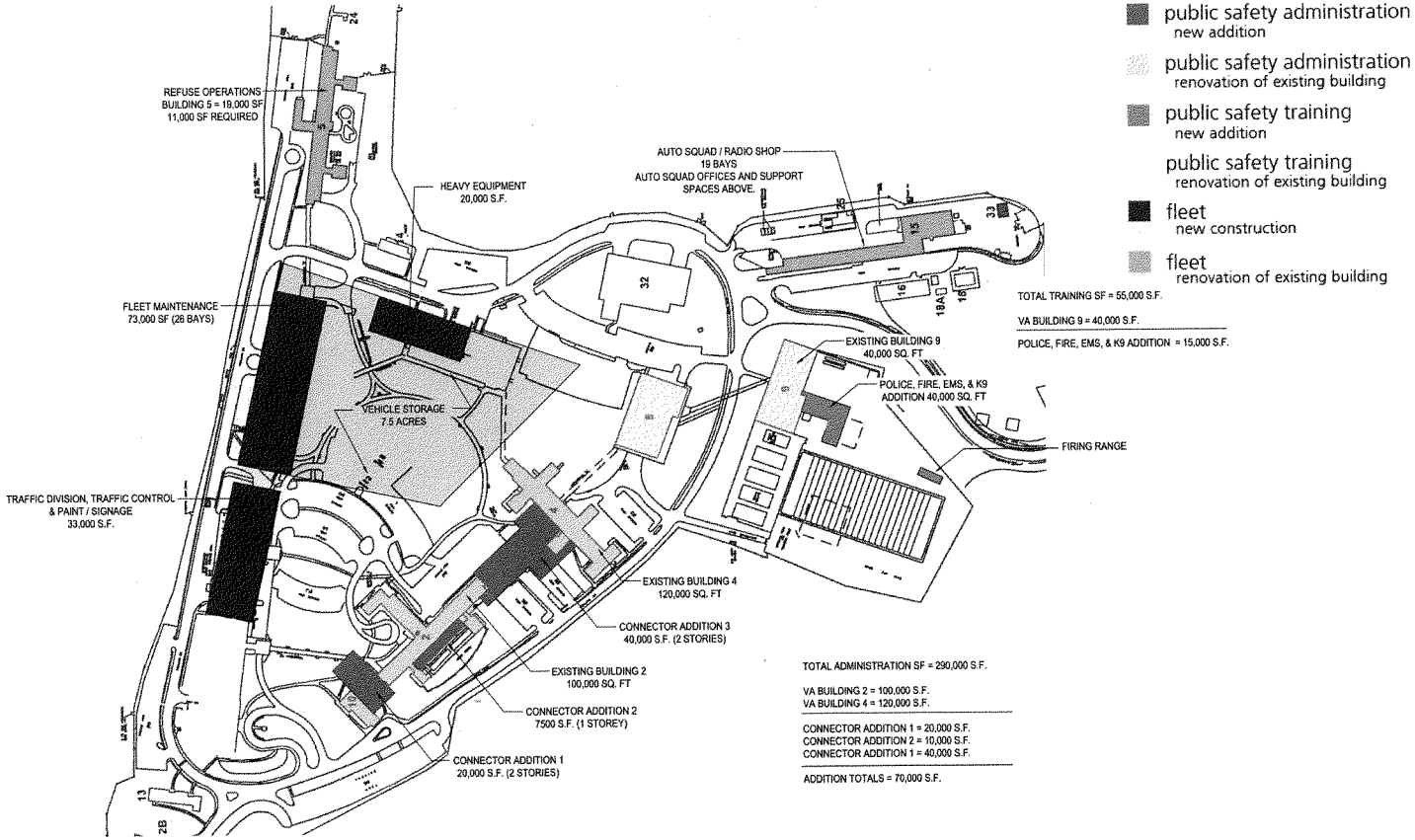
And that is really what brings us to the opportunity with the VA site. Mr. Chairman, thank you for being with us last month. I think you saw firsthand the opportunity that we have here.

The site on the map is at the top right-hand corner, the green dot. It is a fairly isolated site. The topography of Pittsburgh, it is high up. It is disconnected from the neighborhoods. It is 184 acres, about 19 buildings, again, fairly isolated from other neighborhoods in the city of Pittsburgh. It is disconnected from the power grid. There is a plant there that any other use would have to reconnect and restart that plant.

It is also depreciating rapidly. We started this conversation in late 2014. It was my first visit as a new public servant to the site, and you could already see the decline that has happened just through Mother Nature.

So we would love to convert that declining asset to productive use. The good news is we have a plan.

[insert slide 2]


public safety administration
new addition
public safety administration
renovation of existing building
public safety training
new addition
public safety training
renovation of existing building
fleet
new construction
fleet
renovation of existing building
REFUSE OPERATIONS
BUILDING 5 = 19,000 SF
11,000 SF REQUIRED
HEAVY EQUIPMENT
20,000 S.F.
AUTO SQUAD / RADIO SHOP
19 BAYS
AUTO SQUAD OFFICES AND SUPPORT
SPACES ABOVE.
FLEET MAINTENANCE
73,000 SF (26 BAYS)
VEHICLE STORAGE
7.5 ACRES
TRAFFIC DIVISION, TRAFFIC CONTROL
& PAINT / SIGNAGE
33,000 S.F.
EXISTING BUILDING 9
40,000 SQ. FT
POLICE, FIRE, EMS, & K9
ADDITION 40,000 SQ. FT
FIRING RANGE
EXISTING BUILDING 4
120,000 SQ. FT
CONNECTOR ADDITION 3
40,000 S.F. (2 STORIES)
EXISTING BUILDING 2
100,000 SQ. FT
CONNECTOR ADDITION 2
7500 S.F. (1 STOREY)
CONNECTOR ADDITION 1
20,000 S.F. (2 STORIES)
TOTAL TRAINING SF = 55,000 S.F.
VA BUILDING 9 = 40,000 S.F.
POLICE, FIRE, EMS, & K9 ADDITION = 15,000 S.F.
TOTAL ADMINISTRATION SF = 290,000 S.F.
VA BUILDING 2 = 100,000 S.F.
VA BUILDING 4 = 120,000 S.F.
CONNECTOR ADDITION 1 = 20,000 S.F.
CONNECTOR ADDITION 2 = 10,000 S.F.
CONNECTOR ADDITION 1 = 40,000 S.F.
ADDITION TOTALS = 70,000 S.F.

The relocation of those different sites we could unlock for economic development. We have commissioned a study to understand how we could put on site there our city fleet, heavy equipment maintenance, DPW operations. We can build a first-class public safety training facility, multijurisdictional, working with the county, surrounding communities to do the right thing, and we are ready to go.

Again, we also realize that this is sacred ground. This was the VA hospital for the city of Pittsburgh, where veterans went and served and came back and were mended.

My own father who served as a Marine during Vietnam received treatment there. My aunt served for 20 years after her service in the U.S. Air Force and was a police officer on this site.

So we as a member of the city of Pittsburgh will be good stewards of this site to convert it to productive use.

And with that I just want to confirm and appreciate the staff at the VA and the GSA. You have great people working here. This is not a people problem. You have a process problem. The folks that we have worked with have been responsive. They are smart. They know their business. They are development oriented, but the red-tape that it takes to convert this process and this property to productive use is standing in the way. It is costing Federal taxpayers money. It is costing us an opportunity cost to relocate our facilities to better use that would benefit the residents of the city of Pittsburgh.

So with that, again, I appreciate the opportunity. I look forward to working with you, and, Mr. Chairman, thank you for your support and for your leadership.

Mr. BARLETTA. Thank you, Mr. Acklin.

And I just have to say I could not help but put my mayor's hat back on while I was there, and this is a perfect example. This is a model project where it is a win-win for the taxpayers.

The taxpayers of Pittsburgh win by selling very valuable property that can be turned into an economic development project with more income coming into the city.

The Federal taxpayer benefits by getting rid of 160 acres of properties that the meter is running on every day. I am sure it is more than $300,000 since the last time I was there, and why the FASTA is so important that we dispose of these properties in a timely manner so that the taxpayers win, and that is what this is all about. It is all about the taxpayer dollars.

So thank you. I will now begin the first round of questions limited to 5 minutes for each Member. If there are any additional questions following the first round, we will have an additional round of questions as needed.

I will begin with Mr. Horne. Just in a timely manner here, yesterday the FBI and GSA officially canceled the FBI headquarters exchange procurement. While the news was a shock, I am not surprised that you did it.

In fact, this committee told the previous administration that exchanging the Hoover Building for a new headquarters was a mistake and would fail. The decision to pursue an exchange strategy is what killed this procurement, and the people who made that decision are gone now.

By structuring the procurement as an exchange, the previous administration precluded the new headquarters from being built in phases like the DHS headquarters. Instead, the developer would have to build the entire facility before the FBI could move and hand over the Hoover Building as payment to the developer, and that can only happen with full funding of the project, which GSA does not have.

But the need for a consolidation of FBI headquarters remains, and I strongly encourage this administration to pursue a public-private partnership strategy. I believe a P3 is the only way to deliver a consolidated headquarters for the FBI.

I believe the administration will have strong bipartisan support for allowing GSA to use a ground lease leaseback or a discounted purchase option to acquire a new headquarters. I am willing to do whatever I can to help GSA get OMB approval to do this, and I hope that you will pursue such a strategy.

We have the opportunity to fix this project and get it back on track.

My question is: is GSA willing to pursue options such as these for acquiring a new consolidated FBI headquarters?

Mr. HORNE. Thank you, Mr. Chairman, and thanks for the opportunity to meet in your office yesterday with your staff. I enjoyed our conversation about the good work that is happening at GSA. I enjoyed meeting your staff and especially enjoyed meeting Riley, your—what is he, a Golden Retriever?

Mr. BARLETTA. English Golden Retriever.

Mr. HORNE. A Golden Retriever. I kind of wish he was here with me today over on the stand here.

So I also want to take this opportunity for any GSA folks that are watching the hearing back in the office to say thank you for your great work. July marks the 68th birthday of the General Services Administration. So I just wanted to thank the GSA employees for their great work and wish GSA a happy birthday.

In terms of the FBI project, you are correct. It really came down to the structure of the deal plus the lack of funding equals an inability to move forward, and we are absolutely committed to working with this committee, the FBI, and with the Office of Management and Budget on all options moving forward.

There is no doubt that the FBI consolidation is a priority for this administration and for GSA.

Mr. BARLETTA. Thank you.

Mr. Acklin, thank you, again, for being here.

The city's approach is a good example of what we want to see from FASTA, consolidating agency functions, the freed up properties for economic growth.

What are the next steps on your end as this disposal process is underway?

Mr. ACKLIN. Well, thank you, Mr. Chairman.

First of all, we have already budgeted. So the plan that we have and presented to you today—and I have and I could share with Members—we have a comprehensive plan. Our budget over the next 5 years assumes that we will move forward with this site, again, not even including the increase to the tax base that will come from that development.

So we are ready to go. I think that there has been conversation we had as recently as yesterday about the timeline, understanding that the environmental work needs to be done, the historical review, the section 106 review, as well as the community conversation.

The good news is that we are willing to partner with the Federal Government. There is an opportunity to pilot for this project to show other cities and other municipalities that this is a good way that we could collaborate as partners to save taxpayer dollars both at the Federal and the State and local level.

Again, my chairmanship of the Redevelopment Authority in Pittsburgh, this is what we do every day, is converting otherwise vacant, abandoned, derelict property to productive use to build out to the vision of a more equitable city. So I think that in terms of moving forward I do have some steps in front of me as I understand the conversation between our staff and the folks at the GSA now that it has been declared vacant or surplus by the VA.

We had a great meeting a couple of months ago down here in Washington with the VA and the GSA staff. So we are willing to partner with them to have an efficient and more expedient process because, as you mentioned, this is something that we are all paying for right now, and moving forward, we are committed to be partners.

Mr. BARLETTA. How closely has the city worked with VA and GSA?

Mr. ACKLIN. Fairly closely. So this probably over the last couple of years, again, going through the VA process of declaring it surplus, there is a time period. There is a sense of duplication, that some of the work that was done by the VA has to be done again by the GSA, but again, all I can say is that the staff is very professional, very action oriented to dispose of this property, if so inclined, if this ends up being a good deal for the Federal Government like we think it is.

And so my understanding is hopefully by early next year that review will be completed, and if there is anything that we can do on the local level to assume the risk of that completion, we are willing and able to do it.

This is a good deal. If this was a private-sector deal, it would be done already. You know, this is a good deal for the Federal Government. It is a good deal for the city. Again, I was a mergers and acquisitions lawyer before I took this job, because of my love for the city of Pittsburgh. That is the type of approach that we take.

We are talking about public money here. Public money is just as green as private money, and we are spending public money because we have a vacant and abandoned site, and we are spending public money in Pittsburgh because we have sites that could be put to more productive use.

In fact, I would say it is greener than private money because every dollar we spend to maintain a vacant or abandoned property is one fewer dollar that I can put into a police officer's pocket who puts his life on the line every day, one fewer dollar that I can put into affordable housing when we are threatened with maybe the tax cuts to LIHTC [Low-Income Housing Tax Credit] that we are facing for affordable housing down here in Washington.

So, again, when you have an opportunity to do the right thing, and again, Mr. Chairman, as the former mayor of Hazleton, I think you understood it. Mayors are on the front line of the issues here in the country, and it is a global issue right now. We are closest to the people, and we are willing to take on the risk to make this deal happen as soon as possible.

Mr. BARLETTA. And I also realize when these buildings are empty, when they start getting to third and fourth year that they are empty is when the real danger comes because then the roof starts leaking and water gets in, and then the properties are worthless.

So the focus of this hearing is really to talk about FASTA and why it is so important that we have a process to dispose of these properties to protect the taxpayers.

I would now like to recognize Ranking Member Johnson for 5 minutes.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman.

I would want to not yield to Mr. DeFazio, but to allow him to use his 5 minutes first and then it would come back to me if that is fine with the chair.

Mr. BARLETTA. You may proceed.

Mr. DEFAZIO. Thank you. I thank the ranking member. I thank the chairman.

"No member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom."

Mr. Horne, is the President of the United States an elected official of the Government of the United States? Yes or no? It is simple.

Mr. HORNE. Yes.

Mr. DEFAZIO. Good. Thank you.

So has there ever been to your knowledge a similar situation where a President has been a signatory of a major lease with the GSA?

Mr. HORNE. No.

Mr. DEFAZIO. OK. So we can say this is an issue of first impression then essentially in terms of legal interpretation?

Mr. HORNE. Yes, I suppose.

Mr. DEFAZIO. Yes. It is unprecedented.

OK. So how is it then that this contracting officer, Kevin Terry, 3 days after the election can send an email to the Trump Organization, name redacted, either the son or the daughter, saying, quote, "that this is a fair amount of nonsense," that people are questioning whether or not the President is in violation of a lease when it says no elected official shall benefit?

How could that be?

Mr. HORNE. So thank you for the question.

We have had a busy couple of weeks at GSA, and last week I was——

Mr. DEFAZIO. No, let's do this real simple. I do not want a filibuster here.

Do you think that it was proper for the contracting officer in an issue of first impression involving the newly elected President of

the United States when you have a clear lease section that says no elected official of the Government of the United States shall benefit, to say this is nonsense?

And what was the legal basis?

Is that the way your people work? I mean, do you consider him to be not prejudiced? Why should he not be recused or removed from that position?

He says no one has ever had to confront this before. It is nonsense. Yet he ultimately becomes the arbiter, and there are a few other suspicious things. Mr. Dong is appointed head of GSA at 12:15. He is removed at 7:15. You are appointed.

Then he is the head of Public Buildings Service. Strangely enough, he had nothing to do with this, the highest profile lease in the history of the agency and a totally unprecedented issue of first impression, and yet he had nothing to do with it, and then suddenly he is detailed out to a nonprofit.

This all kind of stinks. So let's go back to Mr. Terry. Why was he not removed since he prejudiced himself by saying "Constitutional scholars, legal counsel, I do not need any of that. This is nonsense. Hey, let's go out and have a cup of coffee. I want to tell you about my trip to upstate New York"?

Do you consider that professional conduct? And do you think that that person was capable of dispassionately making such an extraordinarily critical decision?

Mr. HORNE. So I have read the Bloomberg article that you are referring to. When I read the article, I said, "Boy, I wish he would not have said it that way."

And, frankly, my first selfish thought was, "Boy, I am going to have to testify next week and I am going to be asked about this." But I quickly reminded myself that I am the acting head of a 12,000-person agency responsible——

Mr. DEFAZIO. But, again, is this professional conduct to say this is nonsense? Why at that point would you not say, "How could you make a dispassionate ruling?"

Did you ask him? Why did he say it was nonsense and who did he go have coffee with? Did he tell you?

Mr. HORNE. I wish he would not have said it that way. I wish he would have been——

Mr. DEFAZIO. Did he tell you who he went to have or wanted to have coffee with? Was it Ivanka or Donald, Jr.?

Mr. HORNE. I wish he would have been more clear in the email. When it came to my attention, I knew that we had to look into it more and find out the context of what was meant by that email.

Mr. DEFAZIO. OK.

Mr. HORNE. I asked our Deputy Commissioner of Public Buildings to take a look into the situation, to provide me with or to seek out the context from the email.

Mr. DEFAZIO. OK. Thank you. That is good.

If I can reclaim my time, this is nonsense. Yet he is going to then ultimately render decisions. His ultimate decision is because they created yet another shell and the President will not get paid today, he will get a hamburger on Monday, you know, that he is not benefitting from this.

You can pay down the debt. You can enhance the asset, which he owns the majority interest. He is not benefitting. He is not admitted or sharing in this lease or any benefit that may arise therefrom.

Can you really justify that and say there is no benefit to an individual who ultimately is going to benefit? If he just does not benefit today, he might benefit tomorrow, next week or whenever he is not President again?

Mr. HORNE. So my job as the Administrator is to create an environment where contracting officers can make decisions, business decisions, free from political or senior leadership influence.

Mr. DEFAZIO. And legal advice?

Mr. HORNE. Kevin Terry worked closely with our Office of General Counsel.

Mr. DEFAZIO. Could we have the legal documents that were provided to Mr. Terry to justify this ruling, please?

We have asked for those. They have not been provided.

Mr. HORNE. We will continue to work with the committee.

Mr. DEFAZIO. So you will not provide those documents? We have not seen the documents. You will not provide them?

Mr. HORNE. We will continue to work with the committee on——

Mr. DEFAZIO. Mr. Chairman, you are the committee. I am not the committee. So, Mr. Chairman, would you like to request those documents?

He said he will work with us.

Mr. BARLETTA. We will work with him on this.

Mr. DEFAZIO. Well, does "work" mean we will request?

Mr. BARLETTA. I will consider it.

Mr. DEFAZIO. OK. Thank you, Mr. Chairman.

Mr. BARLETTA. Thank you, Mr. DeFazio.

Let's be clear. There is no breach of contract. The determination of a breach is made by the contracting officer. In this case, he determined there is no breach of contract, and this is reasonable.

I submit for the record an article by Professor Andy Grewal published in the Yale Journal on Regulation blog concluding the decision by the contracting officer is reasonable.

The plain language of the contract itself demonstrates his decision was reasonable. It says that no elected official shall be admitted to any share or benefit. It does not prohibit a party from becoming an elected official after he is admitted to the contract.

Now, we can disagree about the interpretation, but the fundamental question is whether the decision was a reasonable one, and I think the record shows that it was.

I would like to recognize Representative Denham, who was responsible for leading and getting the FASTA across the finish line, which will benefit the American people for a long time to come.

So, Mr. Denham, you have 5 minutes.

Mr. DENHAM. Thank you, Mr. Chairman, and thank you for holding a hearing on this very important issue and this very bipartisan bill.

It was signed into law last December, something that we worked on for over 5 years to not only get it signed into law, but now making sure its implementation goes through very, very quickly.

The Federal Government manages over 267,000 buildings, comprising 2.8 billion square feet of space, and the GAO has consistently said that the Federal Government just does not do a very good job of managing those properties. In fact, early on, we had to embarrass agencies on the Old Post Office, first of all, then the Georgetown Heating Plant, Federal courthouses across the country, areas that have been sitting vacant for years, if not decades, costing us millions of dollars every single year in maintenance and upkeep.

We can do a much better job reducing cost, but also coming up with funds that will help us to reduce our debt and move our priorities forward.

But getting FASTA implemented is key. You know, this is a new tool that will get rid of burdensome reviews and make sure that we are waiving a lot of the disposal process and making sure that we streamline the process as well.

These tools provide a great opportunity for the Federal Government and the taxpayer, but first the Public Buildings Reform Board must be established. A nonpartisan and professional Board is integral to identifying not only the waste, but a lot of the unneeded properties and help us to move those forward.

I am glad to see that the administration as well as the Appropriations Committee have both recognized from the budget perspective that we have got to allocate money to establish the Board, but we have got to get this Board up and running very, very quickly.

While the resources will be important next year, there are actions that can occur right now that will benefit FASTA. We have got to leverage existing authority for public-private partnerships and innovative ways like ground lease, leaseback, and discount purchase options.

The potential to save billions of dollars is real, but the window to implement FASTA has to be precise. It will take a coordinated effort to achieve the goals of housing more Federal employees in less space, reducing our reliance on costly lease space, and selling high-value assets that are too valuable for housing Federal employees.

So I am proud that we have worked on a bipartisan level. Chairman, thank you very much for not only your partnership on this, but helping us to get this across the finish line. Now the important piece is getting it implemented and disposing, liquidating these properties that are costing us millions of dollars every single year.

I have got time for just a couple of quick questions. Mr. Horne, in June I wrote a letter to OMB requesting assistance with structuring the Board this year and the importance of doing so. Appointment of the Board triggers a 180-day deadline for board recommendations to OMB and GSA.

A concern that I raised in the letter is the Board is appointed, but commercial real estate consultation is unavailable because salaries and expenses have not been provided.

What is GSA doing to make its own resources available to the Board so we can move quickly?

Mr. HORNE. Thank you for the question.

Obviously, we very much appreciate the legislation. We think it is a terrific way to help better manage underutilized properties.

While we are waiting for the Board, we have collected all of the data. We have a list of 82 projects from 14 agencies, many from GSA and from VA. We are working with following up with agencies who submitted information to resolve questions and concerns and will have the information 100 percent ready for the Board when they are established.

Mr. DENHAM. Thank you.

Oftentimes, due to budgetary scoring rules, GSA undergoes successive operating leases, also resulting in paying for properties multiple times their value over the long run. If the Federal Government were to buy the property, the total cost would need to be provided upfront.

Under an operating lease, only the value of 1 year of the lease needs to be provided in accordance with the current scoring rules. If GSA could utilize public-private partnerships like ground lease, leasebacks without needing to provide the total project cost upfront, would GSA be interested in pursuing such opportunities?

Mr. HORNE. We would. We would very much be interested in working with the committee and with OMB to pursue those opportunities.

Mr. DENHAM. And could that also prevent GSA from paying for the properties beyond their total value and yield taxpayer savings?

Mr. HORNE. It would.

Mr. DENHAM. Thank you.

Mr. Chairman, I yield back.

Mr. BARLETTA. Thank you, Mr. Denham, and thank you for your work.

The Chair now recognizes Ranking Member Johnson for 5 minutes.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman.

Mr. Horne, are you aware that article 1, section 9, clause 8 of the Constitution expressly forbids a Federal office holder from receiving things of value from foreign governments without the consent of Congress?

Mr. HORNE. Yes.

Mr. JOHNSON OF GEORGIA. And you are aware that the Emoluments Clause, which is that clause, protects against foreign governments and other foreign powers being able to exert undue influence over federally elected officials, including the President of the United States?

Mr. HORNE. I am not an expert on the Emoluments Clause, but it sounds like that is what it does.

Mr. JOHNSON OF GEORGIA. All right. And section 37.19 of the GSA lease with Donald Trump's Old Post Office LLC, is a standard and material term included in every GSA lease agreement and is included to protect the public interest and to protect against and to prohibit Emoluments Clause violations by the lessee; is that not correct?

Mr. HORNE. I am not familiar. You read the numbers of the clause. What is the clause that you are referring to?

Mr. JOHNSON OF GEORGIA. Yes, that is the clause that says "no member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Co-

lumbia . . . " That is the one that you agreed with Mr. DeFazio about, the clause that he read to you.

That is a standard clause in lease agreements, is it not?

Mr. HORNE. It is my understanding that the clause has been used before in outlease contracts.

Mr. JOHNSON OF GEORGIA. And it is in there to protect against lessees being able to accept foreign gifts without approval of Congress, and it requires that the public official divest themselves of any interest in the lease if they should become a federally elected official or a District of Columbia elected official, correct?

Mr. HORNE. It is my understanding that the clause is used in some outlease contracts, which is the case like the Old Post Office.

Mr. JOHNSON OF GEORGIA. OK.

Mr. HORNE. Not our standard leases where we lease property.

Mr. JOHNSON OF GEORGIA. So OK. Are you aware of a meeting on December 8th, 2016, between then-Deputy Public Buildings Service Commissioner and now Acting Public Buildings Service Commissioner Michael Gelber and the Democratic staff of this committee wherein the Deputy Commissioner gave an initial assessment that President Trump would be in breach of the lease agreement when he became President unless he fully divested himself of all financial interest in the Trump Old Post Office lease?

Are you familiar with that meeting?

Mr. HORNE. That was before I was Acting Administrator and have not talked to Mr. Gelber about that.

Mr. JOHNSON OF GEORGIA. Are you familiar with the GSA Public Buildings Service Leasing Desk Guide?

Mr. HORNE. I could not quote chapter and verse, but I know that it exists.

Mr. JOHNSON OF GEORGIA. But that guide provides some best practices for the management of GSA leases, correct?

Mr. HORNE. Again, I need to distinguish between an outlease——

Mr. JOHNSON OF GEORGIA. Well, no. I am asking. It gives best practices.

Mr. HORNE. OK.

Mr. JOHNSON OF GEORGIA. And one of the best practices is that if a potential breach of the lease occurs, then you would send the tenant a notice to cure letter; is that correct?

Mr. HORNE. Sure.

Mr. JOHNSON OF GEORGIA. And no notice to cure letter ever went out to President Trump or any of his children, correct?

Mr. HORNE. In the——

Mr. JOHNSON OF GEORGIA. There was no notice to cure letter that was ever sent out; yes or no?

Mr. HORNE. The contracting officer made the determination that the tenant was in compliance with the lease.

Mr. JOHNSON OF GEORGIA. But there was no notice to cure letter that went out.

Mr. HORNE. There was no reason for a cure letter.

Mr. JOHNSON OF GEORGIA. OK. That was because President Trump anticipated that he might have a problem with the Emoluments Clause under the lease. So he took it upon himself to set up what has been described as a shell operation, to remove his interest to another corporation and on down the line, correct?

Mr. HORNE. I am not going to speculate on the structure of the limited liability company.

Mr. JOHNSON OF GEORGIA. His interest was restructured, and based on the restructure, that is what led Mr. Kevin Terry to opine that under the new setup Trump was not in violation of the lease and did not have to divest himself; is that correct?

Mr. HORNE. The contracting officer made the determination that the tenant remains in full compliance with the terms of the agreement.

Mr. JOHNSON OF GEORGIA. That contracting officer is not a lawyer, correct?

Mr. HORNE. I do not know if he is a lawyer or not.

Mr. JOHNSON OF GEORGIA. Well, let me ask you this question. Are you familiar with the fact that this lease has never been submitted to GSA's Office of General Counsel or to the Department of Justice or the Office of Government Ethics or to any other legal office for an official legal opinion?

Mr. HORNE. I can tell you that the lawyers at GSA have spent a tremendous amount of time——

Mr. JOHNSON OF GEORGIA. There has been no legal opinion rendered by the Office of GSA Counsel, correct?

Mr. HORNE. I do not know if they have issued a legal opinion.

Mr. JOHNSON OF GEORGIA. You are the Acting Director, and you are not familiar with whether or not there has been a legal opinion?

Mr. HORNE. I am familiar with the fact that the contracting officer, along with the guidance of the Office of General Counsel, has determined that the tenant——

Mr. JOHNSON OF GEORGIA. OK. Well, you have answered that question, and we know that. You have answered that question.

Now, Kevin Terry's decision that there was no Emoluments Clause violation provides no rationale or legal justification in support of the decision, other than the exhibits and legal arguments provided to him by President Trump's personal lawyers; is that not correct?

Mr. HORNE. GSA's role is to determine compliance with the terms and conditions of——

Mr. JOHNSON OF GEORGIA. Sir, if you will, answer my question.

Mr. HORNE [continuing]. The lease. GSA's role is not to determine compliance with the Emoluments Clause in the Constitution.

Mr. JOHNSON OF GEORGIA. OK.

Mr. HORNE. Its role is to determine compliance with the terms and conditions of the lease.

Mr. JOHNSON OF GEORGIA. Well, who is in the best position to make that determination? Would it be a contracting officer who is a non-lawyer or would it be the Office of General Counsel of GSA?

Mr. HORNE. The Office of General Counsel at GSA does not make decisions. Contracting officers make decisions.

Mr. JOHNSON OF GEORGIA. It gives opinions though, legal opinions, correct?

Mr. HORNE. Makes decisions based on legal advice from the Office of General Counsel.

Mr. JOHNSON OF GEORGIA. And no decision by the Office of General Counsel underlaid Kevin Terry's opinion letter.

Mr. HORNE. I respectfully disagree.

Mr. JOHNSON OF GEORGIA. Do you have a copy of the opinion letter from the GSA Office of General Counsel?

Mr. BARLETTA. The gentleman's time is up. We will entertain a second round of questions.

Mr. JOHNSON OF GEORGIA. I will yield back then.

Mr. BARLETTA. Thank you, Mr. Johnson.

The President is not the first businessman who has become President. In fact, a number of our Founding Fathers, including George Washington, Thomas Jefferson, and James Madison, not only held businesses, but ran them as President.

Were all of these Presidents in violation of the very Constitution that they helped to draft?

I want to submit for the record two articles of legal studies, a paper written by Andy S. Grewal, professor at the University of Iowa, College of Law, and a Harvard Journal of Law and Public Policy article by Seth Tillman.

Thank you.

The Chair now recognizes Mr. Ferguson for 5 minutes.

Mr. DENHAM. Mr. Chairman, can I ask for a point of inquiry?

Mr. BARLETTA. Yes.

Mr. DENHAM. Being familiar with this lease, when President Obama agreed to this lease and Dan Tangherlini announced to this committee that it was going to be done, did they not do an inquiry?

Can we request what inquiries were done out of the previous administration when they signed this lease?

Mr. NADLER. Would the gentleman yield? Would the gentleman yield for a question?

Mr. DENHAM. I don't think I control time right now.

Mr. BARLETTA. No. I recognize Mr. Ferguson for 5 minutes.

Mr. FERGUSON. Thank you, Mr. Chairman.

And, gentlemen, thank you for taking time to be here today.

Mr. Acklin, thank you for your work in Pittsburgh with the redevelopment. I was a mayor before wading up into all of this, and I will tell you that some of the most rewarding work that you can ever do in a community is to redevelop areas that have fallen on hard times or that have historically lacked strategic investments either from the private sector or the public sector.

I do think that it is vitally important where we have underutilized or unused public assets to be able to find ways to put those into productive use for communities, whether it is for the sale of those properties. In a lot of cases what we were able to do is to do long-term leases that not only satisfied the question about who maintains ownership of the property and will it continue to be used for its ultimate purpose, but also it created long-term revenue streams back into our community to further the redevelopment plan.

Do you have any experience in that type of model?

Mr. ACKLIN. Yes, sir. Thank you, Mr. Ferguson.

In fact, the work that resulted in the presentation that I showed today about the vacant and abandoned properties in the city, we have taken a comprehensive view. When you have a city like Pittsburgh that in 1960 housed over 600,000 people and today is just over half of that, it has been overbuilt. We have a lot of aging in-

frastructure. We have a combined sewer overflow problem. Every time it rains in the city, raw sewage pours into our rivers.

We are actually in negotiations right now with friends down the hall in the DEP and the DOJ to try to get a consent decree done.

So when we think about property in the city, public property, there are sort of three lanes that we talk about. We talk about economic development, properties that are ripe for development based on a market analysis. For example, some of those blue dots along the Allegheny River to the north, that is called the Strip District. So 30 years ago, that is where produce came to the city on rails, and it is a very organic, vibrant place that we are trying to recreate.

You have got a lot of housing happening there. So you have this organic conversion from industrial to housing. So it made sense 30 years ago to park garbage trucks there. It no longer does.

That lane of for-profit redevelopment to rebuild the tax base is a lane. Dealing with green infrastructure to deal with the water issue is another lane, and then sort of land bank, stockpiling property to hold for the future for community development for affordable housing and rebuilding neighborhoods to guard against gentrification and provide for affordability.

So this is a comprehensive plan. This is but one piece of what we have been doing for the last 4 years.

Mr. FERGUSON. Along those same lines, one of the things that we found, and you may be able to speak to this as well at the local level, you know, sometimes up here, and I have seen this in the short period that I have been up here, we tend to think that we can solve all of the problems from Washington. Really what we are able to do at the local level and what communities can do is they can create a tremendous amount of economic activity by using these resources that then also provide a tremendous amount of revenue that flows back into the school systems and various infrastructure projects. So I think it is important.

So the other piece is a lot of this stuff focuses on urban areas, but there is also a lot of land outside of our communities, whether it is property that is around Corps of Engineer owned lakes that could be developed.

Can you see a scenario where, and maybe, Mr. Horne, you could address this one; can you see a scenario where GSA can enter into long-term leases with local development authorities or enter into it with the State and then local development authority where some of these Federal properties could be leased long term to create those long-term revenue streams back to the Federal Government?

Mr. HORNE. That is an interesting question, one that I had not considered, and we would be happy to go back and follow up.

I do know that it is a priority for us to move vacant properties off the inventory and transfer them in opportunities like this via a public benefit conveyance to local municipalities, and so far that is the best tool in our toolbox, to make that progress.

Mr. FERGUSON. Mr. Chairman, I yield back. Thank you.

Mr. BARLETTA. Thank you.

The Chair now recognizes Ms. Norton for 5 minutes.

Ms. NORTON. Thank you very much, Mr. Chairman.

I appreciate this hearing for several reasons, in part because I believe this is the first opportunity that the committee has had to do any oversight of the GSA, particularly given the controversies that are surrounding the agency at this time.

Mr. Horne, I recognize you are a civil servant, but you are who the administration has given us for this hearing. Thus, I believe that the questions of my colleagues are entirely appropriate.

These are public interest questions, but they are particularly important for oversight of a GSA property, a property still owned by the United States of America.

Now, recognizing that you are not the appointed head of GSA, I am going to try to ask questions that I think anyone in the agency today should be able to answer.

I am interested in protecting the interests of the United States in what appears to be the profitability of the Trump Hotel. It was my bill that resulted in the renovation of the Old Post Office for the Trump Hotel in the first place.

It was during the Obama administration that that contract was competitively let. I have no reason to believe that Mr. Trump did not win it fair and square. He had to put up millions of dollars to renovate that hotel. The importance of it for this committee is that the profits must be shared with the United States itself.

Unlike other properties that we typically authorize, 3 percent of the profits for the first 10 years must go to the people of the United States, and it does appear that the Government was correct in leasing this property. We were spending $12 million just to keep it up. It is a priceless property.

And it does appear to be profitable. We know from the financial disclosure statements of the President, that he received $20 million in income from the Trump Hotel. We know that Ivanka Trump, who is a White House aide, received $1.5 million.

What I want to know is what the United States received. Has the GSA received its share of profits from the hotel thus far?

Mr. HORNE. Thank you for the question.

And I just want to affirm that we are, in fact, committed to transparency.

Ms. NORTON. Look. Everybody's time is limited here. Has the GSA received its 3 percent?

Mr. HORNE. It is my understanding that the terms and conditions of the lease require a report at the conclusion of the first year of the operation of the hotel, and that is what would trigger the profit sharing, if you will, for lack of a better term.

Ms. NORTON. All right. We are past the first year.

Mr. HORNE. The hotel opened in October.

Ms. NORTON. So you are saying that you are waiting to see whether or not you received. We already know that, of course, the family has received profits.

Your report has not been issued because it is not a full year.

Mr. HORNE. Right.

Ms. NORTON. Do you know whether or not the GSA has received profits at all from the Trump Hotel?

Mr. HORNE. We received $250,000 a month payment, and then the lease requires——

Ms. NORTON. So it has received $250,000 each month?

Mr. HORNE. Yes.

Ms. NORTON. Why has GSA not shared the monthly financial reports? You are required to have monthly financial reports. The deal was structured for transparency so that the people of the United States would know that they were getting their money out of it.

So if there are monthly financial reports, why can we not receive the financial reports for each month?

Mr. HORNE. It is my understanding that the reporting requirement is after a year, not on a monthly basis.

Ms. NORTON. Have you been receiving them on a monthly basis?

Mr. HORNE. I am not aware of monthly reports that——

Ms. NORTON. Well, let me just say this for the record. You do not have a deal that says you must receive monthly reports and not make those reports available to the public and to the Congress of the United States. So if they have been received, you can at least tell us that you are receiving these monthly reports.

Mr. HORNE. If we have, I will be happy to follow up and answer that question.

Ms. NORTON. You know that those are required by the lease, and I wish you would, indeed, follow up and submit that information to the chairman.

Mr. HORNE. Sure.

Ms. NORTON. I also know that you have been put in a position where the Department of Justice has issued a legal opinion stating that the ranking minority member—this is the first time, I think, in the history of the Congress—does not have the authority to conduct oversight and, therefore, unlike my experience with this committee where the ranking member could always get documents, that has not been the case here.

Have you been directed not to provide documents to minority members, including the minority member of this committee?

Mr. HORNE. I have not been directed to not provide any specific documents; I have been given an overall general policy of the administration that for matters of oversight, that those requests need to come from the chair.

I will add that our staff meets frequently with the staff from this committee. We are in constant communication. Not every inquiry requires a formal letter. Sometimes it is a phone call; sometimes it is an email.

You know, I sit down the hall from those guys and see them getting in an Uber all the time to come up here and talk. So I know that there is communication back and forth between our Office of Congressional Affairs and this committee.

Mr. BARLETTA. The gentlewoman's time has expired.

We will move on to our next Representative. Mr. Mast, you have 5 minutes.

Mr. MAST. Thank you, Chairman.

And thank you all for your testimony here this morning. It has been great to hear it.

Mr. Horne, specifically in your testimony you have highlighted a lot of the importance of going out there working with local communities. You spoke about it in terms of the local community of Cambridge, the work that the DOT has done there, and I wanted to touch a little bit on that.

You know, I think this has helped to really significantly lower risk and increase value. This has been something that has been spoken about. So could you speak a little bit about the importance for GSA to work with those kinds of local officials to maximize the value of property that it plans to sell?

And then also if you can find space in there, I would love to hear a little bit of speculation from you on if there has been work specifically done to go out there and lend a hand to our federally qualified community health centers that are out there doing work who are constantly looking for space to go out there and meet some of those healthcare challenges and if you see a road to work with them.

Mr. HORNE. OK. Thank you. Thank you for the question.

You know, one of the great parts of the mission of GSA is the opportunity to have impact on local communities. We are here today to talk about a real chance to make an impact on the city of Pittsburgh through a property disposal, but also the Federal presence is the anchor of just about every downtown major city in the country.

So we take that responsibility very seriously. We have a local presence in every major market and most submarkets where we have GSA representatives on the ground in that city. Part of their basic job description is to be a good neighbor and understand the impact that the Federal presence has there.

In terms of the disposal process and how that can positively impact the local communities, one of the authorities under the Property Act is the idea of a public benefit conveyance. So it is really a local entity like the city of Pittsburgh and perhaps community health organizations. I do not know enough about the rules of what would qualify an organization for a public benefit conveyance, but it is really the mechanism where a community for public good, whether it be like what is happening in the city of Pittsburgh, whether it is for a fire station, sometimes for redevelopment, where they get priority before it goes to public sale, and the process allows for us to do that.

We have done several public benefit conveyances all across the country.

Mr. MAST. Thank you for that.

And, Chairman, I yield back.

Mr. BARLETTA. Thank you.

The Chair recognizes Mr. Nadler for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I just want to before I start my questioning ask if I understood Mr. Horne to reply to Ms. Norton that you would respond only to requests from the chairman and, therefore, not to requests from any other member of the committee?

Mr. HORNE. The administration's policy is to respond on matters of oversight, to respond to requests from the——

Mr. NADLER. Only from the chairman. I do not have time. So your answer is yes, only to the chairman, nobody else.

Mr. HORNE. Only to the committee, yes.

Mr. NADLER. To ignore everybody else on the committee. Not the committee; to the chairman. Only if a request comes from the chairman, correct?

Mr. HORNE. Yes.

Mr. NADLER. Thank you.

Let me just say that that is obnoxious and unprecedented. I understand you did not set it. It is an obnoxious and unprecedented contempt for Congress which is intolerable.

Mr. Horne, at a January press conference the President promised to track profits received by his hotels from foreign governments and to donate those profits to charity or to the U.S. Treasury.

In May in response to a bipartisan request from the Oversight Committee, the Trump Organization stated it was, quote, "impractical," unquote, to, quote, "fully and completely identify all patronage," unquote, at its hotels.

Now, Mr. Horne, do you have any reason to believe that the President and his company, that is, his private company, are following through on his January promise to track and donate all foreign monies received by his hotels?

Mr. HORNE. My role is to make sure that the agency is administering the lease, and as far as I know that clause is not in the lease.

Mr. NADLER. So your answer is you do not know.

Mr. HORNE. I don't know.

Mr. NADLER. OK. Thank you.

Has GSA sought to amend the lease or otherwise enter into an agreement to require the Trump Organization to track payments by foreign governments?

Mr. HORNE. No.

Mr. NADLER. It has not.

Mr. HORNE. Not to my knowledge.

Mr. NADLER. OK. Have you contacted the Department of Justice or the Office of Government Ethics and asked for assistance or direction on evaluating whether the Trump Organization is violating the Foreign Emoluments Clause of the U.S. Constitution by not tracking these payments by foreign governments?

Mr. HORNE. Again, our role is to administer the lease. We will leave judgment about emoluments to——

Mr. NADLER. But in administering the lease, you have to determine presumably whether you are administering something legally. You cannot simply ignore it.

Mr. HORNE. As I have stated, the contracting officer has made the determination that the tenant is in full compliance with the lease.

Mr. NADLER. OK. Now, the Foreign Emoluments Clause that has been mentioned before applies not just to the present Members of Congress, but to anyone holding an office of profit or trust under the United States.

Are any other GSA properties leased by an elected official, officer or employee of the Federal Government?

Mr. HORNE. I do not know the answer.

Mr. NADLER. Do you make any attempt to find out?

Mr. HORNE. I would be happy to look into it and follow up.

Mr. NADLER. No, no. But do you make any attempt?

Is it a normal practice to try to find out when someone signs a lease or are you ignoring that provision of the Constitution? Which is it?

Mr. HORNE. It would be a normal practice for the contracting officer who makes the decision about lease award to make sure that the awardee was in compliance with the lease.

Mr. NADLER. But you do not know if that includes looking into whether the lessee is an employee of the U.S. Government?

Mr. HORNE. To the degree that that is a term and condition of the lease, then——

Mr. NADLER. No, it is not a term and condition of the lease. It is a term and condition of the Constitution.

Mr. HORNE. Again, GSA's role is to determine compliance with the lease and applicable laws.

Mr. NADLER. And the Constitution is not applicable?

Mr. HORNE. Of course it is.

Mr. NADLER. OK. So it would seem that it would be incumbent on you to look into that in every case, or at least to ask about it.

Mr. HORNE. Well, again, you know, we have 12,000 employees that make these decisions all across the country. It is their role to look into it.

Mr. NADLER. OK. And you have no policy.

Mr. HORNE. It is my job to oversee——

Mr. NADLER. And you have no policy to obey the law.

Do any other GSA properties help to facilitate payments from foreign governments to federally elected office holders?

Mr. HORNE. Please repeat the question.

Mr. NADLER. Do any other GSA properties help to facilitate payments from foreign governments to federally elected office holders?

Mr. HORNE. I am not aware of any.

Mr. NADLER. OK. Between October 1st and March 31st, lobbyists working on behalf of the Kingdom of Saudi Arabia spent $270,000 on rooms, catering, and parking at the Trump Hotel.

In December of last year, Bahraini diplomats moved the country's National Day festivities to the hotel's ballroom.

In February, Kuwait moved its annual gala from the Four Seasons to Trump International.

Is it appropriate for the GSA to maintain a lease that allows foreign governments to make payments as I have just mentioned in each case that directly benefit a Government official, in this case the President of the United States?

Mr. HORNE. Sir, we manage the terms and conditions of the lease. The contracting officer has determined that the tenant is in compliance with the lease. We do not manage day-to-day operations. Our job is to administer the lease. We do not get involved in day-to-day operations of the hotel.

Mr. NADLER. But your Legal Department has made no determination one way or the other whether payments from foreign governments to an entity leased from the GSA by a Government official, in this case the President of the United States, constitutes a violation of the Emoluments Clause or not. You are simply agnostic on that point.

Mr. HORNE. Our Legal Department supported the contracting officer while he made his decision——

Mr. NADLER. Has it made an opinion on that?

Mr. HORNE [continuing]. That the tenant is in full compliance with the terms and conditions——

Mr. NADLER. Has it made an opinion on it that we can have?

Mr. HORNE [continuing]. Of the lease.

Mr. NADLER. Has it made an opinion on that? That is my question.

Mr. HORNE. Our Office of Legal Counsel supports the contracting officer.

Mr. NADLER. Has it made an opinion?

Mr. BARLETTA. The gentleman's time has——

Mr. NADLER. No, no. But he has got to answer the question.

Mr. BARLETTA. The gentleman's time has expired.

Mr. NADLER. You have got to answer the question.

Mr. BARLETTA. The gentleman's time has expired.

Mr. NADLER. But he should be——

Mr. BARLETTA. The gentleman's time has expired.

Mr. NADLER. But he should answer the question.

Mr. BARLETTA. Your question was asked after the time has expired.

Mr. NADLER. No, it was not.

Mr. BARLETTA. We will have a second round.

There are three basic issues: one, the contract only restricts an elected official from entering the contract. There is no breach.

Two, there are no conflicts. The President is exempted by law.

And, three, there are respected legal experts who say there is no constitutional problem.

The Chair now recognizes Mrs. Comstock for 5 minutes.

Mrs. COMSTOCK. Thank you, Mr. Chairman.

And as I am actually chairing another hearing right now that I am going to have to get back to, my apologies for not being here and maybe not being all up to date on what everyone is talking about here in the hearing.

But I am from Virginia—obviously—my district is adjacent to the Springfield area that was in contention for this, and it is my understanding that legislation enacted before I came to Congress in 2015 had directed GSA to go about this in a way in which they were never supposed to be really having to request direct appropriations for this project or at least as much as they needed.

So I am wondering. Didn't the FBI propose a public-private partnership so that they could take the valuable asset that they have in DC and be able to use that?

I mean, obviously, when you buy a new house you use your old house as collateral to be able to buy the new one, and so why wasn't that normal process followed?

Mr. HORNE. It is my understanding in looking into this process that at the beginning of the FBI project, multiple options for the way to structure a way forward were considered. I believe that things like seeking full funding, public-private partnerships, doing the exchange authority were all considered, and the decision was made at the time to move forward with the deal as previously structured where the Hoover Building would be part of an exchange that would bridge the funding gap.

I do not know exactly why it was structured the way that it was, but I do know that everyone felt that it was unlikely that we would receive the full appropriation and needed to seek ways to bridge that funding gap.

Mrs. COMSTOCK. And I believe the chairman may have been addressing this before, and I hope going forward because I think what we need for the FBI is to have a fully functioning operation. It is certainly my view that it should be in Virginia, but I know others prefer Maryland, but we need to have something that is sufficient and upgraded and going to serve the FBI and its important mission.

I know we have a lot of blame game here, but can we now go back to what the original legislation was intended to do and look at these public-private partnerships so that we can salvage this and get back on track with this and hopefully not have too much of a delay in finding that?

Is that something that you would participate in?

Mr. HORNE. Absolutely, the FBI is a critical project on a variety of fronts. Aside from the money that it will save from consolidating FBI functions, from expensive leases, the most important part is supporting the mission of the FBI.

It is absolutely critical that we move forward. It is the right thing to do, and it is a priority for GSA. It is obviously still a priority for FBI.

We are committed to working with the committee and the Office of Management and Budget on the best way forward.

Mrs. COMSTOCK. OK. So it is not the situation now that this is going to be a left where it is. There is still an understanding that we need to consolidate, that we need to update, and that we need to have a different facility.

Mr. HORNE. That is absolutely the position of GSA.

Mrs. COMSTOCK. Now, how can we make sure that the timeline is expedited on this so that there is not a lag on getting this consolidated facility?

It is unfortunate that it took so long as it is.

Mr. HORNE. I am committed to making sure that the agency makes this a priority and works with this committee in whatever way we can to speed up the process.

Mrs. COMSTOCK. OK. And the other witnesses, can you weigh in on that?

Mr. SIMMS. So speaking specifically about public-private partnerships, VA has an enhanced-use lease authority that allows us to outlease and then have third-party developers, private sector, cities, localities, municipalities redevelop that property for use.

A previous authority prior to 2011 actually allowed us to lease back that space, which would be a prime example of this, where you could have a third party develop it and then lease it back under that.

We are pursuing legislation to reenable that so that we could do third-party development and then lease back the facilities on that. Any kind of alternative financing structure like a P3 scenario, like the EUL would be helpful to meet a lot of the capital needs from VA's standpoint.

Mrs. COMSTOCK. OK. Thank you.

And thank you, Mr. Chairman. I appreciate your time.

Mr. BARLETTA. Thank you.

We will now begin our second round of questions. I am going to ask Members to restrict their questions to 5 minutes since we have a second panel that we want to get to.

I will begin. Mr. Horne and Mr. Simms, the traditional disposal process can be slow and cumbersome. However, there are ways the process can go faster, such as doing certain reviews at the same time.

What are the VA and GSA doing to look for these efficiencies?

Mr. SIMMS. Chair, we agree with that. We actually engaged GSA early in the process to do what we call a targeted asset review of the facility that helped us line up what due diligence was completed and what due diligence still needed to be done before any kind of transaction could occur.

So we got that on the radar, and we were able to complete some of that due diligence before we excessed to GSA. Now that it has been excessed to GSA, we are working with them on dual tracking both the remaining due diligence for environmental, historic, and things like that, as well as the Federal screening process and some of the other GSA steps.

Mr. HORNE. When we look at our traditional disposal process and plot it out on a line and you have areas where you diverge, if there is Federal or homeless interest, we are doing as much of that screening concurrently while we are doing the phase 1. Specifically about Pittsburgh, it is while we are doing the phase 1 environmental assessment. This allows us to compress the timeframe a little bit.

The other thing that we have been able to do is to give the city access. Mr. Acklin mentioned the central utility plant. We have given the city access to the facility so that they can review what their investment might need to be, what work might need to be done prior to taking title so that they are able to do some of that due diligence upfront.

Mr. BARLETTA. Mr. Horne, are there ways that the city can help speed up this process? I understand there are certain studies and reviews that need to be done. Is there a mechanism for the city to help complete any of those?

Mr. HORNE. I think some of that will depend on what we find in the phase 1 environmental assessment. I think the one thing that I do know is that we are committed to a partnership with the city, and we will continue to work together on what we find going forward.

Mr. BARLETTA. And this question is to Mr. Horne and Mr. Simms.

Obviously, I am very concerned and interested that this process moves quickly because, as I said, the meter is running and the taxpayers are paying as we speak.

So do both of you commit to providing this committee with regular updates on the Pittsburgh disposal and alerting us to any potential delays or problems?

Mr. HORNE. Absolutely.

Mr. SIMMS. Yes, sir.

Mr. BARLETTA. Thank you.

The Chair now recognizes Mr. DeFazio for 5 minutes.

Mr. DEFAZIO. Thanks, Mr. Chairman.

Mr. Horne, does GSA have a formal process by which individuals may recuse themselves or be recused from working on certain matters? Yes or no.

Mr. HORNE. Yes.

Mr. DEFAZIO. OK. Good. Thank you.

Have either of the following Government employees been recused from participating in decisions regarding the Old Post Office: Ivanka Trump, assistant to the President? Yes or no?

Mr. HORNE. I do not know.

Mr. DEFAZIO. Jared Kushner, senior advisor to the President?

Mr. HORNE. I do not know.

Mr. DEFAZIO. Well, that is interesting because that seems to be in contracting officer Kevin Terry's letter that it is a critical component. It is actually included. It says, in fact, in that letter that "it is our further understanding that Mr. Kushner has,"—this is before Ivanka had a formal position—"or will, file necessary confidential financial disclosure forms which, among other things, will include among his listed assets Ivanka Trump's interests in and flowing from Tenant. It is our further understanding that Mr. Kushner has, or will, recuse himself from participating in, among other things, any matters related to the Lease."

But you do not know whether, since that is in a critical letter from your contracting officer and he based his decision on that recusal, in part, has he received information regarding the recusal of either Mr. Trump or Ms. Trump?

Mr. HORNE. I am not sure what information he has received. It is his job to administer the contract, and I do know that he has determined that the tenant is in full compliance with the terms and conditions of——

Mr. DEFAZIO. I know, but, sir, sir, but in his letter, he says this will be done. But you are saying we do not know if it was done. That is correct?

Mr. HORNE. I am saying it is Mr. Terry's job to make that determination.

Mr. DEFAZIO. Well, but if Mr. Terry made that a condition and he does not know, then should he not inquire as to whether or not they met the conditions that he stated in his letter?

Mr. HORNE. I did not say that Mr. Terry did not know. I said that I did not know.

Mr. DEFAZIO. OK. Is this something that only the chairman can ask for? Because it seems that Mr. Terry, based on no legal opinion that we are allowed to see, and apparently there was legal advice but not an opinion; that is my understanding. We cannot see it. He did say that the Trumps were going to recuse themselves. We do not know if they did that or not, but this is all in Mr. Terry's head, and it is all OK, and the people of the United States of America in a profit-sharing agreement with this family have no right to know whether or not they recused themselves from any decision-making, including appointing, of course, the next GSA Administrator.

Mr. HORNE. We are committed to working with the committee to provide information on this project.

Mr. DEFAZIO. OK. Well, just referring back to the legal opinion by the chairman, I might agree—I am not a lawyer—with his read-

ing of the first part of the lease agreement about "shall be admitted," but there is a second clause which stands on its own fully: "or to any benefit that may arise therefrom."

It does not matter when the President was or wasn't admitted into the lease. This is a separate clause. It says, basically, "or to any benefit that may arise therefrom."

Now, Mr. Terry has determined apparently that there is no benefit to the President even though the profits have been reported by the family, including the President, even though the money now under a new agreement will be applied by his son, Donald, Jr., potentially to paying off Mr. Trump's personal obligations to Deutsche Bank or it will accrue to the benefit of the property and enhance it, which Mr. Trump is the most substantial owner, and there is no benefit.

So you are saying that "or to any benefit that may arise therefrom." Did the legal counsel who provided the non-opinion rule on the "shall be admitted" or the benefit part?

Mr. HORNE. I am saying that the contracting officer, with the support of our Office of General Counsel, has made the determination——

Mr. DEFAZIO. In conjunction with.

Mr. HORNE [continuing]. Has made the determination that the tenant is in full compliance——

Mr. DEFAZIO. Did they give a formal legal opinion? Did they give a formal legal opinion?

Mr. HORNE. I do not know.

Mr. DEFAZIO. You do not know. OK. Thank you very much for your non-answers.

Mr. BARLETTA. This is not my opinion. I entered into the record opinions of legal experts that the decision is reasonable.

The Chair now recognizes Mr. Mast for 5 minutes.

Mr. MAST. Mr. Simms, I do not want you to feel left out. So I am going to speak to you for a few minutes here. It is certainly of importance to me, issues pertaining to the Department of Veterans Affairs, our homeless veterans.

So I want to talk a little bit about the VA has 180 million square feet of space, and it was noted in the testimony 430 individual vacant buildings, about 5.9 million square feet of unused space there, and I want you to discuss a little bit if you can the reuse actions that are going on there, how many beds have been able to be created perhaps for homeless veterans.

What have been the challenges to work with local county commissions that may not want shelter type facilities within their counties? Can you address some of that and how that is going on?

Mr. SIMMS. Certainly, and thank you for including me in the question there.

VA's enhanced-use lease authority is specifically geared towards supportive housing for homeless veterans. VA by definition does not have the authority to provide that housing. So we look at our enhanced-use lease authority to provide that.

We can leverage up to 75-year long-term outleases of both property and buildings for conversion into supportive housing. We do partner with a wide variety, some nonprofit organizations, some

local municipalities, housing authorities. Those are all partners that we have.

We have almost, I think, 98 signed enhanced-use leases that have resulted in about 2,700 operational beds for housing homeless veterans across the country. We have enhanced-use leases at many of our VA sites. Some of them have been so successful we are looking at phase 2 and phase 3 to continue expanding that.

It is important to note that the supportive housing component of it is all private. So VA is not part of the operation of the facility, the design, the construction. They bring the financing to the table. They do the renovation, the construction of the buildings, and they fully operate it. So not only does it save taxpayer dollars by us not having to support a vacant or unneeded building, but it provides a lot of benefits on the veterans' side by allowing them to be housed.

Veterans would receive priority, but they certainly do house non-veterans in some cases if there are not veteran demographics to support that.

Mr. MAST. Beyond that, have you seen some of the veterans service organizations attempt to reuse some of these facilities that have been out there?

Mr. SIMMS. So VSOs, not directly. Certainly, we work with the VSOs as a voice of the veteran in different areas. We would look to them to help define the types of supportive housing that might be necessary, but in general we would not enter into any specific agreements directly with the VSOs, but they are very active in working with us on where the needs do exist.

Mr. MAST. Very good. And, Mr. Horne, I know you would feel left out if you had a round of questioning that somebody did not include you. So I wanted to pivot back to you here and get a little bit back to FASTA here and whether it would be useful to allow GSA to do some short-term leasebacks under FASTA.

And if you could expound upon that a little bit, that would be very helpful.

Mr. HORNE. Yes. So that is something that we consider a challenge as we implement FASTA. The Congresswoman mentioned moving from one house to another. What we would be looking to do is to have the authority to do a short-term leaseback so that the Federal tenants and functions are in place until a new location is identified.

Absent the leaseback authority, the only properties that may be disposed of using the FASTA authority would be properties that were completely vacant.

I understand there are challenges around that. There are scoring rules around that. However, we would be interested in having conversations with the committee and OMB on a way forward.

Mr. MAST. Thank you again.

I yield back, Chairman.

Mr. BARLETTA. Thank you.

The Chair now recognizes Mr. Johnson for 5 minutes.

Mr. JOHNSON OF GEORGIA. Thank you.

Mr. Horne, before you came today you knew that you were going to be asked questions about the Old Trump Hotel lease; isn't that correct?

Mr. HORNE. It is.

Mr. JOHNSON OF GEORGIA. And you prepared for your testimony today; is that not correct?

Mr. HORNE. Yes.

Mr. JOHNSON OF GEORGIA. And is it fair to say that you have not seen an opinion letter issued by GSA Office of General Counsel, the Department of Justice, or the Office of Governmental Ethics, or any other legal department, Federal legal department, on the issue of whether the President is in violation or not in violation of the Trump Hotel lease insofar as the Emoluments Clause is concerned?

You have not seen any opinion letter from any of those entities; is that correct?

Mr. HORNE. As it relates to the Emoluments Clause, I have not seen any legal opinions.

Mr. JOHNSON OF GEORGIA. All right. Thank you.

Mr. HORNE. That would be outside the purview of GSA's Office of General Counsel.

Mr. JOHNSON OF GEORGIA. OK. I understand. Let me ask you this question, sir. You are a career employee with GSA for the past 25 years, I think you said.

Mr. HORNE. Yes.

Mr. JOHNSON OF GEORGIA. And you take pride in your work; is that not correct?

Mr. HORNE. Absolutely.

Mr. JOHNSON OF GEORGIA. And you love your career.

Mr. HORNE. Yes.

Mr. JOHNSON OF GEORGIA. And you love your job.

Mr. HORNE. Yes.

Mr. JOHNSON OF GEORGIA. And you are a member of the GSA transition team and the chief GSA liaison with the Trump transition team, correct?

Mr. HORNE. Yes.

Mr. JOHNSON OF GEORGIA. And, in fact, you were appointed to the position of Acting Administrator on the day that the President took office, January 20th; is that not correct?

Mr. HORNE. Yes.

Mr. JOHNSON OF GEORGIA. And is it not also correct that 7 hours earlier Norman Dong was appointed to be Acting Administrator of the GSA, correct?

Mr. HORNE. Mr. Dong was appointed by the previous administration as part of the succession planning so that critical positions would have somebody.

Mr. JOHNSON OF GEORGIA. I understand. So a mere 7 hours after Mr. Dong, who was another career GSA employee, was appointed Acting GSA Administrator, you replaced him, correct?

Mr. HORNE. I was asked by the President to serve as the Acting Administrator of GSA.

Mr. JOHNSON OF GEORGIA. All right. Got you. While you were still serving on the transition team, did you at any time discuss the issues of the Trump International Hotel or GSA's initial position on this matter, which was that the President would be in breach of the agreement if he took office?

Mr. HORNE. No.

Mr. JOHNSON OF GEORGIA. You never did?

Mr. HORNE. No. I was involved in discussions about——

Mr. JOHNSON OF GEORGIA. Well, let me ask you this question because my time is running out. Were there any other Trump administration, any Trump administration officials or campaign officials that you discussed Trump International Hotel with?

Mr. HORNE. Absolutely not. To this day I have not discussed the matter with any Trump officials.

Mr. JOHNSON OF GEORGIA. So that includes President Trump, Ivanka Trump, Eric Trump, and Donald Trump, Jr.?

Mr. HORNE. I have never spoken on this matter or any other matter to any one of those individuals.

Mr. JOHNSON OF GEORGIA. Have you communicated via emails or text messages to any of those individuals about this issue?

Mr. HORNE. No, not this issue or any other issue.

Mr. JOHNSON OF GEORGIA. Who has interviewed you for your job as Acting GSA Administrator?

Mr. HORNE. I was not interviewed. I am proud of the work that I did with the transition.

Mr. JOHNSON OF GEORGIA. Well, let me ask you this question. Was any member of the President's family involved in any way in your appointment as Acting GSA Commissioner?

Mr. HORNE. Not to my knowledge.

Mr. JOHNSON OF GEORGIA. Was anyone involved with the Trump Organization involved in any way in your appointment as Acting Commissioner?

Mr. HORNE. No.

Mr. JOHNSON OF GEORGIA. And was the disposition of the Trump Hotel discussed in any interview that you held for this position?

Mr. HORNE. I was not interviewed for the position, and have not discussed the hotel project with any member of the President's family. Again, I have never spoken to the President or any of his family.

Mr. JOHNSON OF GEORGIA. All right. Thank you. Good enough.

Has any White House official directed you not to respond to inquiries from Members of Congress regarding the Trump International Hotel issue?

Mr. HORNE. Not specifically to this issue. However, we have received a policy that says on matter of oversight we will respond to committee requests, not individual Member requests.

Mr. JOHNSON OF GEORGIA. OK. Has the Trump administration provided you with any direction on how to handle inquiries from the Democrats on the Transportation and Infrastructure Committee about the Trump International Hotel lease?

Mr. HORNE. No.

Mr. JOHNSON OF GEORGIA. And with that, Mr. Chair, I will ask unanimous consent to include in the record the November 11, 2016, email from Kevin Terry. That email referenced the BuzzFeed article about the, quote, "fair amount of nonsense" assessment by Kevin Terry. So Kevin Terry's November 11th email.

Also, the BuzzFeed article that discusses that comment by Mr. Terry along with the letter from the contracting officer, dated March 23rd, which is from Mr. Terry, which is his opinion about Trump's compliance with the lease.

I would ask unanimous consent to include those in the record.

Mr. BARLETTA. So noted.

Mr. JOHNSON OF GEORGIA. And also the Jared Kushner recusal, the letter that memorializes Jared Kushner's recusal offer.

Mr. BARLETTA. So noted.

The Chair recognizes Mr. Nadler for 5 minutes.

Mr. NADLER. Thank you.

Mr. Horne, you have stated repeatedly that the contracting officer made the decision that the lease was in compliance with the Emoluments Clause and with all necessary legal things, correct?

Mr. HORNE. I said that the contracting officer made the determination that the tenant remains in full compliance with the terms and conditions of the lease.

Mr. NADLER. OK. And this was based in part at least on a written opinion, on written advice from legal counsel?

Mr. HORNE. I do not know if it was written advice. I know that there were multiple meetings where multiple GSA lawyers participated in conversations about——

Mr. NADLER. Excuse me.

Mr. HORNE [continuing]. The proposed ownership structure.

Mr. NADLER. Mr. Horne, GSA has told us it was written advice. So someone in your operation knows that it is written advice and has told us that.

So my question is: can we get a copy of that written advice?

Mr. HORNE. We are committed to working with the committee.

Mr. NADLER. I did not ask that. I said: can we get a copy of that written advice? I am requesting that right now.

Mr. HORNE. We are committed to working with the committee to provide——

Mr. NADLER. Can you give me a yes or no answer? My request and the request of the ranking member, I assume: will you give us a copy of that written advice, assuming it exists?

Mr. HORNE. We will provide all materials associated with this project when requested by the committee.

Mr. NADLER. By which you mean by the committee chairman?

Mr. HORNE. Yes.

Mr. NADLER. Or his staff. So, in other words, the answer is, no, you will not give it to us unless the committee chairman requests it because you are ignoring the minority party.

Mr. HORNE. We are complying with the administration——

Mr. NADLER. You are complying with the order to ignore the minority party.

Now, Mr. Chairman, or rather, Mr. Horne, our staff has learned that Mr. Kushner has held discussions regarding candidates for the permanent Administrator position. We have also learned he has been engaged in selecting the FASTA Board.

How is this activity consistent with his recusal from Old Post Office matters, considering the OPO lease is one of the highest profile matters in GSA's portfolio?

Mr. HORNE. I am not aware of Mr. Kushner's role at the White House.

Mr. NADLER. OK. Let me rephrase the question. Assuming he has that role, that he is involved in screening or interviewing candidates for the permanent Administrator position, would this be a violation of his recusal?

Mr. HORNE. I am not going to speculate.

Mr. NADLER. I'm not asking you for speculation. I am saying if that is true, would this be.

Mr. HORNE. I am not going to comment on hypotheticals.

Mr. NADLER. OK. Now, you said in answer to a question before that you did not get monthly statements. You only got annual statements.

Mr. HORNE. I said that I am not aware of monthly statements. I am aware that there is a requirement for an annual report that will decide what the profit-sharing arrangement will be.

If there are monthly reports, I have not seen them.

Mr. NADLER. You are not aware of monthly——

Mr. HORNE. Which is consistent with my approach to this entire project, that it is the contracting officer's job.

Mr. NADLER. All right. You are not aware of a requirement for monthly statements that would give the same information as you just mentioned.

Mr. HORNE. Correct.

Mr. NADLER. OK. Section 5.3 of the lease requires that monthly statement. Shall I read the whole thing to you?

Mr. HORNE. Sure.

Mr. NADLER. Well, I am going to read only part of it because it is lengthy. "Tenant will furnish Landlord on or before the 45th day after the end of each calendar month the following items, accompanied by a certificate of the Chief Financial Officer of Tenant certifying that such items are true," et cetera, et cetera, "monthly and year-to-date statements of income, expenses on an accrual basis," et cetera, et cetera. I can give you the rest of it.

Mr. HORNE. OK.

Mr. NADLER. This requires the monthly statement that you said you did not know existed. So my question is: what will you do to make sure (a) that the monthly statements are being filed and then to answer the questions that you have received from members of the committee regarding information that would appear on that monthly statement?

Mr. HORNE. So I will go back, work with the leadership of the Public Buildings Service to make sure that monthly statements as required by the lease are being received from the tenant, and once again, we are committed to providing information about this project to the committee.

Mr. NADLER. And are you committed to making those monthly statements available to members of the committee?

Mr. HORNE. We are committed to responding to requests from the committee for information.

Mr. NADLER. OK. So once again you are saying the answer is no unless the Republican leadership of the committee wants and, and as long as the coverup is being continued, we are not going to see that information. That is what you are saying.

Mr. HORNE. I am saying that we will comply with the administration's policy and the——

Mr. NADLER. OK. And the administration's policy is that, as you have acknowledged it, is that minority members of the committee are entitled to no information and, therefore, they can continue the coverup.

I yield back, and I thank you.

Mr. BARLETTA. Thank you.

That concludes our questions to the panel. Again, I want to thank you all for your testimony. Your comments have been helpful to today's discussion. Thank you.

On our second panel we will have Mr. Richard W. Painter, Professor of Law.

I ask unanimous consent that our witness' full statement be included in the record.

Without objection, so ordered.

Mr. BARLETTA. For our witness, since your written testimony has been made a part of the record, the subcommittee would request that you limit your oral testimony to 5 minutes.

Professor Painter, if you are ready, you may proceed.

TESTIMONY OF RICHARD W. PAINTER, PROFESSOR OF LAW

Mr. PAINTER. Thank you, Mr. Chairman, ranking member and members of the committee.

I am a law professor at the University of Minnesota Law School. I was previously the chief White House ethics lawyer and Associate Counsel to the President for President George W. Bush.

I also serve as the vice chair for Citizens for Responsibility and Ethics in Washington. I was a founding member of another organization called Take Back our Republic, a founding director of that organization. I am still a director of Take Back our Republic. It is an organization of political conservatives and libertarians who are committed to reforming our campaign finance system.

I should emphasize here that I, like everyone else in the room, have a financial interest in the subject matter of this hearing. I am a taxpayer. I pay tens of thousands of dollars in taxes every year, some years over $100,000 of taxes. I have quite consistently supported for public office persons of both political parties who I believe will reduce the size of Government, increase the efficiency of Government, and reduce the burden of taxation on the American people.

The legislation we are talking about today, the Federal Assets Sale and Transfer Act, FASTA, involves the sale over 6 years, I believe, of up to $8 billion worth of Federal property, and I hope these transactions can be carried out in a manner that maximizes the return for the taxpayer and is without conflicts of interest for the Government officials who are involved in the transactions.

I spent about the past 30 years of my career focusing on conflicts of interest, conflicts of interest in corporations and partnerships, in business law, conflicts of interest in Government, and I want to emphasize that conflicts of interest have consequences.

Mr. Chairman, you referred to the businesses of Presidents Washington and Jefferson and other Presidents. President Trump has referred to those businesses as well and that Presidents Washington and Jefferson visited their plantations when they left the Capitol.

Presidents Washington and Jefferson were great Presidents, did a lot to make this country great, but those businesses involved conflicts of interest that were amongst the most tragic conflicts of interest for our country. The assets of those businesses included

human beings who were held against their will, forced into labor, and in some situations to perform sexual services for overseers and others in the plantations. This was a very tragic conflict of interest that resulted ultimately in a Civil War in which half a million Americans lost their lives and, of course, the difficulties we have in race relations in this country to this day.

So conflicts of interest in Government have consequences. When the President, leading Members of the House and the Senate own businesses, such as those plantations, and then make decisions about issues, such as in that case, the slavery question, those decisions have consequences.

Turning to the present day, conflicts of interest for Government officials cannot be allowed to be present in any of the transactions by the United States Government concerning Government property, and that is critically important, whether the transaction is with the President of the United States or members of the family of the President, Members of Congress or any other Government official.

How do we address conflicts of interest? Well, there are two approaches that I emphasize in the corporation and securities law classes that I teach. One is a categorical ban on transactions between the fiduciary who is making decisions in a fiduciary context and himself. You do not allow the same person to stand on both sides of the transaction.

That is the way trust law works. That is the way I think the Government law should work with respect to Government property and the disposition of Government property. The same person does not stand on both sides of the transaction. That should be prohibited.

There are other ways to deal with it, and I am happy to discuss that. I am happy to discuss in answers to your questions my views on the lease at the Old Post Office or other transactions to the extent I am familiar with the context of those transactions.

But I want to emphasize how critically important it is that we address conflicts of interest that the public, that the taxpayer, people in my situation having to send that check in every year to the IRS, and I usually owe money. Yes, I will admit it, that we are confident that Members of Congress and other elected officials are not simply helping themselves; that the Government is not going into transactions with private real estate developers who then after the deal is closed cut in Members of Congress or other Government officials to get a piece of the action; that when people are prohibited from receiving the benefits of a lease under the terms of the lease, that someone does not just go set up a shell corporation or a trust or some other entity that receives it for them; that those of you who are charged with the fiduciary obligation of watching over our taxpayer money are spending it wisely, but that you also are living up to the spirit of the law, not just the letter of the law.

You can find an expert, a lawyer, who will tell you what you want to hear, but I will emphasize. Please, Mr. Chairman, members of the committee, look at us, the taxpayers. Do what is right. Do what is right for our country.

Thank you.

Mr. BARLETTA. Thank you for your testimony, Professor Painter.

I want to enter into the record a DOJ opinion indicating conflict laws do not apply or did not apply to Vice President Rockefeller with his vast businesses. Subsequently, Congress amended the law to explicitly exempt the President and Vice President.

I will now begin the first round of questions limited to 5 minutes for each Member.

Mr. Painter, FASTA requires properties be sold to the highest bidder getting the maximum return to the taxpayer. That number is driven up the more bidders that there are. You are not suggesting that a lower return is OK so long as we ensure no winning bidder has a connection to a Government official, are you?

Mr. PAINTER. What I am suggesting, firstly, we deal with different types of transactions. One is sale and the other is lease. When you sell the property, usually there is no further relationship between the seller and the buyer. If there is, it is nowhere near as significant an ongoing relationship as you have in the case of a lease.

When you sell a property, you need to make sure at the time of the sale it is a fair transaction. If you are admitting into the bidding process a United States Government official, you could do that, but you have to make absolutely sure that the bidding process is fair, and it is designed to get the absolute highest price.

With respect to leases though, it is a very different situation because that is an ongoing relationship. So it is not just what happens at the inception of the lease. You have ongoing enforcement issues and a range of different issues over the course of a lease.

So I think that bringing in United States Government officials is highly likely to reduce the return to the taxpayer. There are not a lot of situations where United States Government officials are interested in leasing or buying Government property. I believe the GSA Administrator was not aware at least of previous Presidents and I do not believe of other officials who wanted to do that.

I think the risks far outweigh the benefits, particularly in the concept of a lease.

Mr. BARLETTA. What is not clear from your testimony is whether you are offering your opinion on what the law should be or whether you are stating your opinion on what the law actually is.

A number of points you make would mean that George Washington himself acted unethically. Ultimately the goal is getting the best return for the taxpayer. Should that not be this goal?

Mr. PAINTER. I am saying that George Washington, I did say that George Washington, Thomas Jefferson and others violated, I believe, the laws of God and what was set forth in the Declaration of Independence with respect to their businesses.

And I am offended as a taxpayer when those businesses are mentioned in public discourse as if somehow those conflicts of interest were OK. They cost our country a great deal.

Yes, it was unethical, and I am willing to say that to you, Mr. Chairman.

Mr. BARLETTA. Are you stating your opinion or what the law actually is? Did George Washington violate the law?

Mr. PAINTER. He violated the laws of God, and I will say that to you, Mr. Chairman. Slavery was wrong, and it was a conflict of interest that resulted in that question not being addressed at the in-

ception of this Nation, a conflict of interest not only of George Washington and Thomas Jefferson, but Members of the House and the Senate.

Conflicts of interest have consequences. It was unethical. It was wrong, and there is a higher law beyond that which is written in the statute books. The law, the specific law from which the President is exempt is one statute, 18 United States Code 208. There are other statutes, plenty of them, to which the President is bound.

Mr. BARLETTA. Thank you.

The Chair now recognizes Mr. DeFazio for 5 minutes.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Painter, I think you were here earlier when we had some discussion of section 37.19, "no member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom."

The chairman has mentioned some opinion pieces and articles that have been written regarding this. Do you want to opine a bit?

I mean, we have the "shall be admitted" part, but then we have "or to any benefit that may arise therefrom." They are separate clauses, correct?

Mr. PAINTER. Well, yes. The question here is whether you want to interpret the lease as the landlord to accomplish the purpose that you were seeking to accomplish through that provision. When you say no employee of the Government shall be admitted to a share of the lease, do you really want to allow a real estate developer who is a private real estate developer to enter into the lease, and then the minute the lease is signed walk out the door and bring Members of Congress in to share in the proceeds?

Does that not undermine the entire purpose, which is to avoid Government officials being on both sides of the lease, whether it is the President of the United States or Members of Congress?

I do not understand how that interpretation of the lease makes any sense in light of the purpose of the lease. If that interpretation is correct, that language dies upon the signing of the lease and that subsequently Members of Congress, other Government officials can be given a piece of the lease, or if the tenant becomes an elected official, they can just hold onto the lease, if that is true, then whoever drafted that lease was a fool because it does not accomplish the purpose, which is to make sure that Government officials are not standing on both sides of the transactions.

So we can bring in lawyers and you can always bring in a lawyer who will tell you this is a reasonable interpretation and so forth, but it makes no sense.

And so if that is the proper interpretation, whoever drafted that lease for the Government should not be working for the Government.

Mr. DEFAZIO. Well, there are certainly some questions about that. But, again, I would rely on the second part, "or to any benefit that may arise therefrom." If you just omit the first part, that would take care of the issue you are opining about, which is subsequent benefit to an elected official.

Mr. PAINTER. I would think so. I mean, the way I understand that language is you cannot bring in a subsequent elected official

or the real estate developer cannot go out and bring in current Government officials. That is not the way it works. It does not make any sense for it to work that way.

I do not understand the plain language to say that, and that is, by the way, only one of the issues. The other issue is whether you can somehow dodge this by saying, "Well, the money does not go to me. It goes to a trust for my benefit," or, "it is going to increase my wealth later."

I mean, we are talking about Government officials who have billions of dollars. They do not need to spend all of the money today. We do not say, "Well, you cannot receive the money, but you can set up a shell corporation to receive the money," you know, or a trust to receive the money. That is the kind of off balance sheet financing Enron was doing.

You set up a bunch of special purpose entities to do things you yourself cannot do, and I have taught plenty to that over the years. And I know lawyers who play that game, and lawyers will sign off on that game, and that is why we have had some of the corporate messes we have.

But at least can we have the United States Government deal straightforwardly and honestly with the American people? If the President cannot take the money, neither can a trust of which the President is a principal beneficiary.

Mr. DEFAZIO. Thank you. Thank you for your testimony.

Thank you, Mr. Chairman.

Mr. BARLETTA. Thank you.

And, again, I want to say that the Congress has explicitly exempted the President and Vice President from conflicts of interest laws.

Mr. PAINTER. That one statute, I believe, 208. Is there another one?

Mr. BARLETTA. The Chair now recognizes Mr. Johnson for 5 minutes.

Mr. JOHNSON OF GEORGIA. Yes, thank you, Professor Painter, for being here today.

You heard the testimony from the Acting Administrator today that he is the hand-picked Acting Administrator. You have heard from him that he loves his job. He wants to continue. He has got 25 years in. I guess he will probably retire at 30, and certainly being at the Acting Administrator, at the top of the heap, he is making a lot of money at the top end of the schedule, and human nature, you know, causes you to want to maintain that status as an employee.

And you have heard that GSA is not collecting the kinds of information, financial information, that would enable it to adequately scrutinize this Trump lease and the revenues flowing therefrom.

You have heard testimony that perhaps there is no mechanism in place for generating reports about any foreign government or foreign actor spending at the Trump Hotel, and you know the ramifications and implications of what that means in terms of foreign actors impacting U.S. policy through spending money at the Trump Hotel.

And you have also heard testimony that high-level Trump family members and also those serving in high levels in the Trump ad-

ministration are not recused from dealing with the GSA insofar as the Trump Hotel is concerned, and you have heard that there are no legal opinions that have been rendered, or at least we have not had any evidence of any legal opinions being rendered about the compliance with President Trump with this lease.

And so having heard all of those things, what is your opinion about what actions GSA should take to shield the Acting GSA Administrator, along with the contracting officer and others who are associated with administering this lease? What actions do you think GSA should take to protect those officials from undue influence with respect to the lessee who is the President of the United States?

Mr. PAINTER. Well, first I should disclose it is probably commonly known that I am counsel to Citizens for Responsibility and Ethics in Washington in a case pending in the Southern District of New York against the President in his official capacity with respect to not just the payments at the hotel, but payments from foreign governments in violation of the Emoluments Clause of the Constitution. The Justice Department is defending the President in that litigation.

I think with respect to GSA, the one thing that they can do that I would like to see a lot more of here, in addition to strictly construing the terms of the lease to protect the taxpayer, not the President, but the second thing is transparency.

It is critically important that information about this lease and other leases, including this $8 billion worth of leases, but I have no confidence—not just leases, but sales and whatever is going to happen with this property that is going to be sold in the next 6 years pursuant to this statute of FASTA—I have no confidence that there is not going to be just a lot of self-dealing, whether it is Government officials or campaign contributors or someone else.

And if we want confidence, public confidence in this Government and in GSA, they need to be transparent. They need to disclose the relevant documents for transactions that Members of Congress are interested in, and that means Members of Congress of both parties.

I don't know what happened during the first 2 years of the Obama administration when the Democrats controlled the House and the Senate. I do not know what the practice was, but I will tell you what it should have been, and that is that if the Republicans wanted documents from that administration, they should have been delivered here, and the same with the Democrats today.

We don't have one-party oversight of the executive branch, particularly not by the President's party, and I have got to say this. I have been a Republican for 30 years. That is not a very good way for any political party to stay in power.

We need dual oversight, both Democrats and Republicans working together. So if you want a document as ranking member, you work with the chairman. Those documents should be delivered to this committee by GSA, and then we have the transparency that we as taxpayers feel that we need, both parties overseeing the executive branch, not just the President's party.

Mr. BARLETTA. Thank you.

Mr. DEFAZIO. Mr. Chairman, I have a point of personal privilege.

Mr. BARLETTA. OK.

Mr. DEFAZIO. I am certain the chairman is not aware of this, and I am sure it is some zealous little twerp working for the committee, but I have just been made witness to the fact that the livestreaming has been edited, and significant portions of my remarks were edited out, and Mr. Nadler's remarks were edited out, and I find this extraordinary, and if there is not an immediate resolution to this issue, I will be taking this issue to the floor of the House of Representatives as a point of personal privilege.

I mean, this is unbelievable. I mean, what have you got to hide that you cannot even put our damn questions to a Government official online and you have to cut us out?

Mr. BARLETTA. The chairman is not aware of it. We will check into it. If there is a technical problem, it will be checked out.

Mr. DEFAZIO. It was not technical, Mr. Chairman. This was editing.

Mr. BARLETTA. The Chair is not aware, but we will check it out.

Mr. DEFAZIO. I suspected that you were not, but it is going on.

Mr. BARLETTA. The Chair now recognizes Mr. Nadler for 5 minutes.

Mr. NADLER. Thank you.

I am glad to hear the Chair will check this out. I hope to hear the Chair say that it is unacceptable and will be corrected.

Mr. BARLETTA. I have no evidence that it was done intentionally. So we will check it out, but that is your answer.

Mr. NADLER. OK. Mr. Painter or Professor Painter, I should say, between October 1st and March 31st, lobbyists working on behalf of the Kingdom of Saudi Arabia spent $270,000 on rooms, catering and parking at the Trump International Hotel.

In December of last year, Bahraini diplomats moved the country's National Day festivities to the hotel's ballroom, December, after the election.

In February, Kuwait moved its annual gala from the Four Seasons to Trump International.

Now, first, is it appropriate for the GSA to maintain a lease that allows foreign governments to make payments that directly benefit a Government official, as is the case here?

Mr. PAINTER. Well, this is the subject matter of the litigation by CREW [Citizens for Responsibility and Ethics in Washington], and there are other cases pending, one by Members of Congress against the President, one by the Attorney General of Maryland and the District of Columbia against the President with respect to the Emoluments Clause of the Constitution.

I mean, this is the most fundamental conflict of interest that was contemplated by the Founders. As I said, they were not very good at identifying their own conflicts of interest with respect to the slave labor, but they were well aware of the conflict of interest of other governments trying to influence the United States Government by buying off Government officials.

So they had a categorical ban on emoluments and presents, and that is emoluments and presents, not just presents, which are value-added transactions, but emoluments as profits or benefits going to a United States Government official from a foreign government or entity controlled by a foreign government.

And I know the Justice Department is arguing for a narrower interpretation of the Emoluments Clause to only apply to payments received in connection with an office that you have, as if somehow the only concern is whether the President or some other official is two-timing the Government by having an office overseas as well as here. I do not think that was the Founders' point.

And so I believe that these payments, in addition to other payments that are received by the Trump business empire, are in violation of the Emoluments Clause.

You know, the question of what GSA can do about that when the Justice Department is taking a different position on behalf of the President is a difficult one, but I am firmly convinced that payments from foreign governments and entities controlled by foreign governments that go into a business owned by the President or any other Government official are in violation of the Emoluments Clause.

That provision is in the Constitution for a reason, because these European governments were busy bribing the English House of Commons, and by the way, Russia was busy doing all sorts of strange things.

Mr. NADLER. And the President of England or France at one point was on the payroll of the other. I forget which way.

Mr. PAINTER. Oh, yes.

Mr. NADLER. Let's not get into that.

Mr. PAINTER. Yes, right.

Mr. NADLER. Let me just ask you: if the Emoluments Clause did not exist, this would still be a violation of straight conflict of interest principles?

Mr. PAINTER. Well, I think that we have the broader problem, not just with respect to foreign governments but lobbyists who, of course, have been generous with their campaign contributions to both parties, one serious conflict of interest, but now we have compounded that by the fact that what they do is they rent out a ballroom at the Trump Hotel, the money goes to the President's business, and then every lobbyist shows up there, but members of the administration are much more likely to go to a party at the Trump Hotel than another hotel.

Mr. NADLER. So your answer is yes?

Mr. PAINTER. Absolutely, yes.

Mr. NADLER. Thank you.

Mr. PAINTER. It is very profitable.

Mr. NADLER. I only have 1 minute left.

Does the payment from a foreign government for services rendered by a business owned by the President, and I think you have answered this, constitute a violation of the Emoluments Clause?

You would say yes, obviously.

Mr. PAINTER. Yes.

Mr. NADLER. And does the current ownership and control structure of the OPO lease absolve the President of any such violation?

Mr. PAINTER. I do not think it absolves, no, sir. You focus on follow the money. I mean, that is what I have been doing as a corporate securities lawyer for 25, 30 years. You focus on where is the economic benefit going to.

You can create all sorts of shell entities and trusts and the rest of it, and the lawyers are good at doing that, but you have got to focus on where is the money going. Where is the economic value?

Mr. NADLER. Thank you.

Mr. PAINTER. We get all caught up in those entities. That is what happened in Enron, and that is not the way to run the United States.

Mr. NADLER. Thank you.

My last question for 23 seconds is you are the vice president or president of CREW, the Committee for Responsibility and Ethics in Washington.

Mr. PAINTER. Yes.

Mr. NADLER. I have often seen it referred to in the newspapers as a liberal group or left-leaning group. You do not sound like you are a liberal or left-leaning person with your Republican background. Would you consider that an accurate characterization of CREW?

Mr. PAINTER. No. I am not a liberal. This is not a liberal or conservative issue. This is about responsibility in Government and how our money, our taxpayer money is used, and I think this is why taxes are so high in this country. There are a lot of conflicts of interest, and there is a lot of waste, and we do not now have the President of the United States setting a good example. I think it is atrocious.

Mr. NADLER. Thank you.

I yield back.

Mr. BARLETTA. Thank you.

Thank you, Mr. Painter, for your testimony.

This concludes our hearing. If Members have any further questions, they can be submitted for the record.

I would like to submit for the record a statement provided by the Associated General Contractors of America detailing the importance of implementing FASTA.

Without objection, so ordered.

I would ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing, and unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

I would like to thank our witnesses again for their testimony today.

If no other Members have anything to add, this subcommittee stands adjourned.

[Whereupon, at 12:24 p.m., the subcommittee was adjourned.]

Witnesses' Prepared Statements and Responses to Post-Hearing Questions for the Record

STATEMENT OF TIMOTHY O. HORNE

ACTING ADMINISTRATOR FOR THE U.S. GENERAL SERVICES ADMINISTRATION

BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

July 12, 2017

Introduction

Good morning Chairman Barletta, Ranking Member Johnson, and Members of the Committee. My name is Tim Horne and I am the Acting Administrator of the U.S. General Services Administration (GSA). Thank you for the opportunity to testify today on GSA's management of Federal real property and the implementation of the Federal Assets Sale and Transfer Act of 2016 (FASTA).

I have been a GSA employee for almost 25 years, starting off as a facilities management intern at the Denver Federal Center. Later in my career, I held the position of Federal Acquisition Service Regional Commissioner, and I served as the Public Buildings Service Regional Commissioner for GSA's Rocky Mountain Region. In 2008, I had the privilege to serve as the Deputy Federal Transition Coordinator and the Federal Transition Coordinator for the most recent Presidential Transition before being appointed as Acting Administrator.

GSA's mission is to deliver the best value in real estate, acquisition, and technology services to government and the American people. Given our current fiscal environment, GSA is working with agencies on multiple fronts to reduce the Federal Government's real estate footprint. GSA agrees with Members of this Committee about the importance of and is committed to the identification, consolidation, and disposal of nonperforming and vacant Federal real property.

FAST Act

Last year, Congress passed the FASTA to encourage landholding agencies to reduce the number of unneeded and underutilized properties from their inventory. GSA strongly supports FASTA and we view this as a valuable tool to incentivize agencies to be more efficient and effective in their management of real property. It also improves the Federal real property disposal process by establishing an independent board to make recommendations for property disposals along with other ways to reduce the costs of Federal real property holdings. Further, the Act streamlines the process for identifying and disposing of properties to benefit the homeless.

To help implement the FASTA, GSA, working with the Office of Management and Budget (OMB), conducted two data calls to build a more robust Federal Real Property Profile (FRPP) and develop recommendations for disposal and consolidation projects to put forward. We are adding the new data elements required by the FASTA to the FRPP data collection. The Act expanded the universe of 24 Executive Branch agencies that previously reported real property data to GSA. A total of 51 agencies have responded to the data calls under the FASTA.

Additionally, to support and implement the board's recommendations, the President's budget requests $40 million in FY 2018 to be deposited into the Asset Proceeds and Space Management Fund. These funds will support the independent activities of the Board and will be managed as a stand-alone account. Once the Board is in place, GSA looks forward to working with the Chairman and board members, as well as OMB, to implement the Act.

As you know, GSA administers one of the largest and most diversified public real estate portfolios in the country. The agency's portfolio consists of 371 million rentable square feet (RSF) in 8,700 active assets across the United States, in all 50 states, 6 U.S. territories, and the District of Columbia (DC). The owned inventory accounts for approximately 49 percent of the portfolio, and the leased inventory is approximately 51 percent of the portfolio.

Over time, technological advancements, shifts in Federal agencies' scope and mission, economic and demographic changes, and the aging of a facility or infrastructure can contribute to Federal real property underutilization and deterioration. When this occurs, GSA works in coordination with the agency that controls the asset to determine whether it is in the best interest of the Federal

Government to maintain ownership or begin the process to find an alternative use outside of the Federal Government.

GSA is taking an aggressive approach to improving the utilization of Federal property and reducing our unneeded and underutilized assets. From FY 2012 through FY 2016, GSA disposed of 976 properties, both those managed by GSA as well as other landholding agencies, generating $273 million in gross sales proceeds. The bulk of the disposals were executed through public sales. Other property disposals involved negotiated sales, public benefit conveyances, and Federal transfers.

For GSA-managed properties, between FY 2012 and FY 2016, GSA disposed of 66 properties, generating $88 million in gross proceeds. Earlier this year, GSA disposed of the Cotton Annex building in Washington, DC. The $30 million sale of this 118,000 square-foot facility, which previously housed the U.S. Department of Agriculture, resulted in a cost avoidance to the Federal Government of almost $7 million over two years, because GSA no longer needs to make long-term repairs and upgrades to the facility. Additionally, the disposal of this building could also serve as a catalyst for economic development in the surrounding area by introducing new tenants, businesses and employment to the area.

However, the Federal Government is not the only participant and benefactor in this process. State, local, and non-profit partners play a vital role in helping GSA identify and unlock an asset's value and benefit.

For example, through a negotiated sale, GSA sold underutilized acreage at the Denver Federal Center to the City of Lakewood, Colorado. The City then developed the property, which now contains a transit hub and hospital that serve the citizens of the surrounding area. This example showcases that Federal and non-Federal stakeholders benefit when we collaborate together during the disposal process.

In closing, GSA is committed to carrying out its mission of delivering the best value in real estate. When GSA and other Federal agencies more efficiently and effectively manage their real property inventory, we realize improved mission and workforce outcomes while reducing housing and related costs. These savings can be invested back into agencies' mission-critical work.

I thank the Committee for the opportunity to testify today and look forward to answering your questions.

"Implementing the Federal Assets Sale and Transfer Act (FASTA): Maximizing Taxpayer Returns and Reducing Waste in Real Estate"
Subcommittee on Economic Development, Public Buildings, and Emergency Management Hearing
Wednesday, July 12, 2017, 10:00 a.m.
2167 Rayburn House Office Building
Washington, D.C.

Questions for the Record

Submitted on behalf of Representative Lou Barletta (R-PA)

1. GSA and the Department of Veterans Affairs (VA) have been working closely with the City of Pittsburgh, PA, in the disposing of the vacant VA Highland Drive Medical Facility. The traditional real property disposal process can be cumbersome. However, there are ways the process could be streamlined and move faster – such as completing certain reviews simultaneously.

a. What is GSA doing to look for opportunities to streamline the process?

Prior to the U.S. General Services Administration's (GSA) formal involvement in the Pittsburgh property, VA sought assistance from GSA. On May 11, 2016, months before the facility was reported excess, GSA conducted a Targeted Asset Review (TAR). This analysis provided VA with important due diligence information that VA used to submit the necessary documents to submit the finalized Report of Excess and officially begin the disposal process. Concurrent with the completion of the TAR and submission of the Report of Excess, GSA began meeting with Pittsburgh city officials to gain an understanding of the city's plans for the property. As GSA and VA continued to interact with local stakeholders, and identified that VA needed to complete the Environmental Phase I site assessment and the boundary and utility survey. As GSA waited for the development of these documents, GSA and VA proceeded with the disposal process and would complete the required reports together as the disposal process moved forward. Concurrent to the development of the documents, GSA initiated the Federal Screening process. On July 20, 2017, GSA completed Federal Screening, the first step in the Title 40 disposal process. GSA can report that the property is now surplus to the needs of the Federal Government, and the agency continues to work with the city to better understand its proposed uses. By advancing the disposal process while also confirming the environmental conditions of the reported property, GSA estimates that 3 months were saved on the disposition of the asset.

These efforts have been made simultaneously, with an eye to the most efficient and comprehensive repositioning of the 167-acre facility.

b. Do you commit to providing regular updates to the Committee as the disposal progresses?

Yes. To date, GSA has provided several status updates and has committed to continue with monthly briefings for Committee staff and other congressional stakeholders.

c. What is your current timetable for the disposal?

GSA estimates that the transfer of ownership of the property will be completed by April 2018. This timeframe depends on the disposal methods and on environmental issue and/or title conditions.

2. The Federal Assets and Sale Transfer Act (FASTA) establishes requirements for the Federal Real Property Profile database and requires that the database be publicly accessible.

a. Where is GSA in implementing these requirements?

GSA has collected data from agencies as required by FASTA. GSA is reviewing the data collected and working with agencies to identify data elements that should be excluded for reasons of national security (as defined by the Department of Homeland Security Interagency Security Committee) and the Freedom of Information Act. Once final determinations are made, the data will be made available to the public.

b. Will the deadline of one year from enactment be met?

GSA is continuing to work closely with OMB, DHS, and all Federal agencies reporting data to the FRPP database to prepare the data for publication. GSA is on course to make the data accessible by the December 16, 2017, deadline.

3. In 2014, the Subcommittee launched a series of hearings and roundtables focused on the large number of leases that will be expiring in the near term and how we can ensure GSA is in the best position to negotiate good deals and lower rates for the taxpayer when replacing those leases. At that time, we found 50 percent of GSA's leases were expiring in five years. We also found a potential for significant savings of more than 20 percent if GSA negotiated longer term deals, as opposed to firm terms of

five years or short-term extensions. Given the potential savings and large number of expiring leases, last Congress, I introduced bipartisan legislation, the Public Buildings Reform and Savings Act of 2016, which passed the House. That legislation would have created a streamlined leasing pilot program to provide GSA more tools to replace expiring leases with good deals. While I plan to re-introduce similar legislation, there are steps GSA can take now to lower leasing costs such as eliminating holdovers, negotiating replacement leases with firm terms exceeding five years, and working across tenant agencies to find opportunities to co-locate and consolidate as leases expire.

a. What steps has GSA taken to position itself to negotiate better lease deals?

GSA agrees with your assessment of the opportunities to save significant tax dollars through the replacement of GSA's expiring leases. In addition, GSA believes the likelihood of realizing these savings greatly improves when there is alignment between the executive and legislative branches on the goal and strategies for achieving these savings. To that end, GSA looks forward to partnering with the committee in this effort. Specifically, GSA is pursuing two powerful strategies for reducing lease costs. These are reducing the square footage of replacement leases when it is cost effective and increasing the firm term of midsize and large leases. These strategies have the potential to generate significant savings over the life of the leases, and GSA will use them aggressively when they result in taxpayer savings.

Additionally, GSA is leveraging OMB's Reduce the Footprint (RTF) policy to identify leases for consolidation and disposal, as well as using the agency specific office space design standard requirement per the RTF policy to encourage agencies to downsize and efficiently design new office acquisitions.

Furthermore, in our efforts to improve the delivery of leased space, in 2015, GSA rolled out its online leasing platform, known as the "Automated Advanced Acquisition Program" (AAAP), in all markets in the United States. The goals for the platform are to make it easier for the real estate industry to do business with the Federal Government, for GSA to deliver leased space more quickly to its Federal customer agencies, and for GSA to receive competitive lease rates. AAAP's paperless online offer submission process enables the Government to accomplish these goals.

GSA also utilizes the GSA Leasing Support Services (GLS) contract. GLS provides support services via a vendor broker to the GSA lease contracting officers and leasing specialists during the procurement process (e.g., market surveys, site visits, document preparation, and negotiations). GLS serves as a resource multiplier for the regional GSA leasing offices. The contract enables

GSA to leverage broker expertise, market knowledge, and existing industry commission practices for compensating brokers.

GSA is implementing a long-term lease strategy in which GSA considers the benefits of favorable rental pricing associated with longer firm terms against the costs associated with the risk of the inability to backfill vacant Government-controlled space. Specifically, GSA is striving to:

- Obtain lower rental rates by better leveraging GSA's financial strength and its 20-year lease acquisition authority through longer leases where appropriate;
- Reduce the number of lease procurements and the resulting workload burden on regions by using strategies for longer lease terms; and
- Implement these strategies in a manner that does not result in a material increase in vacant leased space.

Overall, the firm term of all new lease solicitations should more closely match the expected need for the space by the Government, and not necessarily match the length of a particular agency's use of that space.

GSA has been working with its customer agencies to emphasize the importance of earlier planning for upcoming lease expirations. The earlier development of customer agency requirements allows not only for footprint reduction, but also allows GSA to make progress in reducing costly extensions, securing longer term leases, and ensuring a competitive approach in its procurements. In FY 2017, the agency continued to sign a growing number of long-term leases (26 percent compared to 20 percent in FY 2015). Also, since FY 2015, GSA reduced the amount of vacant leased space from 1,350,502 square feet to 848,382 square feet.

b. Please provide the Committee the percentage and square footage of expiring leases over the next five years.

Between FY 2017 and FY 2022, 62 percent of leases and 56 percent of leased rentable square feet, amounting to 106 million rentable square feet, will expire.

c. Please provide the Committee the number and percentage of leases in holdovers and in short-term extensions.

As of September 2017, 74 leases (.09 percent of the leased inventory) with private entities are in holdover status, and 113 leases (1.4 percent of the leased inventory) are in short-term (less than a year) extensions.

Submitted on behalf of Representative Peter A. DeFazio (D-OR)

1. Please provide the following records in the possession of the GSA to the Committee in unredacted form:

a. All communications that took place from June 16, 2015, to the present related to the Old Post Office building lease agreement (GS-LS-11-1307) between contracting officer Kevin Terry, or any other GSA employee, and

i. Donald J. Trump,
ii. Ivanka Trump,
iii. Donald Trump Jr.,
iv. Eric Trump, or
v. David Orowitz.

GSA is providing documents that are responsive to this question.

b. All communications between Timothy Horne and

i. the Donald J. Trump campaign for president, or
ii. the Donald J. Trump presidential transition.

GSA is providing documents that are responsive to this question.

c. All legal memos or opinions created pursuant to the Old Post Office lease agreement.

In accordance with the July 20, 2017, letter from Marc Short, White House Director of Legislative Affairs, to Senator Grassley, GSA will "use its best efforts to be as timely and responsive as possible in answering such requests consistent with the need to prioritize requests from congressional Committees...with any legitimate confidentiality or other interest of the Executive Branch." Since answering the question could involve "legitimate confidentiality or other interests of the Executive Branch," GSA respectfully declines to provide an answer.

d. All formal notices pursuant to the Old Post Office lease agreement

i. from GSA to the tenant
ii. from the tenant to GSA

GSA is providing documents that are responsive to this question.

e. All monthly reports submitted by the tenant describing revenues, expenses, and budgets, pursuant to the Old Post Office lease agreement.

GSA is providing documents that are responsive to this question.

f. All guidance provided by the White House or any other federal agency related to the Old Post Office lease agreement.

GSA has not received any guidance from the White House or any other Federal agency related to this lease agreement.

2. Please provide an explanation of how profits generated by the Trump International Hotel are calculated, and the amounts that GSA is entitled to receive on an annual or monthly basis. Specifically, please describe:

a. How often Trump International Hotel calculates the profits,

GSA is unaware of how often the Trump Old Post Office LLC calculates any such profits. The lease requires the LLC to pay a minimum annual base rent of $3 million, escalated on an annual basis at the consumer price index. The LLC also will pay a percentage rent difference if the percentage of gross revenues exceeds the minimum base rent payment.

b. How often profit information is provided to GSA,

The lease establishes a number of different reporting requirements. In particular, Section 5.3(b) of the lease requires the submission of an annual audited financial statement, which sets forth, among other things, gross operating profit.

c. Eligible expenses that are itemized by Trump International Hotel,

The lease establishes a number of different reporting requirements. In particular, Section 5.3(b) requires the submission of an annual audited financial statement, and Section 5.3(c) requires the submission of a monthly statement. However, nothing in the lease requires an itemization of "eligible expenses."

d. Projected revenue information provided by Trump International Hotel, and

Because the terms and conditions of the lease do not require the tenant to provide this information, GSA is not able to respond to this question.

e. Any mechanisms GSA is entitled to use to validate profit calculations.

Section 5.4 of the lease provides GSA with audit rights.

3. Please provide profit statements for the Trump International Hotel for 2016, and for January through June 2017.

GSA does not receive a separate document entitled "profit statements," The hotel officially opened for business on October 26, 2016. The first annual statement for the initial year of the hotel being open for business is not due until the end of December 2017.

4. Please provide any guidance provided by the White House or any other federal agency to GSA with regard to the Old Post Office lease agreement.

GSA did not receive any guidance from the White House or any other Federal agency with regard to the Old Post Office lease agreement.

5. Are any of the following White House employees recused from participating in decisions related to the Old Post Office lease? Please provide documentation; if none, please explain.

a. Ivanka Trump
b. Jared Kushner

GSA is not aware of whether these individuals have been recused from participating in decisions related to the Old Post Office lease. GSA is not in possession of any documentation regarding this question. Neither person is a GSA employee.

Submitted on behalf of Representative Jeff Denham (R-CA)

1. How many agencies met the April 15, 2017 date for providing data on owned, leased, or controlled properties to GSA?

In response to GSA's request, over 50 agencies provided data on owned, leased, or otherwise controlled real property by April 15, 2017.

GSA also requested information from all Chief Financial Officer Act agencies for recommendations to the Real Property Reform Board.

1. Did those agencies include recommendations of unneeded properties?

   Yes, agencies submitted recommendations as required by the act.

2. How do you recommend we incentivize more agencies to participate and submit that data and their valuable properties for consideration?

   Full funding of the President's FY 2018 request for the Board salaries and expenses as well as the Asset Proceeds and Space Management Fund to support project implementation would incentivize greater participation.

2. Upon receipt of agency recommendations, the Public Buildings Reform Board is to identify and implement an accounting system to evaluate costs and returns. Additionally, GSA and Office of Management and Budget (OMB) are to develop standards and criteria against which the recommendations will be reviewed. Has GSA begun consultation with OMB to review recommendations and develop standards for review?

   Yes, recommendations have been reviewed and standards have been developed in consultation with OMB.

3. On July 11, 2017, GSA announced that it is cancelling the strategy for the new FBI headquarters proposal. Trading the value of the Hoover building towards the value of the new property and offsetting the delta with appropriations was a questionable strategy. But we now have an opportunity: the FBI project is perfectly situated to be sold under FASTA authority. Does GSA plan to move forward with finding a new FBI headquarters or just cancel the project?

1. Does GSA plan to explore FASTA authority for the project?

   GSA and the FBI are currently working to identify acquisition solutions to meet the requirements of the new FBI headquarters. GSA and the FBI are working to report back to Congress by November 30, 2017.

2. Which type of transactions does GSA plan to explore for the project?

GSA and the FBI are currently working to identify acquisition solutions to meet the requirements of the new FBI headquarters. GSA and the FBI are working to report back to Congress by November 30, 2017.

Submitted on behalf of Representative Barbara Comstock (R-VA)

Questions regarding the Federal Real Property Profile (FRPP):

1. By way of background, the House Appropriations Committee included the following language in its Committee Report to Accompany the Financial Services and General Government Appropriations Act for Fiscal Year 2018:

> Federal Real Property Profile.—The Committee remains extremely frustrated with the slow pace at which GSA and other federal agencies are improving the accuracy of the Federal Real Property Profile. The U.S. Government Accountability Office (GAO) named managing federal real property to its 2017 High Risk List. The Committee is concerned that despite language in the fiscal year 2015, 2016, and 2017 reports, GSA has not made progress on the value and accuracy of its inventory, taken steps to include public lands as required by Executive Order 13327, made the FRPP available to the public, or geo-enabling the FRPP. The Committee is outraged that the federal government cannot provide an accurate accounting to the American public of all the property that it owns. The Committee expects GSA to work with agencies across government and utilize geographic information technology to improve the data contained in this report and enhance transparency to the American taxpayer. The Committee directs GSA to report to the Committees on Appropriations of the House and Senate on steps taken to improve the quality and transparency of the profile within 60 days after the enactment of this Act.

For reference, the language can be viewed here https://appropriations.house.gov/uploadedfiles/fsgg.report.07.13.17.pdf.

a. What is the status of GSA's undertaking for improving and enhancing the FRPP?

> GSA continues to take steps to improve the quality of data agencies submit to the FRPP. A complete status is covered in GSA's response dated August 21, 2017, to the Committee Report issued by House Appropriations Committee for the Financial Services and General Government Appropriations Act for Fiscal Year 2018.

GSA has included a copy of that report on the enclosed thumb drive.

b. Since the GAO again included this topic in the 2017 High Risk List, will you share with me at the end of the 60-day period what steps GSA has taken to improve the FRPP?

GSA continues to take steps to improve the quality of data agencies submit to the FRPP. A complete status is covered in GSA's response dated August 21, 2017, to the Committee Report issued by House Appropriations Committee for the Financial Services and General Government Appropriations Act for Fiscal Year 2018.

GSA has included a copy of that report on the enclosed thumb drive.

2. Last year, then-GSA Administrator Denise Turner Roth stated that GSA hopes to work with the private sector as much as possible.

a. With respect to the GSA FRPP, what has GSA done to bring out the best mapping and geospatial knowledge base and expertise from the private sector to help with the FRPP?

GSA has engaged in discussions with private sector entities as well as Federal personnel about geospatially displaying FRPP data. GSA has developed the Real Property Management Tool and the Asset Consolidation Tool—geospatial tools for federal agencies submitting data to the FRPP that allow these agencies to visually display their data to identify potential opportunities for consolidations and co-locations.

GSA is also working within the executive branch to determine what data should be made publicly accessible in accordance with FASTA requirements concerning national security and FOIA exemptions.

b. What specifically does GSA plan to do with the geospatial community to make the FRPP more transparent and user-friendly for Members of Congress, decision-makers at the federal level, and most importantly, for my constituents searching for such data back in my district?

GSA will comply with the FASTA requirement to make the FRPP data publicly accessible, with the exception of data concerning national security and FOIA exemptions.

Questions regarding decision to halt consolidation of new FBI headquarters building:

1. My constituents and I were very troubled to learn that GSA was halting the process to consolidate the FBI headquarters building. These brave men and women really need this project to be completed in a timely and cost-efficient manner. They are currently in more than a dozen leased locations, in addition to the headquarters building. A consolidated headquarters would address security and operational concerns as well as save taxpayer dollars. In 2011, the FBI originally proposed completing the project through a ground-lease/leaseback arrangement. Instead, the GSA proceeded with an exchange approach, asserting the value of the Hoover building would be enough to cover the cost of a new consolidated headquarters. However, subsequently, GSA and the FBI returned to Congress seeking an additional $1.4 billion in appropriations on top of the exchange.

There are less complicated ways for this project to proceed, such as what was originally proposed by the FBI.

a. Does GSA commit to considering all of these options in finding a path forward on this critical project?

GSA is looking at all options.

b. What is GSA's timeline for proposing a path forward?

GSA and the FBI are currently working to identify acquisition solutions to meet the requirements of the new FBI headquarters. GSA and the FBI are working to report back to Congress by November 30, 2017.

STATEMENT OF
C. BRETT SIMMS
DIRECTOR OF CAPITAL ASSET MANAGEMENT SERVICE
OFFICE OF ASSET ENTERPRISE MANAGEMENT
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

July 12, 2017

Good morning, Chairman Barletta, Ranking Member Johnson, and Members of the Committee. Thank you for the opportunity to appear today to discuss the Department of Veterans Affairs (VA) real property portfolio, particularly its ongoing efforts to reuse or dispose of vacant property, and VA's compliance with the Federal Assets Sale and Transfer (FAST) Act of 2016.

VA Real Property Portfolio

VA's mission is distinct compared to other Federal agencies, in that we operate the Nation's largest integrated healthcare system, with more than 1,700 hospitals, clinics, community living centers, domiciliaries, readjustment counseling centers, and other facilities. Additionally, VA administers a variety of benefits and services, and operates 135 national cemeteries nationwide.

The Department owns and leases real property in hundreds of communities across the U.S. and overseas. Overall, VA maintains approximately 155 million square feet in 6,274 owned buildings, and more than 35,000 acres of land. Approximately 24.6 million square feet of space has been acquired through over 1,926 leases for the Department. VA's portfolio of nearly 180 million square feet is one of the largest in the Federal Government; and unlike many Federal agencies, VA owns the majority of its

portfolio – 86 percent of its square footage – which means real estate plays an important role in our overall asset management. Another aspect that separates VA from other Federal agencies is the fact that the average age of a VA-owned building is approaching 60 years old. Managing a portfolio of that size and age is complex, and takes a significant amount of resources. VA has more than $50 billion in capital needs over the next 10 years to modernize and maintain its infrastructure.

VA Real Property Disposal

One of Secretary Shulkin's top-five priorities includes modernizing VA's system, by focusing on infrastructure improvements and streamlining. In support of this priority, VA has identified 430 individual vacant buildings, totaling 5.9 million gross square feet that are geographically dispersed through VA campuses nationwide. These buildings are not being used to serve Veterans; and the $7 million in annual capital and operating expenses currently used to maintain these vacant buildings can be redirected to better serve Veterans. On June 20, 2017, the Secretary announced VA's plans to initiate disposal through demolition, sale, or transfer; or reuse actions for the 430 vacant identified buildings totaling 5.9 million gross square feet, over the next 24 months. When looking at possible reuse of these buildings, VA would look for internal reuse options different from the original use of the building, as well as possible repurposing for homeless housing via VA's Enhanced-Use Lease (EUL) program or as part of the federal surplus program under the McKinney-Vento Act. Because the buildings are currently categorized as vacant, these disposal and reuse actions will not change the delivery of services to Veterans.

VA evaluated the 430 vacant buildings and categorized them for disposal based on data regarding several factors. These factors included whether the buildings were classified as historic or historic eligible, had environmental concerns, or if there were more complex issues preventing disposal or reuse of the buildings. VA's next steps will be to begin performing due diligence on these buildings, with the first step being evaluating for potential reuse of the building. Reuse can be internal to VA for a different function than originally intended, or external to VA for purposes such as homeless

housing or historic reuse. After being evaluated for reuse, VA would work to complete any necessary due diligence to move forward with the desired reuse or disposal option. Once necessary due diligence is completed to ensure compliance with laws and regulations, the disposal or reuse transaction would be initiated. On June 20, 2017, Secretary Shulkin also announced that VA will review another 784 non-vacant, but underutilized buildings to determine if additional efficiencies can be identified to be reinvested in veterans' services. This effort will be incorporated as the Department works towards the goal of high performing healthcare networks.

Disposal and Reuse Challenges

While VA is working with an aggressive timeline to address its vacant buildings, there may be occasional impediments that delay the disposal or reuse of these buildings. Many disposal/reuse delays are due to the historic nature of much of VA's inventory. Impediments do not specifically prevent disposal/reuse, but they can significantly slow the process. VA's biggest challenges that can impact disposal or reuse timelines include (but are not limited to): compliance with the National Historic Preservation Act (specifically the Section 106 consultation requirements); funding availability to demolish given operational needs at VA medical centers; National Environmental Policy Act compliance/due diligence; the location/condition of the buildings on the campus, and stakeholder opposition to the disposal/reuse. VA welcomes support from Congress to streamline approval timelines and processes, so VA can better align owned assets more efficiently and effectively.

Available Outleasing Tools

While disposal and reuse challenges do exist, VA has made progress in its efforts to reduce its vacant and underutilized building footprint, and has aggressively pursued reuse and disposal strategies. Since 2004, this effort has resulted in the disposal or reuse of 1,059 assets totaling approximately 8.3 million gross square feet, and 932 acres. One of VA's most successful real property asset management tools is its EUL authority. The EUL authority allows VA to outlease assets to private and public-sector entities for the purpose of repurposing underutilized capital assets. The authority

currently allows VA to outlease vacant historic buildings and excess land, which can be transformed into housing for homeless Veterans, at little or no long-term carrying cost to VA. VA's EULs are authorized for maximum terms of up to 75 years. The program has provided significant benefits to VA in terms of annual cost savings; improved facilities consistent with VA's mission and operations; increased healthcare services; substantial private investment in VA's capital facilities and infrastructure; creation of jobs; and increased tax revenues for local communities.

VA is one of only a few Federal agencies with an EUL authority, and VA manages one of the most successful versions of these programs within the Federal Government. Approximately 4.5 million square feet of VA building space has been outleased in public-private partnerships through VA's EUL authority. This has resulted in over 2,700 operational housing units for homeless Veterans, Veterans that are at-risk for homelessness, and, in some situations, their families.

VA previously had broader EUL authority that allowed for mixed-use and other wide-ranging partnerships beyond supportive housing. Such uses were consistent with VA's mission and operations. While that authority lapsed in December 2011, VA has submitted draft legislation to Congress that proposes to expand the EUL authority beyond the scope of supportive housing. This would allow greater reuse flexibility of unneeded assets, and improve services for Veterans.

Another instrument available to the Department and other Federal agencies, is the historic outleasing program under Section 306121 of Title 54 of the United States Code. This authority allows VA to outlease or exchange historic properties with third parties, after consultation with the Advisory Council on Historic Preservation, provided the properties are not needed for current or projected agency purposes. Historic outleasing gives VA the ability to preserve historically significant assets while transferring maintenance and management costs to the private sector for a defined period.

Federal Assets Sale and Transfer (FAST) Act of 2016

The FAST Act of 2016 required that VA submit to the General Services Administration (GSA) recommendations regarding VA real properties that no longer meet VA's needs, and that potentially could be sold for proceeds or otherwise disposed. VA submitted this requested information on April 12, 2017. VA identified 15 sites consisting of 551 acres and approximately 2.3 million square feet. VA's real property submission comprised a substantial portion of the total Federal portfolio data gathered for the FAST Act government-wide. VA looks forward to continuing to support this effort and, in compliance with the Act, will submit updated real property data in January 2018.

Pittsburgh Highland Drive

In the fall of 2016, VA determined that the Pittsburgh, Highland Drive campus is excess to its needs. The campus totals 168 acres and approximately 752,326 square feet. The site has been vacant since it was closed in 2013, as a result of the consolidation of services and functions to other local VA hospitals. VA has been collaborating with GSA, and in May 2017 submitted a report of excess to GSA for disposal. It is anticipated that the timeframe for excessing the site could take 1 to 2 years, depending on the physical, environmental, and historic condition of the campus. During the excess process, it is anticipated that GSA and VA will engage the community at large, as part of required environmental and historic review processes.

Conclusion

VA has a complex real estate portfolio, and seeks to maintain the optimal mix of investments needed to provide care, services, and benefits to our Nation's Veterans. VA welcomes new or expanded tools to reduce its vacant and underutilized real property assets, establish viable reuses where possible, cut waste, and save taxpayer dollars. The FAST Act, in combination with expanded EUL authority, and other strategies, will help VA continue to address its most challenging assets.

Mr. Chairman and Members of the Committee, this concludes my statement. Thank you for the opportunity to testify before the Committee today. I would be happy to respond to any questions you may have.

Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management "Hearing on Implementing the Federal Assets Sale and Transfer Act (FASTA): Maximizing Taxpayer Returns and Reducing Waste in Real Estate"
C. Brett Simms, Director of Capital Asset Management Service, Office of Asset Enterprise Management, Department of Veterans Affairs

July 12, 2017

Questions for the Record from Congressman Jeff Denham

Question 1: On June 20, 2017, the U.S. Department of Veterans Affairs (VA) announced a plan to dispose of or reuse all of its vacant buildings in 24 months. Has the VA submitted its real property data and recommendations to the General Services Administration and Office of Management and Budget in accordance with the Federal Assets and Sale and Transfer Act (FASTA)?

VA Response: Yes, VA submitted its real property data as well as a list of 15 projects, comprised of 107 buildings, 2,335,894 square feet, and 551 acres of land to the General Services Administration (GSA) on April 12, 2017, in accordance with FASTA. We believe VA's submission to be the largest of any agency submission in terms of acreage and square footage by a wide margin.

Question 1a. If not, does VA plan to exercise the expedited disposal program in FASTA?

VA Response: VA submitted its recommendations to GSA on April 12, 2017, and the Office of Management and Budget, in accordance with FASTA.

Question 1b. If VA does not plan to utilize FASTA, why would the VA not take advantage of the law if the VA shares similar goals as FASTA?

VA Response: VA does plan to use FASTA – both for the initial submission as well as future iterations to be done annually. Some of the vacant buildings highlighted by Secretary Shulkin as being planned for reuse or disposal were not included on VA's initial FASTA submission for various reasons, including lack of severability from the surrounding campus, a desire to reuse internally, potential for Enhanced Use Lease, or necessitating complex actions prior to disposal that could not be completed in time for inclusion. VA continues to review its portfolio for disposal, consolidation, and reuse opportunities and will include assets not included on the first submission on subsequent submissions should they be appropriate.

Statement of
Mr. Kevin B. Acklin
Chief of Staff, Office of Mayor William Peduto
City of Pittsburgh, Pennsylvania
before the
House Committee on Transportation and Infrastructure
Subcommittee on Economic Development, Public Buildings, and Emergency Management

July 12, 2017

Chairman Barletta, Ranking Member Johnson, and Members of the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management: Thank you for the invitation to speak with you today. My name is Kevin Acklin, and I serve as the Chief of Staff to Mayor William Peduto of Pittsburgh. I am also the City's Chief Development Officer, and serve as the Chairman of our Urban Redevelopment Authority. Our City is at a moment of transformation, as our innovation continues to fuel a growing health care, education, and technology revolution to transform our once-industrial city into a thriving 21st century metropolis.

Even as we are poised to grow for the first time in two generations, Pittsburgh still faces significant challenges. We are a city that was built for twice as many residents as we now have. Combatting blight and stabilizing neighborhoods is an issue we continue to confront. Our redevelopment has not always been equitable in the past, and we constantly strive today to ensure access to opportunity for everyone across our City. Pittsburgh's infrastructure is antiquated and under-resourced, with some critical systems and facilities entering their second century.

In order to address our infrastructure challenges, the City undertook a recent assessment of our entire portfolio of public buildings and facilities. When our administration took office, a comprehensive list of all of our facilities did not even exist. We built that list and evaluated the conditions, necessary upgrades, and opportunity costs of nearly 300 facilities. For the first time, we are able to lay out a strategic investment plan for our police and fire stations and training centers, recreation centers, maintenance facilities, offices and scores of other properties.

Pittsburgh is now beginning a process of implementing the recommendations derived from this assessment. Through a robust public process, we are evaluating where there are opportunities to enhance existing facilities, consolidate others, and dispose of underutilized assets in a way that generates the most value to our residents. Our goal is to improve city services to residents and to continue to rebuild and expand our tax base and local economy.

A major opportunity to accelerate our facility optimization program would be for the City to gain control of the former Vetrans Affairs Medical Center, a 164-acre site that has been vacant for approximately four years and has been declared excess property by the federal government. All services were transferred to other facilities throughout the Pittsburgh region by 2013, and the site has sat vacant and unused ever since. The facility is very large and comprised of 19 buildings that, while secured, are depreciating rapidly. The buildings are not connected to typical utilities and they are not regularly inhabited. As Chairman Barletta pointed out on a recent tour, it is only a matter of time before a roof leaks or a pipe bursts, potentially going unnoticed for a long period and causing significant damage to the facility.

Gaining control of the site and partnering with the Federal government for its reuse will revolutionize first responder and emergency service response and delivery in Pittsburgh. The campus is remote and surrounded by woodlands, but is in close proximity to major highways and our East Busway for convenient access to Downtown Pittsburgh. The site could hold facilities that are currently scattered around the City, including the headquarters and training academies of our police, fire, and emergency management services; our garage and machine shop; and our emergency operations center, thereby unlocking those sites for development that will grow our City and tax base. Given our strong partnership with Allegheny County Chief Executive Rich Fitzgerald and the support of State Senator Randy Vulakovich who represents the site, we believe it could become a regional law enforcement and emergency management asset that could support not only the City, but the 129 other municipalities in our county. This process of relocation could make available a number of properties in dynamic markets, including our riverfronts, which could produce a higher return on investment to the public. Additionally, rehabilitation of the VA property with an eye toward storm water management will help to alleviate significant flooding issues downhill from the property.

We have worked over the past several years on plans for the VA site, and I commend the work of the GSA and the VA in being open and accessible through this process. We have been working with partners in both Departments and the property has recently been declared "surplus". We are now working to gain access to the site as quickly as possible. While the staffs of both agencies have been consummate professionals and dedicated public servants that have proven to be true partners with our team as we navigate this process; but, we all acknowledge that the process can be cumbersome and time-consuming.

For example, the VA had to complete various due diligence in surveying other government entities for proposed use and examining potential environmental and historic preservation issues in order for the process to be turned over to GSA. Now that GSA has jurisdiction, it seems that most, if not all, of these studies and surveys must be completed for a second time. Having a clear and well-defined process is important but we also wish to avoid redundancy and duplication that could get in the way of efficiently delivering services to residents. In much the same way that we are hoping to repurpose properties that are not providing value to our residents, we're hoping that the federal government will consider doing the same.

On behalf of the residents of Pittsburgh, I appreciate the opportunity to work together in a way that produces value to the City and the taxpayers while reducing the burden on the federal government. Thank you for the opportunity to speak to you today, and I am happy to answer any questions.

Implementing the Federal Assets Sale and Transfer Act (FASTA), Maximizing Taxpayer Returns and Reducing Waste in Real Estate

Testimony of Richard W. Painter[i]

July 12, 2017

For several decades, I have taught and published books and articles on corporate and securities law as well as government ethics. Much of my work has focused on the problem of monitoring the role of fiduciaries – whether corporate executives or government officials -- in business transactions and avoidance of self-dealing. Unfortunately, self-dealing by officers and directors remains a fact of life in some business organizations. Self-dealing is an even greater risk in government where collective action by taxpayers is more difficult than in even the largest of corporations, securities laws and corporate fiduciary duty laws often do not apply, and self-dealing politicians can divert the public's attention with emotionally driven political issues and then accuse their critics of being politically motivated.

Government real estate is one of the most vulnerable areas for self-dealing. The federal government owns a vast amount of real estate, indeed far more than any state government or private real-estate owner. The Federal Assets Sale and Transfer Act (FASTA) sets forth procedures for the government to sell and lease that real estate to assure efficiency, honesty and fairness to taxpayers.

My testimony does not analyze the specific provisions of FASTA but instead discusses broader concepts of ethics in government that must be observed in the implementation of FASTA. I also point out specific risks of elected and unelected government officials abusing their power over our government's vast real estate holdings to cut sweetheart deals for themselves, their family, campaign contributors and friends. There are substantial risks from allowing such unethical conduct by

government officials including waste of taxpayer funds and loss of public confidence in government.

A core principle underlying my analysis is that the private sector is inherently different from government because we expect people to enrich themselves in the private sector while adding value to the overall economy, but we do not expect, and indeed condemn self-enrichment in government. A government that allows its officials to enrich themselves from public service beyond the salary allotted to their office is kleptocracy (e.g. theft). Although kleptocracy may be a fact of life in many countries in the world, including some of the largest economies, Americans are not prepared to accept it here, and it is the duty of Congress to prevent it.

There are two fundamental ways of addressing conflicts of interest in business transactions. Imposing a flat prohibition on certain types of transactions by certain categories of fiduciaries is one approach. As I will discuss below this is often the more effective and simplest approach. Another more complex, and sometimes workable, approach is to allow a transaction with a fiduciary but impose rigorous mechanisms to monitor it for substantive and procedural fairness.

The first approach is incorporated into the law of trusts which often prohibits transactions between a trustee acting in his own self-interest and the trust. Although there are some exceptions, the general rule is that while a trustee is allowed to buy and sell real estate on behalf of the trust, the trustee is not allowed in his personal capacity to buy or sell real estate in a transaction with the trust. The trustee who wants to engage in such a transaction with the trust usually steps down and is succeeded by another trustee. A person thus must choose between being a trustee of the trust and personally transacting with the trust. The same person cannot have both roles. The trustee's profits from the trust are limited to the designated compensation received by the trustee for his services – no more and no less.

The second approach is embodied in much of corporate law which allows interested director and officer transactions provided they are (i) approved by a majority of the disinterested directors, (ii) approved by a majority of the disinterested shareholders, and/or are (iii) determined by a court or other neutral decision maker to be fair to the corporation and its shareholders. Most corporations implement stringent procedures to assure that these standards are complied with. Shareholders who are not happy with a transaction can challenge it with shareholder derivative suits or direct actions under state corporate law. In addition, federal and state securities laws also impose civil and criminal liability on anyone who misrepresents material facts, or fails to disclose material facts, about transactions. Although self-dealing by fiduciaries is a serious problem in the private sector, collectively these and other controls deter most of it.

Unfortunately most of these controls are absent in government. There is no parallel to the shareholder derivative suit. Individual citizens are often denied standing in their capacity as taxpayers to sue government officials for waste or self-dealing in government property. Whereas corporate officers and directors who lie in connection with securities transactions get sued, and can even go to jail, politicians tell lies – sometimes sarcastically characterized as "alternative facts" – to the public and get away with it. A corporate CEO who used speeches, press releases or social media or any other platform to communicate falsehoods to investors would at a minimum be removed and likely would be sued and perhaps even be put in jail. A politician who does the same may very well get re-elected.

For these reasons, it is far preferable that transactions involving government real estate and other government property be subjected to the first approach – a flat prohibition on business transactions between the government and its own officials.

When federal government property is sold, it should not be sold to a federal government official or to an entity in which a government official has a substantial financial interest. At a minimum the property should not be sold to a high ranking official – a Member of Congress or a cabinet officer or a member of the senior executive service -- who is in any way in a position directly or indirectly to influence the terms of the transaction. When federal property is leased, it should not be leased to a federal official or to an entity in which the official has a substantial financial interest. None of the profits from operation of the property should be shared by the lessor with a federal official. If they are the lease should be terminated. This is the simplest, the most cost effective, and the easiest way to prevent self-dealing by federal officials in government property.

In sum, the government official, like the trustee of a trust, should be required to choose. He can either assume a fiduciary role in government bestowed upon him by election or appointment, or he can transact with the government and profit from contracts with the government. He cannot do both. He cannot stand on both sides of the transaction.

Although the law does not always impose such a rule, it is the better rule for protecting the interests of taxpayers. Government agencies, such as the General Services Administration (GSA) may choose to restrict who they contract with by imposing such a restriction in the sale or lease of real property. GSA and other agencies thus may insert in a contract of sale, lease or other contract a provision that prevents an interest in the property, or in the profits from operating the property from going to a federal government official. And in those instances where GSA or another agency has wisely chosen to protect taxpayers in this manner the contractual provision should be strictly enforced.[ii]

Attempts by government officials to weasel around such conflict of interest provisions in sales agreements, leases and other contracts – for example by diverting profits from operation of leased federal real estate

to a trust of which the government official is a beneficiary – must be soundly rejected by GSA and by Congress in its oversight role over GSA. Contracts in government property are no place for setting up Enron style special purpose entities to receive monies that government officials are not themselves contractually entitled to receive.

Of course there are limits to this first approach – imposing a flat prohibition on contracting between the government and certain persons or corporations, trusts and other entities set up to benefit those persons. This approach works in the case of government officials themselves but such a prohibition is probably too broad if it were also to bar contracts with extended family members of government officials, friends and campaign contributors. The government should be allowed to contract with such persons, including conveying an interest in real property to such persons, but procedural and substantive measures should be implemented to assure that the taxpayers are receiving not only a good bargain, but the best possible bargain they can get.

And it is here that strict compliance with both the spirit and letter of FASTA and other applicable law is critically important. FASTA aims to reduce the inventory of federal property through sales and other transfers. It should not, however, become an excuse for federal officials to sell, lease or otherwise dispose of federal property at suboptimal times or at suboptimal prices in order to benefit private interests. Sweetheart deals for private interests, which may also be connected with friends or campaign contributors of federal officials, betray the taxpayers whose funds were used to acquire and maintain the federal properties in the first place (because the federal government has been running a deficit in almost every year for the past several decades, today's taxpayers are in effect still paying for expenditures that were made for government real estate many years ago).

It furthermore is crucial that laws be enforced, including the financial conflict of interest statute for federal employees, 18 U.S.C. 208, the

Office of Government Ethics impartiality rule, 5 CFR 2635.502, and the Emoluments Clause of the United States Constitution (prohibiting federal officials from receiving profits and benefits from dealings with foreign governments and entities controlled by foreign governments). Breach of any one of these critically important conflict of interest provisions by a federal official in connection with a sale, lease or other transfer or federal property should result in review of the contract itself for compliance with federal law and fairness to taxpayers, and in the case of larger contracts or contracts involving high ranking government officials, a thorough investigation by Congress.

In sum, federal officials charged with entering into, implementing and enforcing the terms of contract for the sale, lease or other disposition of federal property have a single overriding responsibility, which is to the federal government and the taxpayers who support it. It is the job of Congress to make sure that responsibility is carried out.

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[i] The opinions expressed in this testimony are my own and I am not testifying on behalf of any other person or organization.

[ii] There is considerable controversy over the GSA's lease for the Old Post Office building which, at the time the lease was entered into, was for the benefit of a private company owned by a private citizen, Donald. J. Trump. Mr. Trump's election to the presidency has raised significant issues under the lease and other applicable federal law. I am happy to provide my opinions on various aspects of this lease if requested by members of this Committee in questions after my testimony.

Submissions for the Record From Hon. Barletta

Jon Barlette

NOTICE & COMMENT

A Blog from the Yale Journal on Regulation and the ABA Section of Administrative Law & Regulatory Practice

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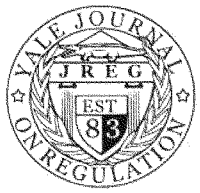

Did the GSA Properly Find Trump's "Full Compliance" With the D.C. Hotel Lease?

by Andy Grewal — Friday, Mar. 24, 2017

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Commentators have argued that the Trump Old Post Office LLC (Trump Hotel LLC) has violated its lease agreement with the General Services Administration (GSA) from the moment that Donald Trump took the Presidential oath. The lease agreement, which relates to the federally owned property through which the D.C. Trump Hotel operates its hospitality business, states that no elected official shall be "*admitted* to any share or part" of the lease or to "any benefit that may arise therefrom." See GSA Lease §37.19.* With an important exception, this restriction also extends to circumstances where the admittance occurs indirectly through the acquisition of an interest in a legal entity that is a party to the lease.

The GSA recently opined on whether Donald Trump's assumption of office established a violation of §37.19 and concluded that it did not. Its short letter, authored by Kevin Terry, GSA Senior Realty Contracting Officer, does not spell out the relevant legal analysis. Rather, it states that the Trump Hotel LLC is in "full compliance" with §37.19 based on its review of the

lease, discussions with Trump Hotel LLC representatives, and documents submitted by them. See GSA Letter, p.1 (Mar. 23, 2017).

Did the GSA get the §37.19 analysis right? It seems so, given the arguments that the Trump Hotel LLC lawyers made to support the GSA's determination. They argue that §37.19, by its plain terms, refers to a prospective event – the subsequent admittance of an elected official to the lease agreement. Though Trump may have been deemed to be admitted to the lease through his indirect interests in Trump Hotel LLC, that admittance occurred at a time when he was a private person, not an elected official. Thus, no admittance of an elected official has occurred. See GSA Letter, Exhibit 1.B (Letter from Morgan Lewis to Mr. Kevin Terry) (Feb. 10, 2017).

This argument makes sense. Suppose, for example, that an existing co-ed university decided to convert to an institution dedicated to the education of only women, and that it announced "no men shall be admitted to the university." Suppose further that many men were currently enrolled in the university as of the date of the announcement. Would the university have violated its new rule by virtue of the men's current enrollment? Of course not. The university would not have "admitted" any male students – they were already enrolled.

Under similar reasoning, no elected official was "admitted" to the GSA lease, or was "admitted" to any benefit arising from it. The lease agreement could have broadly prohibited any elected official from enjoying any benefit under the lease, but it instead prohibits only the admittance of an elected official. Section 37.19 thus differs from a statute like 18 U.S.C. §431, which voids a contract between a member of Congress and the federal government whether he became an elected official "before or *after*" the contract was entered into. See also Politico (Dec. 3, 2017) (quoting a former senior GSA official's interpretation of the lease: "The president-elect isn't going to be 'admitted' to the lease, he's already the tenant.").

But it's perhaps possible to read "admitted" in a different way, as a synonym for "permitted to enjoy." Under this interpretation, the GSA lease flatly bars any elected official from being "permitted to enjoy any share or part of this Lease, or to enjoy any benefit that may arise therefrom." And interpreted this way, the language would prohibit President Trump from enjoying any share or benefit, without regard to when he took office. The Trump Hotel LLC may have anticipated this in arguing that any contractual ambiguities over "admitted" must be interpreted against the drafter (here, the GSA). See Trump Hotel LLC Letter of Feb. 17, 2017, n.20.

In any event, the Trump Hotel LLC lawyers also present a second argument. They argue that even if Trump's taking of office constituted an admittance, his absence of any direct participation in the lease means that §37.19 has not been breached.

Section 37.19 contemplates that if a party to the lease is a "publicly held corporation or other entity," and an elected official acquires an interest in such an entity, no violation will arise if the lease operates "for the general benefit of such corporation or other entity," rather than for the benefit of the elected official. The Trump Hotel LLC lawyers argue that the lease is in fact for the benefit of Trump Hotel LLC, and not a sham designed to benefit President Trump personally. Probably to bolster this alternative argument, the Trump Hotel LLC has amended its internal operating agreement such that no distributions will be made to any entity in which President Trump owns an interest. (Trump maintains no direct ownership in Trump Hotel LLC.) See GSA Letter, Exhibit 1.B (Letter from Morgan Lewis to Mr. Kevin Terry) (Feb. 17, 2017), and Exhibit 1.C (Letter from Morgan Lewis to Mr. Kevin Terry) (Mar. 20, 2017). See also *Contract With Corporation Partly Controlled by Congressman*, 39 U.S. Op. Atty. Gen. 165, 1938 WL 1491 (May 19, 1938) (statutory prohibition regarding contracts between the federal government and public officials did not apply where a Congressman was the president of and owned 30% of the contracting entity).

The Trump Hotel LLC's alternative "entity" argument may very well be correct, though it is not as strong as the admittance argument. The exception in §37.19 applies to interests acquired in a "publicly held corporation or other entity," but it's unclear whether the "other entity" can be an entity that, like Trump Hotel LLC, is not publicly traded. (That potential interpretation, as well as the alternative one, does some degree of violence to the contractual language.) Also, where an elected official owns a majority equity interest in an entity, it's at least plausible to argue that any benefit provided to the entity is not "for the general benefit of such corporation or other entity," but rather is a benefit provided for the elected official who owns a majority equity stake in that entity. *Cf.* 39 U.S. Op. Atty. Gen. 165, 171 (reserving on whether to respect a corporation established by a Congressman solely to avoid statutory contracting prohibitions). Last, the Trump Hotel LLC's plan to prohibit *current* distributions to Trump does not foreclose the possibility that he has benefited from the lease agreement, where the otherwise undistributed amounts increase President Trump's capital account and therefore increase his potential *future* distributions.

The Trump Hotel LLC lawyers cite some authorities in favor of their entity argument, not further discussed here, and the counterarguments presented here are not the only items relevant to the analysis. But it is fair to say that the entity argument raises some thorny issues, especially as compared to the stronger admittance argument.

Regardless, the GSA was apparently persuaded by Trump Hotel LLC's arguments. It has issued Trump Hotel LLC an "estoppel certificate," meaning that the entity can conclusively rely on the GSA's §37.19 determination.

But this does not necessarily mean the controversy over the GSA lease has ended. A Washington, D.C. restaurant, Cork, has filed a lawsuit against Trump Hotel LLC and President Trump, and the lease may figure into that controversy. Cork's complaint assumes and obliquely relies on a violation of §37.19, but that litigation is in an early stage, and Cork still has plenty of time to finesse its litigation approach to take into account the recent GSA letter. The GSA lease thus could remain relevant in that litigation, depending on how things go.

On the Congressional side, two representatives have expressed significant dismay over the GSA's decision. They may themselves potentially make further inquiries, which could bring additional legislative attention to the GSA lease. Or, they may prod GSA officials to further investigate Mr. Terry's decision on behalf of the agency, and an investigation into the propriety of his determinations would renew the focus on §37.19.

Also, whatever the legality of the GSA lease, critics have largely couched their complaints in terms of broad conflicts-of-interest questions or policy issues, not in terms of careful legal arguments. Thus, though the GSA seems to have relied on the proper interpretation of §37.19, or, at the very least, relied on a permissible interpretation, there remains the political issue of whether it is appropriate for President Trump to "sit on both sides of a transaction." Consequently, we will probably continue to hear policy-based complaints about the Trump Hotel, even though the GSA found that §37.19 has not been violated.

Follow me on Twitter: @AndyGrewal

This post may be occasionally updated.

*The full text of §37.19 provides:

No member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Co-

lumbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; provided, however, that this provision shall not be construed as extending to any Person who may be a shareholder or other beneficial owner of any publicly held corporation or other entity, if this Lease is for the general benefit of such corporation or other entity.

This entry was tagged .

About Andy Grewal

Law Professor, University of Iowa

View all posts by Andy Grewal →

Cite As: Author Name, *Title*, YALE J. ON REG.: NOTICE & COMMENT (date), URL.

Report, "The Foreign Emoluments Clause and the Chief Executive," No. 2017-12, June 2017, by Andy S. Grewal, University of Iowa, College of Law, Submitted for the Record by Hon. Barletta

[This report is retained in committee files and is available at https://ssrn.com/abstract=2902391.]

Article, "Business Transactions and President Trump's 'Emoluments' Problem," by Seth Barrett Tillman, Harvard Journal of Law & Public Policy, Vol. 40, No. 3, Submitted for the Record by Hon. Barletta

[This article is retained in committee files and is available at https://ssrn.com/abstract=2957162.]

Letter of September 16, 1974, from Hon. Howard W. Cannon, Chairman, U.S. Senate Committee on Rules and Administration, to Hon. William B. Saxbe, Attorney General of the United States, U.S. Department of Justice, Submitted for the Record by Hon. Barletta

AND

Response letter of September 20, 1974, from Hon. Laurence H. Silberman, Acting Attorney General, U.S. Department of Justice, to Hon. Howard W. Cannon, Chairman, U.S. Senate Committee on Rules and Administration, Submitted for the Record by Hon. Barletta

[These letters are retained in committee files.]

Statement of

The Associated General Contractors of America

To the

U.S. House of Representatives'

Subcommittee on Economic Development, Public Buildings and Emergency Management under the Committee on Transportation & Infrastructure

For a hearing on

"Implementing the Federal Assets Sale and Transfer Act (FASTA): Maximizing Taxpayer Returns and Reducing Waste in Real Estate"

May 3, 2017

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 26,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

2300 Wilson Boulevard, Suite 300 • Arlington, VA 22201 • Phone: (703) 548-3118

Statement of
The Associated General Contractors of America
Transportation & Infrastructure Committee
Subcommittee on Economic Development, Public Buildings and Emergency Management
United States House of Representatives
July 12, 2017

Chairman Barletta, Ranking Member Johnson and members of the subcommittee, the Associated General Contractors of America (AGC) thanks you for all of your hard work in ensuring the enactment of the Federal Assets Sale and Transfer Act (FASTA) last year. This statute is among the most comprehensive and major steps forward in addressing the federal government's glut of underutilized, outdated and vacant real property. That stated, law for nearly seven months, FASTA has not yet been substantially implemented. Although there have been a number of small yet important steps forward, its significant reform potential is yet to be realized.

AGC—a national construction trade association representing more than 26,000 construction contractors, suppliers and service providers across the nation through a nationwide network of 92 chapters in all 50 states, DC, and Puerto Rico—is concerned that the major provisions of FASTA have not begun to move towards full implementation. The construction contractor community is eagerly awaiting the Public Buildings Reform Board's recommendations for monetizing up to $8 billion of underutilized and vacant federal real property. The sale of such properties has the potential to: create significant private construction economic activity in the form of new construction jobs that especially benefit middle class workers; generate new and reoccurring revenue for federal state and local government coffers; and spur broader economic renewal of surrounding areas previously burdened by these underutilized or vacant federal facilities.

In this statement, AGC puts forth the following in regards to FASTA implementation:

I. FASTA Success: Sale of the Cotton Annex; and
II. The Need to Establish the Public Buildings Reform Board

In addition, AGC adds the following topics involving federal interests in the realm of real property for the subcommittee's consideration:

III. The Need to Address the Federal Budget Scoring Rules
IV. Streamlining Duplicative Historical and Architectural Approval and Review Processes in the District of Columbia
    a. A Case Study: Georgetown West Heating Plant—A GSA Disposed Federal Facility

I. FASTA Early Success: Sale of the Cotton Annex

After about a decade of lying vacant, the U.S. General Services Administration (GSA) successfully auctioned off the Cotton Annex in Southwest, D.C., in February 2017. The building previously housed the U.S. Department of Agriculture (USDA)—who used it for office and warehouse space—until 2007. At that time, the USDA chose to vacate the facility, leaving GSA—and taxpayers—to cover its maintenance and repair responsibilities as it lay largely underutilized. For nearly ten years, GSA studied and

attempted to uncover interest to maximize the facility's use by the federal government. Those efforts were unsuccessful.

As mandated under FASTA, the GSA worked to sell the facility in December 2016 at fair market value at the highest and best use. In February 2017, GSA announced a winning $30.2 million bid for the property to a private real estate developer. As a result, the property will find a better use in the private sector in the absence of such use by government, generating new construction jobs and increased government tax revenues.

Members of this subcommittee worked hard to make his happen since the beginning of the decade. Issuing a report entitled, "Sitting on Our Assets,"[1] and holding a field hearing at the Cotton Annex, members of this subcommittee have long fought for common sense management of federal real estate. AGC, again, thanks the subcommittee for its long efforts and congratulates it on another victory.

II. The Need to Establish the Public Buildings Reform Board

Among the most important features of FASTA is the establishment of the Public Buildings Reform Board (PBRB or Board), tasked with identifying up to $8 billion in federal civilian real properties for sale. However, to date, no one has been nominated to serve on the PBRB. As a result, the bulk of the reforms in FASTA have yet to be implemented, as assembly of the Board is paramount to advancing the law's intentions and demands. Federal agencies that own underutilized or vacant properties lack the tools and motivation to maximize the value of such facilities on a significant scale. The PBRB's purpose is to uncover such ripe facilities and wrangle with recalcitrant agencies to do what makes sense for the American taxpayer and the public's interest in federal real property management.

AGC urges members of this subcommittee to work with the President, Speaker of the House, House Minority Leader, Senate Majority Leader and Senate Minority Leader to put forth nominees to fill the Board.

III. The Need to Address the Federal Budget Scoring Rules

A major impediment to federal agencies' making common-sense real property management decisions that maximize asset value remains with the way the Office of Management and Budget (OMB) and Congressional Budget Office (CBO) score capital improvements and leases. As it stands, CBO and OMB require Congress and federal agencies, respectively, to set aside budget authority for the full term of a long-term capital lease in year one, while short-term operating leases are scored on a year-by-year basis. The result has led to an overreliance on inefficient short-term leases, where federal ownership, long-term leases or public-private partnership opportunities may otherwise be available.

AGC urges the subcommittee to allow for a pilot program for a select number of projects/transactions to be exempted from these overly rigid scoring rules, and utilize a new set of scoring rules that both protect the public's interest and allow for common-sense transactions to occur.

[1] http://archives.republicans.transportation.house.gov/singlepages.aspx/979

IV. Streamlining Duplicative Historical Preservation Review Processes in the District of Columbia

While the reforms under FASTA help with federal agency's disposal of underutilized or vacant federal facilities, they do not address what happens next with that facility. American taxpayers may save on operation and maintenance costs for such facilities—once disposed—but how, if or when those facilities are efficiently utilized by the private sector remain subject to a host of state and local requirements. These requirements may include, but are not limited to zoning ordinances, design reviews, neighborhood planning approval, and historic preservation review boards.

For purposes of this statement, AGC would like to focus on various and duplicative historic preservation review boards that projects must obtain approval from in the District of Columbia in order to move forward. AGC urges Congress to take a common-sense approach to streamlining the duplicative project reviews and approvals within the District of Columbia in an effort to further improve our nation's capital for the benefit of both its residences and all citizens.

b. A Case Study: Georgetown West Heating Plant—A GSA Disposed Federal Facility

Background

The West Heating Plant in the Georgetown neighborhood of Washington, D.C., was built in 1948 to provide steam to federal buildings on the west side of the facility. It was decommissioned in 2000 and subsequently served as a fuel storage site and parking facility for government vehicles in one of the most expensive real estate areas of the city. The building is an aesthetically unpleasing concrete block. In its dozen years of underutilization, taxpayers paid more than $3.5 million to maintain the facility and lost out on significant opportunities to capitalize on the site in the form of new and reoccurring tax revenues and construction jobs.

On Monday, June 19, 2012, members of this subcommittee held a field hearing[2]—as a part of the "Sitting on Our Assets" effort—at the plant. GSA had announced that it planned to sell the plant in October 2011,[3] and posted a large "Coming Soon" banner—with a link to the GSA auction site—on the facility the day of the hearing. In March 2013, GSA auctioned the facility to a private developer for $19.5 million.

Impediments to Construction & Efficient Use after Disposal

The plant was sold in 2013. The plans for constructing a new facility that could generate tens of millions of dollars in new construction jobs have yet to be approved by the numerous federal and District of Columbia historic preservation review boards. For seventeen years, the plant has not been utilized for its most economically efficient use thanks to government red tape—both at the federal and D.C., local government levels. At the rate of approval, it may take another 17 years before something worthwhile is constructed.

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[2] http://archives.republicans.transportation.house.gov/hearings/hearingdetail.aspx?NewsID=1649
[3] http://www.thegeorgetowndish.com/thedish/georgetown-v-house-republicans-west-heating-plant

In certain areas of the District of Columbia, construction projects must be reviewed and approved by not one, nor two, but at least four historic preservation bodies. For example, in the case of the West Heating Plant, designs for redevelopment have to be approved by:

- The U.S. Commission of Fine Arts (CFA);
- Old Georgetown Board (a sub-authority of the CFA);
- The D.C., Historic Preservation Review Board; and
- The Mayor's Agent for Historic Preservation.

To date, the CFA has approved designs for the redevelopment project, but the Old Georgetown Board has not, after years of negotiating on subjective aesthetics concerning the historic value of what is essentially a concrete block industrial structure. The local D.C., review entities have not yet issued their approval.

Both the CFA and Old Georgetown Boards were created by federal statute, while the D.C., entities are products of local government authority, itself subject to congressional oversight and power. As such, AGC urges this subcommittee to review these impediments and work with its colleagues on the Oversight and Government Reform Committee to streamline the historic preservation review process in the District of Columbia.

Submissions for the Record From Hon. Johnson, Jr., of Georgia

Subject: RE: Certification of Opening Date
Date: Tue, 29 Nov 2016 01:41:48 +0000
From: [redacted] trumporg.com>
To: Kevin Terry - WPRA <[redacted]>
Cc: [redacted] trumporg.com>, "Brett Banks (WPT-C)" <[redacted]>, "Paula Demuth (LDW)" <[redacted]>, "Shapour Ebadi - WPS" <[redacted]>, [redacted] trumporg.com>
Message-ID: <DM5PR20MB158082D755425D39BC9668D1A68D0@DM5PR20MB1580.namprd20.prod.outlook.com>
MD5: f33d4861ab261c767c0363779b513908

Thank you Kevin

From: Kevin Terry - WPRA [[redacted]]
Sent: Monday, November 28, 2016 3:10 PM
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>; Brett Banks (WPT-C) <[redacted]>; Paula Demuth (LDW) <[redacted]>; Shapour Ebadi - WPS <[redacted]>; [redacted] trumporg.com>
Subject: Certification of Opening Date

[redacted],

Attached please find a pdf. of the fully executed Certification confirming the actual Opening Date for Trump Old Post Office, LLC (hard-copy to follow).

Best Regards,

Kevin M. Terry

Senior Realty Contracting Officer

US General Services Administration

301 7th Street, SW

Washington, DC 20407
Desk: [redacted]

Cell: [redacted]

Subject: Fwd: Release of documents to the U.S. House of Representatives Committee on Oversight and Government Reform (Committee)
Date: Tue, 3 Jan 2017 13:37:36 -0500
From: Kevin Terry - WPRA <[redacted]>
To: "Brett Banks (WPT-C)" <[redacted]>
Message-ID: <CAKiQyU-fZtKndAXbNiZ1BgSaoPiMUKsM1=5zayDw=90+PXOtHg@mail.gmail.com>
MD5: 74a61aca35dacb6e2727d85f55346f71
Attachments: Letter No. 17-01.03.2017 [Documents Transmitted to U.S. House of Representatives Committee].pdf

---------- Forwarded message ----------
From: **Kevin Terry - WPRA** <[redacted]>
Date: Tue, Jan 3, 2017 at 12:32 PM
Subject: Release of documents to the U.S. House of Representatives Committee on Oversight and Government Reform (Committee)
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>, [redacted] trumporg.com>

Dear [redacted],

Attached, please find a letter related to GSA's response to members of Congress, for documents in unredacted form pertaining to the Old Post Office.

Feel free to call me directly at [redacted] if you have any concerns or questions,

Best Regards,

--
Kevin Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

--

Kevin Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

Subject: Certification of Opening Date
Date: Mon, 28 Nov 2016 15:10:03 -0500
From: Kevin Terry - WPRA <[redacted]>
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>, "Brett Banks (WPT-C)" <[redacted]>, "Paula Demuth (LDW)" <[redacted]>, Shapour Ebadi - WPS <[redacted]>, [redacted] trumporg.com>
Message-ID: <CAKiQyU94c-S25CNkozqti16ni4yf+kG35=Hs6vuO=4TA-fYAFw@mail.gmail.com>
MD5: d1666ecf097e5b8a74e15da83d9a6f8a
Attachments: Letter 11.28.2016 [Certification of Opening Date].pdf ; Letter 11.28.2016 [Certification of Opening Date - attachment].pdf

[redacted]

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Best Regards,

Kevin M. Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk [redacted]
Cell: [redacted]

Subject: Re: Canceled: 2:15pm Coffee Kevin Terry
Date: Wed, 16 Nov 2016 18:02:04 -0500
From: Kevin Terry - WPRA <[redacted]>
To: [redacted] trumporg.com>
Bcc: [redacted]
Message-ID: <-7258138848631851873@unknownmsgid>
MD5: 4191a1ca1c761282d8ebe0a6a0c49de6

Congratulations,
Let me know when you need that coffee break.
Best Regards,
KT
Sent from my iPhone

On Sep 14, 20 at 3:09 PM, [redacted] trumporg.com> wrote:

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<mime-attachment.ics>

Subject: RE: Certification of Opening Date
Date: Tue, 29 Nov 2016 01:41:48 +0000
From: [redacted]trumporg.com>
To: Kevin Terry - WPRA [redacted]>
Cc: [redacted]trumporg.com>, "Brett Banks (WPT-C)" [redacted]>, "Paula Demuth (LDW)" [redacted]>, "Shapour Ebadi - WPS" [redacted]>, [redacted]trumporg.com>
Message-ID: <DM5PR20MB158082D755425D39BC9668D1A68D0@DM5PR20MB1580.namprd20.prod.outlook.com>
MD5: 8f5b9c0937ec809d36a6bfb1f037a071

Thank you Kevin

From: Kevin Terry - WPRA [redacted]
Sent: Monday, November 28, 2016 3:10 PM
To: [redacted]trumporg.com>
Cc: [redacted]trumporg.com>; Brett Banks (WPT-C) <[redacted]>; Paula Demuth (LDW) [redacted]>; Shapour Ebadi - WPS [redacted]>; [redacted]trumporg.com>
Subject: Certification of Opening Date

[redacted],

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Best Regards,

Kevin M. Terry

Senior Realty Contracting Officer

US General Services Administration

301 7th Street, SW

Washington, DC 20407
Desk: [redacted]

Cell: [redacted]

Subject: Automatic reply: Trump's DC Hotel Lost More Than $1M In Its First Two Months
Date: Wed, 25 Jan 2017 03:31:05 +0000
From: [redacted] trumporg.com>
To: [redacted]
Message-ID: <46705f3e56fd415b96490f833cf70d68@DM5PR20MB1580.namprd20.prod.outlook.com>
MD5: 95ec0ebf8cef1c07f12d8db608985ab3

Thank you for your email. This email address is no longer active and the emails received here will not be read or forwarded.

To assist you in your inquiry, please contact the individuals listed below. For general inquiries, please contact The Trump Organization at [redacted] or [redacted] at [redacted] @trumporg.com

Trump Hotels & Scion: [redacted] @trumphotels.com
Ivanka Trump Brand: [redacted] @ivankatrump.com
Trump Golf: [redacted] @trumporg.com
Construction: [redacted] @trumporg.com
Marketing & Public Relations: [redacted] @trumporg.com
Interior Design: [redacted] @trumporg.com

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Subject: Re: Canceled: 2:15pm Coffee Kevin Terry
Date: Wed, 16 Nov 2016 22:34:32 -0500
From: Kevin Terry - WPRA <[redacted]>
To: [redacted] trumporg.com>
Message-ID: <CAKiQyU8oJwcDJoSJoBzvL2YsYZAtLwyvpLNJjKMSE8jeueaAew@mail.gmail.com>
MD5: 4c0def9325323e28502e239bf16dce9b

Nothing on the radar for NYC but was up in Rochester two weekends ago for a girls U-14 Hockey Tournment. The Canadian teams gave our girls a rough go but it was a great weekend.

Talk soon.
KT

On Wed, Nov 16, 2016 at 7:30 PM, [redacted] trumporg.com> wrote:

YES! I look forward to this raincheck. Will let you know when I am next in DC. Do you have any plans to be in NYC?

From: Kevin Terry - WPRA [[redacted]]
Sent: Wednesday, November 16, 2016 6:02 PM
To: [redacted] trumporg.com>
Subject: Re: Canceled: 2:15pm Coffee Kevin Terry

Congratulations,

Let me know when you need that coffee break.

Best Regards,

KT

Sent from my iPhone

On Sep 14, 20 at 3:09 PM, [redacted] trumporg.com> wrote:

This e-mail message, and any attachments to it, are for the sole use of the intended recipients, and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email message or its attachments is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, while the company uses virus protection, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

<mime-attachment.ics>

--

Kevin Terry

US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

Subject: Fwd:
Date: Fri, 11 Nov 2016 21:27:30 -0500
From: Kevin Terry - WPRA <[redacted]>
To: Kevin Terry <[redacted]>
Bcc: [redacted] trumporg.com>, "Tim Tozer (LDW)" <[redacted]>, "Brett Banks (WPT-C)" <[redacted]>
Message-ID: <7863797756162567314@unknownmsgid>
MD5: dddfab6104cc10a1379f4804df8a747a

FYI-
A fair amount of nonsense.

KT
Sent from my iPhone

Begin forwarded message:

From: [redacted]@buzzfeed.com>
Date: November 11, 2016 at 4:34:14 PM EST
To: Kevin Terry - WPRA <[redacted]>

https://www.buzzfeed.com/aramroston/federalagencyinbusinesswithtrump?utm_term=.lePQNBAb#.vxerKknJ

Subject: RE: Canceled: 2:15pm Coffee Kevin Terry
Date: Thu, 17 Nov 2016 00:30:01 +0000
From: [redacted] trumporg.com>
To: Kevin Terry - WPRA <[redacted]>
Message-ID:
<DM5PR20MB15804CFAB33BDD287E9A79C2A6B10@DM5PR20MB1580.namprd20.prod.outlook.com>
MD5: def1dffc45c4a0ef2e7ce21119ba54a3

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Sent: Wednesday, November 16, 2016 6:02 PM
To: [redacted] trumporg.com>
Subject: Re: Canceled: 2:15pm Coffee Kevin Terry

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KT

Sent from my iPhone

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<mime-attachment.ics>

Subject: Read: Certification of Opening Date
Date: Mon, 28 Nov 2016 21:24:10 +0000
From: [redacted]trumporg.com>
To: [redacted]>
Message-ID: <DM5PR20MB15803D9687C1B560DD433EB4A68A0@DM5PR20MB1580.namprd20.prod.outlook.com>
MD5: ebbc63954d4267f27390bd27aff06bcf

Your message

To: [redacted]
Subject: Certification of Opening Date
Sent: Monday, November 28, 2016 3:10:03 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Monday, November 28, 2016 4:24:10 PM (UTC-05:00) Eastern Time (US & Canada).

Subject: RE: Certification of Opening Date
Date: Mon, 28 Nov 2016 21:00:59 +0000
From: [redacted] trumporg.com>
To: Kevin Terry - WPRA [redacted]
Message-ID: <BLUPR20MB0483C9F1B3E4577DE3BE3905DF8A0@BLUPR20MB0483.namprd20.prod.outlook.com>
MD5: c92804b666b59579bb07666ff8992825

Thank you Kevin. I hope all is well.
Best,
[redacted]

TRUMP
THE TRUMP ORGANIZATION

[redacted]
Executive Vice President & Chief Legal Officer
725 Fifth Avenue | New York, NY | 10022
p [redacted] | f [redacted]
[redacted] @trumporg.com | trump.com

Follow me on Twitter: [redacted]
Follow me on Facebook

From: Kevin Terry - WPRA [[redacted]]
Sent: Monday, November 28, 2016 3:10 PM
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>; Brett Banks (WPT-C) <[redacted]>; Paula Demuth (LDW) [redacted]; Shapour Ebadi - WPS <[redacted]>; [redacted] trumporg.com>
Subject: Certification of Opening Date

[redacted],

Attached please find a pdf. of the fully executed Certification confirming the actual Opening Date for Trump Old Post Office, LLC (hard-copy to follow).

Best Regards,

Kevin M. Terry

Senior Realty Contracting Officer

US General Services Administration

301 7th Street, SW

Washington, DC 20407
Desk: [redacted]

Cell: [redacted]

Subject: Fwd: Release of documents to the U.S. House of Representatives Committee on Oversight and Government Reform (Committee)
Date: Tue, 3 Jan 2017 13:37:36 -0500
From: Kevin Terry - WPRA [redacted]
To: "Brett Banks (WPT-C)" <[redacted]>
Message-ID: <CAKiQyU-fZtKndAXbNiZ1BgSaoPiMUKsM1=5zayDw=90+PXOtHg@mail.gmail.com>
MD5: 2a7fd95b1971783b6495d70f85c02168
Attachments: Letter No. 17-01.03.2017 [Documents Transmitted to U.S. House of Representatives Committee].pdf

---------- Forwarded message ----------
From: **Kevin Terry - WPRA** <[redacted]>
Date: Tue, Jan 3, 2017 at 12:32 PM
Subject: Release of documents to the U.S. House of Representatives Committee on Oversight and Government Reform (Committee)
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>, [redacted] trumporg.com>

Dear [redacted],

Attached, please find a letter related to GSA's response to members of Congress, for documents in unredacted form pertaining to the Old Post Office.

Feel free to call me directly at [redacted] if you have any concerns or questions,

Best Regards,

--
Kevin Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk [redacted]
Cell: [redacted]

--

Kevin Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

Subject: Certification of Opening Date
Date: Mon, 28 Nov 2016 15:10:03 -0500
From: Kevin Terry - WPRA <[redacted]>
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>, "Brett Banks (WPT-C)" <[redacted]>, "Paula Demuth (LDW)" <[redacted]>, Shapour Ebadi - WPS <[redacted]>, [redacted] trumporg.com>
Message-ID: <CAKiQyU94c-S25CNkozqti16ni4yf+kG35=Hs6vuO=4TA-fYAFw@mail.gmail.com>
MD5: a94f4c37d63712aa226ddc861a722168
Attachments: Letter 11.28.2016 [Certification of Opening Date].pdf ; Letter 11.28.2016 [Certification of Opening Date - attachment].pdf

[redacted]

Attached please find a pdf. of the fully executed Certification confirming the actual Opening Date for Trump Old Post Office, LLC (hard-copy to follow).

Best Regards,

Kevin M. Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

Subject: Release of documents to the U.S. House of Representatives Committee on Oversight and Government Reform (Committee)
Date: Tue, 3 Jan 2017 12:32:51 -0500
From: Kevin Terry - WPRA [redacted]
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>, [redacted] trumporg.com>
Message-ID: <CAKfQyU_fP9ZHtz0K5jSXmUBRiB6+qr0NaKt-txYVFOcfbPDAxw@mail.gmail.com>
MD5: 76bb4217c29f49b02cb23b8555e6fd14
Attachments: Letter No. 17-01.03.2017 [Documents Transmitted to U.S. House of Representatives Committee].pdf

Dear [redacted]

Attached, please find a letter related to GSA's response to members of Congress, for documents in unredacted form pertaining to the Old Post Office.

Feel free to call me directly at [redacted] if you have any concerns or questions,

Best Regards,

--

Kevin Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

Subject: Fwd: Release of documents to the U.S. House of Representatives Committee on Oversight and Government Reform (Committee)
Date: Tue, 3 Jan 2017 13:37:16 -0500
From: Kevin Terry - WPRA <[redacted]>
To: "Tim Tozer (LDW)" <[redacted]>
Message-ID: <CAKiQyU-GahWpbbXvS60eg2hb90WKJ-bRsLDTAjF_-+UFkGAK-w@mail.gmail.com>
MD5: a121018685788133d032f364308d1f18
Attachments: Letter No. 17-01.03.2017 [Documents Transmitted to U.S. House of Representatives Committee].pdf

Tim,

FYI, for your record.
KT
---------- Forwarded message ---------
From: **Kevin Terry - WPRA** <[redacted]>
Date: Tue, Jan 3, 2017 at 12:32 PM
Subject: Release of documents to the U.S. House of Representatives Committee on Oversight and Government Reform (Committee)
To: [redacted] trumporg.com>
Cc: [redacted] trumporg.com>, [redacted] trumporg.com>

Dear [redacted],

Attached, please find a letter related to GSA's response to members of Congress, for documents in unredacted form pertaining to the Old Post Office.

Feel free to call me directly at [redacted] if you have any concerns or questions,

Best Regards,

--
Kevin Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

--

Kevin Terry
Senior Realty Contracting Officer
US General Services Administration
301 7th Street, SW
Washington, DC 20407
Desk: [redacted]
Cell: [redacted]

Federal Agency Doing Business With Trump Is Trying To Avoid A Massive Conflict Of Interest

By Aram Roston

For the first time, federal officials have acknowledged a potential conflict of interest that faces incoming president Donald Trump over his high-profile hotel deal with the United States government. And the federal agency that's involved wants to talk to Trump's transition team about it before he takes the oath of office.

In 2012, the General Services Administration agreed to lease the Old Post Office Building — a landmark building just blocks from the White House — to Trump's organization so that the mogul could turn it into a luxury hotel. In the complicated 109-page lease, Trump is required to pay the GSA $3 million a year plus a portion of his revenue, and he has to abide by a complex set of restrictions regarding what he can do and how he can build.

But once Trump becomes president, he will have authority over the GSA and will be able to fire its administrator at will, raising profound issues of a conflict.

Questioned about that conflict, a GSA spokesperson sent a statement to BuzzFeed News: "Prior to Mr. Trump taking the oath of office, GSA plans to coordinate with the President-elect's transition team to allow a plan to be put in place to identify and address any potential conflict of interest relating to the Old Post Office building."

Trump spokesperson Hope Hicks did not respond to emailed questions about the matter.

It's been extensively reported that Trump often does not pay his bills, and this has been a characteristic business practice for decades. If Trump's company stops paying rent to the US government, shortchanges the taxpayer on revenue sharing, or harms the priceless landmark in any way, it is the GSA that would have to enforce the lease.

"Under the contract the only way the GSA can enforce rights is by litigating against him," said Professor Steven L. Schooner, who teaches federal contracting law at George Washington University Law School. "Is the GSA going to litigate against the president?" Schooner pointed out that the GSA will be at a massive disadvantage in any dealings with the Trump company.

"Imagine the poor GSA employee that has to negotiate that annual sum with the president's daughter or son," he said.

As BuzzFeed News has previously reported, Trump won control of the Old Post Office Building in a highly unusual process. His company made representations to the

government about its architect and financial backing to beat out competitors from better known hotel chains, and then reversed itself once it won the right to build the hotel.

He gave his children a share in the property for free. And court records show that he had two sets of revenue projections for the deal.

Peter Smirniotopoulos, an adjunct professor of real estate at George Washington University School of Business, said that the GSA is "clearly not going to take enforcement action against a company founded and set up by the person who is now the president of the United States!"

Kenneth Gross, an ethics attorney at the law firm Skadden, Arps, Slate, Meagher and Flom said it is a bad situation that creates a potential for conflict, but he points out that the President is specifically exempt from conflict-of-interest laws that apply to other government officials.

Trump and three of his children — Ivanka, Eric, and Donald Jr. — own the lease and manage the hotel through a web of holding companies. Trump's children and a lawyer have told news organizations that Trump will put his assets in a blind trust and that the businesses will be managed by his children. Ethics experts contend that such a blind trust would not solve Trump's conflicts: His properties are well known to him, so the trust would not be truly blind, and his children, who would manage the hotel, have interests directly aligned with his.

To truly resolve the conflict, Smirniotopoulos said, they would have to divest. Or, he said, Trump and his children could sell their holdings in the management company that runs the company, and then put their passive ownership interest in a genuinely blind trust managed by an independent trustee.

Schooner, the professor at George Washington University, said the GSA should just breach the contract and break the lease, even if Trump sues the government. But for the president to remain in business with the government in such a glaring way creates a major problem, he argued. "If this is the world we live in now, one where there is no principle or rules, just tell me that," he said, "But if we are going to be a nation of rules, this is a horrible, horrible situation."

Trump faces other potential conflicts of interest.

As BuzzFeed has reported, Trump mortgaged the federal lease to Deutsche Bank, a German bank that is a frequent lender to him. The US government is reportedly seeking to recover $14 billion from the bank to settle old mortgage securities cases.

Meanwhile Trump has himself said that his tax returns are being audited by the Internal Revenue Service. The auditors will now face the fact that the man whose taxes they are reviewing is the most powerful in the world, and can easily replace their boss.

Letter and exhibits of March 23, 2017, from Kevin M. Terry, Contracting Officer, U.S. General Services Administration, to Donald J. Trump, Jr., Trump Old Post Office LLC, c/o the Trump Organization

[These materials are retained in committee files.]

GSA Public Buildings Service

February 10, 2017

Via E-Mail and Overnight Delivery

Trump Old Post Office LLC
c/o The Trump Organization
725 Fifth Avenue, 25th Floor
New York, New York 10022
Attn: Donald J. Trump, Jr.

Re: Ground Lease, dated as of August 5, 2013, by and between the United States of America, acting by and through the Administrator of General Services, and Trump Old Post Office LLC (as amended, the "Lease")[1]

Dear Mr. Trump:

As you are aware, Section 37.19 of the Lease provides, in full, as follows:

> *No member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; provided, however, that this provision shall not be construed as extending to any Person who may be a shareholder or other beneficial owner of any publicly held corporation or other entity, if this Lease is for the general benefit of such corporation or other entity.*

Questions regarding the applicability of the above-quoted section of the Lease to Donald J. Trump and Trump Old Post Office LLC ("Tenant") have been, and continue to be, raised. GSA previously issued a public statement on the matter providing that "no determination regarding the Old Post Office can be completed until the full circumstances surrounding the President-elect's business arrangements have been finalized and he has assumed office."

On January 20, 2017, Mr. Trump was sworn into office as the 45th President of the United States. GSA has continued to publicly state that no determination has yet been made with respect to Section 37.19 of the Lease as it pertains to Tenant and President Trump, and that the agency is committed to making a determination regarding the matter as expeditiously as possible after obtaining a full and complete understanding of Tenant's current organizational structure, including the interests of President Trump. To that end, I thank you and your organization for meeting with us to more fully explain Tenant's current organizational structure, and otherwise being accessible and responsive to our requests for access to documents demonstrating Tenant's current structure. GSA appreciates your cooperation in this matter.

[1] Capitalized terms used but not defined herein shall have the meaning given to them in the Lease.

U.S. General Services Administration
301 7th Street SW
Washington, DC 20407-0001
www.gsa.gov

The purpose of this letter is to summarize GSA's understanding of Tenant's current organizational structure based on our recent meetings and review of documents, and to request a written submission from Tenant setting forth your position regarding your current compliance with the Lease, specifically Section 37.19.

For purposes of convenience, our current understanding of Tenant's organization structure is set forth below.

The Ownership Interests in Trump Old Post Office LLC

GSA understands that the following individuals and/or entities have an ownership interest in Trump Old Post Office LLC:

- DJT Holdings LLC
- DJT Holdings Managing Member LLC
- Don OPO LLC
- Donald J. Trump Revocable Trust
- Donald J. Trump, Jr. Revocable Trust
- Eric OPO LLC
- Eric Trump Revocable Trust[2]
- Ivanka OPO LLC[3]
- Ivanka OPO Hotel Manager LLC
- Ivanka Trump Revocable Trust
- Trump Old Post Office LLC
- Trump Old Post Office Member Corp.
- OPO Hotel Manager LLC[4]
- OPO Hotel Manager Member Corp.[5]

---

[2] As part of your response to this letter, we request that you confirm GSA's understanding that neither President Trump nor The Donald J. Trump Revocable Trust is a beneficiary or trustee of the Eric F. Trump Revocable Trust, Ivanka Trump Revocable Trust, or Donald J. Trump, Jr. Revocable Trust.

[3] GSA understands that Ivanka Trump's husband, Jared Kushner, has accepted a position with the current Administration. It is our further understanding that Mr. Kushner has, or will, file necessary confidential financial disclosure forms which, among other things, will include among his listed assets Ivanka Trump's interests in and flowing from Tenant. It is our further understanding that Mr. Kushner has, or will, recuse himself from participating in, among other things, any matters related to the Lease. Please confirm these understandings in your response to this letter.

[4] The OPO Hotel Manager LLC serves as the Operator, which is defined in the Lease to mean "the operator and manager of the operations of the Hotel." Lease, Article I. Please confirm GSA's understanding, as part of your response to this letter, that the OPO Hotel Manager LLC does not hold any ownership interest in Tenant.

[5] See Footnote 4.

We further understand that the ownership interest is as set forth in the following charts:

The members of Trump Old Post Office LLC, a Delaware limited liability company, are as follows:

Name	Status
DJT Holdings LLC	Member
Ivanka OPO LLC	Member
Don OPO LLC	Member
Eric OPO LLC	Member
Trump Old Post Office Member Corp	Managing Member

Non-Individual Direct and Indirect Members of Tenant:

The members of DJT Holdings LLC, a Delaware limited liability company, are as follows:

Name	Status
DJT Holdings Managing Member LLC	Managing Member
Donald J. Trump Revocable Trust	Member

The members of DJT Holdings Managing Member LLC, a Delaware limited liability company, are as follows:

Name	Status
Donald J. Trump Revocable Trust	Sole Member

The members of Ivanka OPO LLC, a Delaware limited liability company, are as follows:

Name	Status
Ivanka Trump Revocable Trust	Sole Member

The members of Don OPO LLC, a Delaware limited liability company, are as follows:

Name	Status
Donald J. Trump, Jr. Trump Revocable Trust	Sole Member

The members of Eric OPO LLC, a Delaware limited liability company, are as follows:

Name	Status
Eric F. Trump Revocable Trust	Sole Member

The members of Trump Old Post Office Member Corp., a Delaware corporation, are as follows:

Name	Status
DJT Holdings Managing Member LLC	Member
Ivanka OPO LLC	Member
Don OPO LLC	Member
Eric OPO LLC	Member

OPO Hotel Manager LLC, a Delaware limited liability company, is the Operator, and its members are as follows:

Name	Status
DJT Holdings LLC	Member
Ivanka OPO Hotel Manager LLC	Member
Don OPO Hotel Manager LLC	Member
Eric OPO Hotel Manager LLC	Member
OPO Hotel Manager Member Corp	Managing Member

Non-Individual Direct and Indirect Members of OPO Hotel Manager LLC:

The members of OPO Hotel Manager Member Corp, a Delaware corporation, are as follows:

Name	Status
DJT Holdings Managing Member LLC	Member
Ivanka OPO LLC	Member
Don OPO LLC	Member
Eric OPO LLC	Member

GSA understands that in accordance with the operating agreements of the limited liability companies listed above, profits, losses, and other cash distributions are allocated among the members in accordance with their respective percentage interests in the entity. GSA further understands that the limited liability companies listed above maintain capital accounts for each of the members.

The Officers, Directors, and Managers

We understand that President Trump is not an officer, director, manager, employee, or other official in any of the entities listed in Section I above. We further understand that President Trump resigned from each and every office and position held in any of the entities listed in Section I above.

The Donald J. Trump Revocable Trust

We understand that the property of the Donald J. Trump Revocable Trust ("Trust") includes interests in DJT Holdings LLC and DJT Holdings Managing Member LLC. We further

understand that the Trust has a membership interest in DJT Holdings LLC and DJT Holdings Managing Member LLC. In turn, DJT Holdings Managing Member LLC holds an interest in Trump Old Post Office Member Corp., which holds an interest in Tenant. Further, DJT Holdings LLC holds a membership interest in Tenant. As noted in Section I, profits, losses, and other cash distributions are allocated among the members of the various limited liability companies in accordance with their respective percentage interests in the entity.

We understand that Donald J. Trump, Jr. is the Trustee of the Trust, that Allen Weisselberg is the Business Trustee of the Trust, and that Eric F. Trump is the Chairman of the Advisory Board of the Trust. We understand that one of the responsibilities of the trustees of the Trust is to hold and administer the trust property. In this regard, we further understand that the Trustees shall distribute net income or principal to President Trump at his request, as the Trustees deem necessary for his maintenance, support or uninsured medical expenses, or as the Trustees otherwise deem appropriate.

Confirmation of Understandings and Request for Written Statement

Thank you again for your cooperation and access to documents that has enabled us to better understand Tenant's current organizational structure and develop the understandings set forth above.

Please provide a written statement to my attention on behalf of Tenant, no later than Friday, February 17, 2017, to address the following: (1) confirmation of GSA's understandings of Tenant's business structure as set forth above or, if applicable, any corrections thereto; and (2) Tenant's detailed position and analysis regarding its business structure and how Tenant is in full and complete compliance with the Lease, specifically Section 37.19. As part of the submission, please provide any and all documentation, not otherwise reflected in the understandings set forth above, reasonably necessary to support your position. To the extent Tenant is of the opinion that any such documentation should be protected from disclosure, please include an appropriate notation on the face of each document.

Please feel free to call me at [redacted] with any questions.

Sincerely,
Kevin M. Terry KEVIN TERRY
Kevin M. Terry
Contracting Officer

cc: Eric Trump (via email)
Alan Garten, Esq. (via email)
Sheri Dillon, Esq. (via email)

U.S. General Services Administration
301 7th Street SW
Washington, DC 20407-0001
www.gsa.gov

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