

GSA OUTLEASES AND THE TRUMP OLD POST OFFICE HOTEL

(116-50)

HEARING
BEFORE THE
SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND
EMERGENCY MANAGEMENT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
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Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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JANUARY 22, 2020

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Economic Development, Public Buildings, and Emergency Management
FROM: Staff, Subcommittee on Economic Development, Public Buildings, and Emergency Management
RE: Subcommittee hearing on *GSA Outleases and the Trump Old Post Office Hotel*

PURPOSE

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

OLD POST OFFICE BUILDING HISTORY

The Old Post Office Building is a unique, historic building located at 1100 Pennsylvania Avenue N.W., Washington, DC, and owned by the GSA. The building was completed in 1899 and served as the main post office for the Nation's capital. It was placed on the Historic Register in 1973. After the main post office closed, the Old Post Office Building was used to house Federal agency offices and limited retail space. The building was underutilized for decades. Attempts by GSA to introduce amenities failed and the Federal government lost money year after year. For example, in 2007, the building's rental receipts of \$5.4 million were far lower than the total expenses of the property of \$11.9 million, resulting in a loss of \$6.1 million to the Federal government.¹ The House Transportation and Infrastructure Committee held multiple hearings related to the Old Post Office Building and passed legislation to require GSA to find a private partner to redevelop the site.² Until 2016, the Old Post Office Building was one of the oldest buildings in Washington, D.C. that had yet to be rehabilitated and preserved.

OLD POST OFFICE BUILDING REDEVELOPMENT

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

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

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

³ P.L. 110–359 (2008).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ASSIGNMENT OF LEASE

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

Following the minimum hold period, Tenant shall have the right to assign its interest in the Lease or sublease all or substantially all the Premises, provided that the proposed Transferee is a Qualified Transferee and Tenant otherwise complies with this Section 15.3. Prior to such assignment or sublease of all or substantially all of the Premises, Tenant shall be required to provide Landlord with detailed information evidencing that the proposed Transferee qualifies as a Qualified Transferee (the “Landlord Qualified Transferee Confirmation”) and Landlord shall have the opportunity to confirm whether it concurs that the proposed Transferee is a Qualified Transferee (the “Landlord Qualified Transferee Confirmation”). If Landlord fails to respond within forty-five (45) days of the Tenant submitting all necessary Qualified Transferee Information to the Landlord, then Tenant shall provide a second written notice, then the Landlord Qualified Transferee Confirmation shall be deemed given.¹⁸

GSA’S OUTLEASING AUTHORITIES

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

GSA’s statutory outleasing authorities are listed below:

40 USC Public Buildings, Property and Works

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

40 USC Public Buildings, Property and Works

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

40 USC Public Buildings, Property and Works

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

54 USC National Historic Preservation Act

- Sec. 306121—Authority to Lease or Exchange

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

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

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

²⁰ *Id.* at p. 2.

²¹ *Id.* at p. 2.

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

54 USC National Historic Preservation Act

- Sec. 306122—Contracts for Management of Historic Property

WITNESS

- Ms. Emily W. Murphy, Administrator of General Services

GSA OUTLEASES AND THE TRUMP OLD POST OFFICE HOTEL

TUESDAY, JANUARY 28, 2020

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 10:02 a.m. in room 2167, Rayburn House Office Building, Hon. Dina Titus (Chairwoman of the subcommittee) presiding.

Ms. TITUS. The subcommittee will come to order. I ask unanimous consent that the chair be authorized to declare recesses during today's hearing.

Without objection, so ordered.

Also I ask unanimous consent that the Members not on the subcommittee be permitted to sit with the subcommittee at today's hearings and ask questions.

Without objection, so ordered.

We will now proceed with opening statements. I will go first.

Today's hearing is going to focus on the General Services Administration's handling of the lease at the Old Post Office Building here in Washington. Owned by the Federal Government, the building is being leased to the Trump Organization, and now houses the Trump International Hotel. This morning we are joined by Ms. Emily Murphy, the Administrator of the General Services Administration.

And I welcome you to the committee, and appreciate talking to you earlier.

Administrator Murphy is in a difficult position. She is responsible for overseeing the Trump Organization's lease of the Old Post Office Building, and yet her boss is, ultimately, President Trump. And that presents a serious problem. It is one that could have been prevented, if the President had divested from his business interest in the Trump International Hotel, or put them in a blind trust, like every modern President before him.

Instead, President Trump is the single largest beneficiary of the Trump Organization's hotel in Washington. He makes money when people stay there, and he loses money when people don't. So let me repeat: President Trump is both the GSA's tenant and its boss, and that is an obvious problem.

Perhaps, then, it is no surprise that Administrator Murphy's agency has refused to turn over documents that were subpoenaed by this committee that would help us determine, one, whether the

President is following the Constitution; and two, he is complying with the terms of the lease.

We know from dogged reporting that President Trump's DC hotel isn't going quite as well as he had hoped. While it is being propped up by foreign governments, corporate executives, and lobbyists looking to curry favor, that apparently isn't enough, because the Trump Organization has now announced it is looking to sell this lease.

Administrator Murphy, as you likely know, last Thursday was the deadline by which initial bids to purchase this lease were to be submitted by potential buyers. The Trump Organization is asking for \$500 million for this lease, which is, by far, more per room than any other luxury hotel here in Washington to date. That means that you are going to be overseeing the potential transfer of hundreds of millions of dollars into the pockets of the President and his family.

Given the myriad of issues and concerns raised by the execution of this lease from the outset, I want us to make sure that the GSA and this committee have a clear understanding of the process, moving forward, and that we are not going to be repeating the significant mistakes of the past.

What we want to know, and what we want to find out in this hearing, is if any changes could be made to the terms of the lease with the new tenant. Additionally, we need to determine the need for any new legislation to guide and oversee the outleasing process. But most importantly, American taxpayers deserve transparency. They need to know who is buying this lease. And, above all, we need to seek information to ensure that it is not some foreign government. That arrangement would not only raise serious ethics questions, but could also potentially bring into question the Emoluments Clause of the Constitution, and potentially threaten national security.

Given that the GSA's inspector general concluded last year that your agency "ignored the Constitution"—I have put that in quotes—and has said that you are continuing to ignore the Emoluments Clause, we hope that we can ensure that, going forward, with the potential sale of this lease, we will be abiding by Federal law.

Some of us believe that the Constitution matters. It is the law of the land, regardless of whether this administration finds it to be inconvenient or not.

So I thank you, Administrator Murphy, for being with us today. I thank you in advance for being willing to answer our questions.

[Ms. Titus' prepared statement follows:]

Prepared Statement of Hon. Dina Titus, a Representative in Congress from the State of Nevada, and Chairwoman, Subcommittee on Economic Development, Public Buildings, and Emergency Management

Today's hearing will focus on the General Services Administration's handling of the lease at the Old Post Office Building here in Washington, D.C. Owned by the federal government, the building is being leased to the Trump Organization and now houses the Trump International Hotel.

This morning we are joined by Emily Murphy, Administrator of the General Services Administration, and I want to welcome her here to the Committee.

Administrator Murphy is in a difficult position: she is responsible for overseeing the Trump Organization's lease of the Old Post Office Building and yet her boss is ultimately President Trump. That is a serious problem—and it's one that could have been prevented if President Trump had divested from his business interests in the Trump International Hotel or put them in a blind trust, like every modern President before him.

Instead, President Trump is the single largest beneficiary of the Trump Organization's hotel in Washington. He makes money when people stay there, and he loses money when people don't.

So perhaps it's no surprise that Administrator Murphy's agency has refused to turn over documents that were subpoenaed by this Committee that would help us determine (1) whether the President is following the Constitution and (2) complying with the terms of the lease.

Let me repeat: President Trump is both the GSA's tenant and its boss. That's an obvious problem.

Yet, we know from dogged reporting that President Trump's D.C. hotel isn't doing as well as he had hoped. While, it's being propped up by foreign governments, corporate executives, and lobbyists looking to curry favor, that apparently isn't enough because the Trump Organization has announced that it's looking to sell this lease.

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Given the myriad of issues and concerns raised by the execution of this lease from the outset, I want to make sure that GSA and this Committee have a clear understanding of the process moving forward and we are not just repeating significant mistakes of the past.

We want to know what, if any, changes could be made to the terms of the lease with the new tenant. Additionally, we must determine the need for new legislation to guide the outleasing process.

Most importantly, American taxpayers deserve transparency in knowing who is buying this lease; we should all seek to ensure that it's not some foreign government.

That arrangement would not only raise serious ethics questions, but it would also potentially bring into question the Emoluments Clauses to the U.S. Constitution.

Given that GSA's Inspector General concluded last year that your agency "ignored the Constitution" and has said that you are continuing to ignore the Emoluments Clauses, we hope you will ensure that any potential sale of this lease abides by federal law.

Some of us believe the Constitution matters. It is the law of the land, regardless of whether this Administration finds that to be inconvenient or not.

Thank you Administrator Murphy for being with us today and thank you in advance for answering our questions.

Ms. TITUS. And now I will recognize Ranking Member Pence for an opening statement of 5 minutes.

Mr. PENCE. Thank you, Chairwoman Titus. I want to welcome GSA Administrator Emily Murphy, and thank you for joining us today.

GSA has accomplished a lot in recent years across its portfolio. GSA saved Federal agencies \$7 billion in just fiscal year 2019 alone. The DOT Headquarters purchase will realize significant savings over the long term. And GSA was part of the team to help stand up the Public Buildings Reform Board pursuant to the FASTA Act, which will realize billions of dollars in savings in the sales of unneeded Federal property.

But once again, instead of focusing on critical issues like those I mentioned, or our crumbling infrastructure, we are here today focusing on bashing the President.

We have other business before this subcommittee that is critical to the American taxpayer, including issues that fall under the purview of the GSA Administrator. For instance, Ranking Member

Meadows and I introduced legislation that will give GSA some of the tools needed to address the avalanche of expiring leases. We spend over \$5 billion a year on leasing space. We should be focused on what we can do to ensure these leases are replaced with good deals, and continue to reduce costs.

We also have bills pending before this subcommittee to pilot the use of public-private partnerships to help address a backlog of GSA projects. We should be focused on solutions to address the backlog of GSA capital projects so we are not forced to resort to leasing because we cannot afford to do anything else.

The Federal Protective Service is responsible for securing GSA's facilities. There is a reorganization happening right now involving FPS. But instead of focusing on how this reorganization may be impacting the security of people working and visiting Federal buildings, we are holding our second hearing related to the Old Post Office.

The Office of Management and Budget just approved the first round of high-value properties to be sold under historic and bipartisan legislation this committee drafted, the Federal Assets Sale and Transfer Act. But instead of focusing on that, we are questioning a project that turned a money-losing asset into a money-making asset for taxpayers, which was—I think that is about \$9 million a year in savings.

GSA, along with other agencies, had facilities damaged in many of the disasters that happened across the country in recent years. Where are they in fixing and repairing them? Why is that not a focus today?

And instead of ensuring all GSA employees are focused on these and other critical issues, many of the GSA employees have had to spend their time responding to the majority's document requests, which can best be described as a partisan fishing expedition.

Let's be clear. GSA has produced over 10,000 pages of documents in response to Democratic requests, over 30,000 if you include the FBI Headquarters project document requests. Despite GSA providing rolling document productions following our hearing in September, the chair felt compelled to issue a subpoena. In response, GSA offered this committee an opportunity to go to the GSA and review the financial records submitted for the Old Post Office for oversight purposes.

This committee has had a longstanding bipartisan respect for the sensitivity of certain information, such as procurement-sensitive and proprietary business information. We know this information, if disseminated, can harm the interests of the taxpayer, as it would result in lower competition, and increased costs because of the higher risk of doing business with the Government.

I agree we have to be able to conduct our oversight. And as I stated earlier, GSA has invited this committee to view the financial records for this purpose. But the majority would not take up GSA on this offer because the committee would not agree to one simple term, to not publicly disclose any of the private financial information obtained in those documents.

This only confirms what we already know: This is not a legitimate exercise of the committee's oversight authority, but rather an abuse of that authority to harm the President, politically.

We spent our September hearing listening to witnesses argue that the current arrangement at the OPO violates the Emoluments Clause. And now that there are reports the hotel interest may be sold, that too, according to Democrats, violates the Constitution, even before it has happened.

Outleasing, historically, has not only been supported by Congress, but encouraged. The Public Buildings Cooperative Use Act of 1976 and section 111 of the National Historic Preservation Act were intended to encourage commercial, cultural, recreational, and other activities in Federal buildings. The OPO lease itself was directed by Congress in legislation.

Are there valid issues we may want to examine with respect to outleases, going forward? Of course.

There are many other issues we should be addressing here today. I hope today we can not only look at outleasing going forward, but other critical issues related to public buildings.

[Mr. Pence's prepared statement follows:]

**Prepared Statement of Hon. Greg Pence, a Representative in Congress
from the State of Indiana**

GSA has accomplished a lot in recent years—across its portfolio, GSA saved federal agencies \$7 billion just in fiscal year 2019 alone. The DOT headquarters purchase will realize significant savings over the long term. And, GSA was a part of the team to help stand up the Public Building Reform Board pursuant to the Federal Assets Sale and Transfer Act (FASTA) which will realize billions of dollars in savings in the sales of unneeded federal property.

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For instance, Ranking Member Meadows and I introduced legislation that would give GSA some of the tools needed to address the avalanche of expiring leases. We spend over \$5 billion a year on leasing space. We should be focused on what we can do to ensure these leases are replaced with good deals and reduce the costs.

We also have bills pending before this subcommittee to pilot the use of public-private partnerships to help address the backlog of GSA projects. We should be focused on solutions to address the backlog of GSA's capital projects, so we are not forced to resort to leasing because we cannot afford to do anything else.

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GSA, along with other agencies, had facilities damaged in many of the disasters that happened across the country in recent years. Where are they in fixing and repairing them? Why is that not a focus today?

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Let's be clear—GSA has produced over 10,000 pages of documents in response to Democratic requests—over 30,000 if you include the FBI Headquarters project document requests. Despite GSA providing rolling document productions, following our hearing in September, the Chair felt compelled to issue a subpoena. In response, GSA offered this committee an opportunity to go to GSA and review the financial records submitted for the Old Post Office for oversight purposes.

This committee has had a long-standing, bipartisan respect for the sensitivity of certain information, such as procurement sensitive and proprietary business information. We know this information, if disseminated, can harm the interests of the taxpayer, as it would result in lower competition and increased costs because of the higher risk of doing business with the government.

I agree we have to be able to conduct our oversight, and as I stated earlier, GSA has invited this committee to view the financial records for those purposes. But the Majority would not take up GSA on that offer because the Committee could not agree to one simple term—to not publicly disclose any of the private financial information contained in those documents. This only confirms what we all already know: this is not a legitimate exercise of the Committee's oversight authority but rather an abuse of that authority to harm the President politically.

We spent our September hearing listening to witnesses argue that the current arrangement at the OPO violates the Emoluments Clause, and now that there are reports the hotel interest may be sold, that too, according to the Democrats, violates the Constitution.

Outleasing historically has not only been supported by Congress, but encouraged. The Public Buildings Cooperative Use Act of 1976 and Section 111 of the National Historic Preservation Act were intended to encourage commercial, cultural, recreational and other activities in federal buildings. The OPO lease itself was directed by Congress in legislation.

Are there valid issues we may want to examine with respect to outleases going forward? Of course. But, in the \$9 billion GSA Federal Buildings Fund, outleases account for less than 0.3% of the funds.

There are many other issues we should be addressing here today, especially with the GSA Administrator joining us. I hope today we can not only look at outleasing going forward but other critical issues related to public buildings.

Mr. PENCE. I yield back the balance of my time. Thank you.

Ms. TITUS. I would now recognize Mr. DeFazio for 5 minutes, chairman of the Transportation and Infrastructure Committee.

Mr. DEFAZIO. Well, I thank the chair. And in response to my colleague, who just spoke from the minority side, we wouldn't be holding a second hearing here today if GSA had followed the recommendations of its own internal watchdog, the Office of Inspector General, that concluded the GSA failed to consider the Emoluments Clause when evaluating the lease. And we wouldn't be here today if they were recognizing the legitimate oversight authority of this Congress.

Now, what we are here about is the Constitution of the United States of America, and that is pretty damn important. It doesn't matter who is President. Your President, my President, anybody.

But in this case, we would like to see the so-called legal memorandum that concluded that this lease does not violate the Emoluments Clause of the Constitution of the United States of America. And as I said, the OIG said it wasn't considered. They apparently have seen the secret legal memorandum, which we are not being allowed to see, that somehow concludes that either the President of the United States is not an elected official, or is not benefiting from the lease. Now, I don't know which of those two conditions it is, but it seems that that is a problem.

Now—and the gentleman carried on at some length about us reviewing in camera the financial documents with a restriction that, in exercising our legitimate oversight authority to see whether or not the taxpayers in the United States are being made whole under this lease, that we would be bound to secrecy after viewing them.

Now, I think the gentleman has sat through some of the hearings with Boeing. Even Boeing, a private for-profit company, didn't try and impose such a restriction on us. In this case we are talking about the Government of the United States of America, a Federal

agency, trying to impose such a restriction on us. That is outrageous, absolutely outrageous.

The only thing we have gotten from GSA that is meaningful is a letter that they forwarded from an attorney for the Trump Organization in terms of why GSA wouldn't comply with the records request. That is a bit odd. It isn't even from the legal counsel at GSA. I think they do have attorneys. In fact, they have some sort of legal analysis, maybe, about this lease which we can't see. But that letter, forwarded by GSA, questions our oversight jurisdiction, our legitimate need for financial records.

So the question is, who is GSA serving here, Trump LLC or the people of the United States of America? That is why we are here today.

Now we are confronted with something of even greater import, which is the potential sale of this lease. Let's just say that Vladimir Putin or one of his oligarch friends decides to buy the hotel for an outrageous price. Wouldn't that be interesting? Oh, well, what if it is the Chinese or what if it is bin Salman, who apparently helps hack phones of individuals who the administration doesn't like?

Will there be a security review of this lease? Will the GSA refer it to CFIUS? Because Congress has said buildings that are to be leased by the Government in proximity to sensitive institutions, military bases, et cetera—and this is pretty darn sensitive—it is across the street from the FBI, it would be a great place to do surveillance. Is GSA going to go through a full CFIUS process? We will be asking those questions later in this hearing.

We also asked GSA to conduct an audit. We asked last September, "Would you audit?" And GSA has yet to respond to that.

So the gentleman wonders why we are here today. We are here today to protect the interests of the people of the United States of America, the taxpayers of the United States of America, and the Constitution of the United States of America. That is why we are here today, no matter who is President.

[Mr. DeFazio's prepared statement follows:]

Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chairman, Committee on Transportation and Infrastructure

Thank you, Chair Titus, and thank you, Administrator Murphy for making your first appearance before this Committee.

We are here today because of GSA's failure to act. The General Services Administration (GSA), under successive Administrations, failed to properly consider the Emoluments Clauses to the U.S. Constitution when evaluating the Old Post Office (OPO) lease to the Trump International Hotel.

But only under this Administration did this lease present what seems to be a clear violation of the U.S. Constitution.

The GSA's own internal watchdog, the Office of Inspector General (OIG), concluded that GSA failed to consider the Emoluments Clauses when evaluating this lease.

The IG recommended that GSA revise its leasing language to ensure GSA is abiding by the laws of our Nation, including the supreme law of our nation, the U.S. Constitution. Once again, the GSA chose not to act by refusing to implement the IG's recommendation.

In October, I issued a subpoena to GSA for copies of legal memos and financial data regarding the Old Post Office lease to the Trump International Hotel that GSA

has refused to provide to the Committee for over one year now. Once again, GSA failed to act.

They have outright refused to provide the Committee with legal memos related to the Trump Hotel, and while we engaged in good faith efforts to review the financial data in-camera, GSA wanted us to grant them veto power over our ability to reference or release any of this data publicly if we believed it served a legitimate oversight need of the Committee and was in the public's interest.

What's interesting is that GSA appears to be mimicking arguments made by the Trump Organization. In fact, the GSA provided the Committee with a copy of a letter that an attorney for the Trump Organization sent GSA about complying with the Committee's original records request. That letter questioned the Committee's oversight jurisdiction and our legitimate need for financial records. This leads me to question whose interests GSA is serving—the Trump Organization or the American public?

So, I am happy that Administrator Murphy has agreed to be here to help us understand why GSA appears more concerned about protecting the personal interests of the President of the United States than the financial interests of U.S. taxpayers.

But this is not the only reason we have invited the GSA Administrator here today. We expect Administrator Murphy to answer questions about the potential sale of the Old Post Office lease.

Exactly a month after our last hearing on the Old Post Office lease in September of last year, and three years after the Trump International Hotel grand opening, media reports surfaced that the Trump Organization was interested in selling their lease with GSA.

The sales brochure for the hotel says, "potential exists for a new owner to fully capitalize on government related business." It sounds like they're speaking from experience.

Meanwhile, the Trump Organization claims that their refusal to solicit foreign business has cost the hotel over \$9 million. That's a pretty specific number considering we can't seem to get any other financial performance data related to the hotel.

The lack of transparency and cooperation by GSA with the Committee's legitimate oversight authority over the past three years is ridiculous.

In October, Chair Titus and I requested that GSA conduct an audit of the Old Post Office lease, which they had acknowledged had not been done. Three months later we are still waiting on a response to that request.

In addition, I have serious concerns about how GSA administers its outleasing program. While there are extensive regulations for how GSA should acquire leased space, there seem to be very few formal rules outlining how the government should lease property to private parties. Further, since a lessee's compliance with a lease is determined by a Lease Contracting Officer, I'd like to know what processes are available to review that decision.

I hope we can make some progress today, Administrator Murphy, and get you to commit to working with this Committee to ensure GSA is properly managing its outleasing program so that we can ensure it is being managed effectively, efficiently and ethically moving forward.

Thank you. I look forward to your testimony. I yield back.

Mr. DEFAZIO. I yield back the balance.

Ms. TITUS. Thank you, Mr. Chairman. I recognize Mr. Graves for an opening statement.

Mr. GRAVES OF MISSOURI. Thank you, Chairwoman Titus, and I want to thank the Administrator for being here today.

Normally, when we invite the heads of an agency to testify, it is to discuss critical issues facing the agency itself. But today, here we are. We called the Administrator in to focus primarily on one project, the Old Post Office, and outleases generally, which account for less than 1 percent of all that GSA manages.

As was pointed out, under this Administrator's leadership, GSA has saved the Federal agencies and taxpayers more than \$7 billion in 2019. And GSA has closed the deal on the purchase of the DOT Headquarters building; it has managed major renovations at land ports of entry. GSA's role in implementing the Federal Assets Sale and Transfer Act is going to save billions by selling and redeveloping underused Federal assets.

You know, this is the second hearing on the Old Post Office, a project now being criticized because of the lease and the terms in the lease, and the project was directed by Congress through Democratic legislation, and awarded and negotiated under a Democratic President. And yet, here we are, trying to slam this President for things that are in a lease done under the last administration. And it is unfortunate that the desire to impeach the President runs so deep that even issues related to public buildings have become partisan.

You know, we may from time to time disagree on projects and priorities, but ultimately our goals have been the same: to ensure that GSA is a good steward of the taxpayer dollars. And after thousands of documents produced, and the offers by GSA to make accommodations for the committee to review those requested financial records for the OPO—which, by the way, have yet to be taken up by the committee—the majority still accuses the GSA of obstruction.

And for what? Because the Democrats claim that the lease is going to violate the Emoluments Clause, which is an unsettled area of the law, which should be sorted out through the courts, and not by us here.

So let's get back to real work. With all the time and effort that is put into investigating this one lease, we could have worked together to develop solutions to some of the critical issues that are facing management of our public buildings and other infrastructure, for that matter, throughout this country. I hope we can talk about some of those other pressing issues and the good work that the Administrator is doing since coming on board.

[Mr. Graves of Missouri's prepared statement follows:]

Prepared Statement of Hon. Sam Graves, a Representative in Congress from the State of Missouri, and Ranking Member, Committee on Transportation and Infrastructure

Normally, when we invite the head of an agency to testify, it's to discuss critical issues facing the agency. But, today we have called the Administrator to focus primarily on one project—the Old Post Office—and outleases generally, which account for less than one percent of all that GSA manages.

Under Administrator Murphy's leadership, GSA has saved Federal agencies and the taxpayer more than \$7 billion in FY2019. GSA has closed the deal on the purchase of the DOT Headquarters building, is managing major renovations at land ports of entry, and GSA's role in helping to implement the Federal Assets Sale and Transfer Act will save billions by selling and redeveloping underused federal assets.

This is our second hearing on the Old Post Office—a project directed by Congress through Democratic legislation and awarded and negotiated under a Democratic President. It is unfortunate that the desire to impeach this President runs so deep that even issues related to public buildings have become partisan.

We may from time to time disagree on projects or priorities, but ultimately, our goals have been the same—to ensure GSA was a good steward of the taxpayer dollar.

There are important issues that we should be asking the GSA Administrator about today. GSA has more than 50% of its leases expiring in the next 5 years, there is a backlog of construction and repair projects, and there are ongoing security issues at federal facilities. We should be focused on working with GSA on addressing those and other issues.

While GSA is trying to deal with expiring leases and backlogs in repair projects, GSA has also had to juggle what seems to be never-ending document requests. After thousands of documents produced and offers by GSA to make accommodations for the Committee to review requested financial records for the OPO, the Democrats

still accuse GSA of obstruction. And for what? Because the Democrats claim the lease may violate the Emoluments Clause—an unsettled area of law which should be sorted out through the courts not by us here in Congress.

Let's get back to real work. With all the time and effort put into investigating this one lease, we could have worked together to develop solutions to some of the critical issues facing management of our public buildings and other infrastructure. I hope today we can talk about some of those other pressing issues and the good work the Administrator has been doing since coming on board.

Mr. GRAVES OF MISSOURI. And with that I would yield back.

Ms. TITUS. The gentleman yields back. We would now like to welcome our witness, the Honorable Emily Murphy, Administrator of U.S. GSA.

We are glad to have you here today. We look forward to your testimony. As you can see, we are anxious not only to learn about what has happened, but, going forward, what will happen with the sale of the lease.

Without objection, our witness' full statement will be included in the record.

Since your written testimony has been made part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes. So please go ahead. Thank you very much.

**TESTIMONY OF HON. EMILY W. MURPHY, ADMINISTRATOR,
U.S. GENERAL SERVICES ADMINISTRATION**

Ms. MURPHY. Thank you. Good morning, Chairwoman Titus, Ranking Member Pence, Chairman DeFazio, and Ranking Member Graves, and members of the subcommittee. Thank you for the opportunity to testify.

It is actually a particular honor for me today, because I get to testify in front of my former boss, Mr. Graves.

GSA's mission is delivering value and savings in real estate acquisition, technology, and other mission support services across Government. I am proud to say that, in my 2 years as Administrator, we have saved Federal agencies \$14.5 billion. We were able to do this while improving the agency culture, and saw our "best places to work" rating improve to its highest score ever.

Our success is based on our partnership with suppliers, customer agencies, and Congress. This subcommittee and GSA have worked together to more efficiently and effectively manage GSA's 368 million square feet of office space. This is saving taxpayers billions of dollars.

While I will talk about GSA's document production, I do hope I will be able to discuss some of GSA's major initiatives. It is crucial that we work together to invest in GSA's own portfolio, and address our repair and maintenance backlog.

First, GSA has provided the vast majority of what this committee has asked for. Regarding the OPO lease, GSA has provided more than 3,700 documents, totaling more than 10,000 pages. This is only part of the 7,000 documents and nearly 30,000 pages GSA has provided to this committee since I became Administrator in December of 2017.

With regard to the document requested regarding the OPO lease, it is my understanding the GSA has provided all documents, with two exceptions.

The first category includes confidential financial records provided by the tenant pursuant to the terms of the lease. Prior to October 24th, GSA was unable to provide those materials without violating the terms of the lease. However, following the receipt of the committee's subpoena on November 12th, GSA offered to make the unredacted records available for the committee's review, provided the committee agreed not to publicly disclose the information contained within the records without GSA consent.

The purpose of this condition was not to resist congressional oversight, but rather to preserve the confidentiality of proprietary information provided by those who seek to do business with the Government. If tenants and suppliers come to believe the GSA will not protect their confidential information, then it will be much more difficult and expensive for GSA to acquire space, goods, and services for our Federal customers.

While the committee has not yet agreed to those terms, I am hopeful you will soon agree, as our offer to view the documents still stands.

Second, GSA has not produced agency legal opinions regarding the OPO lease. These documents are highly deliberative in nature, and contain attorney-client communications that implicate core confidentiality interests of the executive branch. It is a long-standing practice of multiple administrations of both parties to protect the confidentiality of legal advice.

In the meantime, GSA is investing in its own real estate, most notably by modernizing and expanding land ports of entry on the northern and southern borders. Two such active projects are the expansion of the land port of entry in Alexandria Bay, New York, and in Calexico, California. Congress has recently funded phases of these projects and passed the USMCA. This makes it especially important that GSA-controlled LPOEs on both of our borders are modernized for the future.

Additionally, GSA will be working with this committee to address more than 100 million square feet of expiring leases in the next 5 years. These are worth more than \$60 billion. We cannot let this opportunity for savings slip past us.

Finally, there is a significant issue that harms GSA's ability to invest in its existing buildings and construct new facilities. GSA lacks the ability to access the full revenues collected in GSA's Federal Buildings Fund.

GSA charges Federal agencies rent for the space they use, and then deposits that rent into the FBF. Congress exercises control through the appropriations process. It sets annual limits on how much of the fund balance GSA can spend. Since 2010, GSA hasn't been allowed to spend what we have collected. As a result, the balance in the Federal Buildings Fund has continued to grow, and is now more than \$8 billion.

At the same time, we have a \$7 billion backlog for repairs and alterations. This backlog will only get worse. The average GSA building is over 50 years old. Our aging buildings can be valuable assets for decades to come, but not if we fall behind on needed repairs and alterations. To address this vital issue, I would ask that members of the subcommittee advocate for full funding of GSA's forthcoming FBF request. This will allow GSA to make critical

maintenance and repair investments in existing infrastructure, as well as to construct new facilities, allowing the Federal Government to better carry out its mission.

With that, I again thank the committee for their time today, and welcome any questions.

[Ms. Murphy's prepared statement follows:]

Prepared Statement of Hon. Emily W. Murphy, Administrator, U.S. General Services Administration

Good morning Chairwoman Titus, Ranking Member Meadows, and Members of the Subcommittee. My name is Emily Murphy, and I am the Administrator of the U.S. General Services Administration (GSA). I am here today to discuss GSA's congressionally-mandated outlease of the Old Post Office Building (OPO) and GSA's responses to document requests from the Committee.

I would first like to thank Chairwoman Titus and Members of this Subcommittee for the invitation to appear before you this morning. This is my first time testifying before the Subcommittee since I became Administrator in December 2017.

GSA's mission is delivering value and savings in real estate, acquisition, technology, and other mission-support services across government. I am proud to say that in fiscal year 2019 alone GSA was able to save Federal agencies more than \$7 billion, allowing agencies to dedicate those resources to mission needs. Moreover we were able to do this while improving the agency culture and saw our "Best Places to Work in the Federal Government" rating improve to 75.6, our fifth straight year of improvement and the agency's best rating ever. This rating places GSA second across all of government for agencies with more than 6,000 employees, only behind the National Aeronautics and Space Administration.

Vital to our success over the last several years are the partnerships our agency has built with suppliers, customer agencies, and Congress. As you know, this Subcommittee and GSA have had a long and productive partnership, under both Democratic and Republican leadership, which has resulted in more efficient and effective management of GSA's federally owned and leased portfolio. This collaboration has resulted in GSA optimizing and rightsizing our owned and leased portfolios, saving the taxpayer billions of dollars. This has allowed Federal agencies to invest more resources into core agency missions and related activities, instead of real estate.

Later in my testimony, I will discuss two current GSA initiatives that I believe the Subcommittee and GSA can work on together to deliver increased value to federal agencies: investing in GSA's owned-portfolio and restoring funding to address GSA's pressing need to address a growing repair and maintenance backlog.

As you may remember, Dan Mathews, the Commissioner of GSA's Public Buildings Service (PBS), testified before you last September. As part of his testimony, he provided a narrative timeline of the OPO lease. While I am happy to answer questions about the timeline today, in the interest of time, I would like to focus my opening statement on GSA's efforts to accommodate the Committee's interest in this topic, as well as on the challenges and opportunities facing both GSA and this Committee.

First, GSA has provided the vast majority of what the Committee has asked for with regard to the OPO related requests. As of today, GSA has provided more than 3,700 documents totaling more than 10,000 pages on this topic alone, which is only a part of the more than 7,000 documents and nearly 30,000 pages GSA has provided to this Committee on numerous topics since I became Administrator in December of 2017.

With regard to the OPO requests, it is my understanding that the only outstanding documents fall into two categories. In the first category are agency legal opinions regarding the OPO lease. These documents are highly deliberative in nature and contain attorney-client communications that implicate core confidentiality interests of the Executive Branch. It is the long-standing practice of multiple Administrations of both parties generally not to disclose internal legal advice, especially in the absence of any articulation of a particularized congressional need.

The second category includes confidential financial records provided by the tenant pursuant to the terms of the lease. Prior to October 24, 2019, GSA was unable to provide those materials without violating the terms of the lease. However, following receipt of the Committee's subpoena, GSA offered on November 12, 2019, to make the unredacted records available for the Committee's review, provided the Com-

mittee agreed not to publicly disclose the information contained within the records without GSA's consent.

The purpose of the condition on GSA's offer was not to "resist" congressional oversight, but rather to preserve the confidentiality of proprietary information provided by those who seek to do business with the government. If tenants and suppliers come to believe that GSA will not protect their confidential data, then it will be much more difficult—and expensive—for GSA to acquire space, goods, and services for our federal customers. While the Committee has not yet agreed to these terms, I am hopeful you will agree soon, as our offer to view the documents still stands.

Turning to the two initiatives I mentioned earlier, GSA is making strategic investments in its owned real estate portfolio of more than 1,600 assets, such as modernizing and expanding land ports of entry (LPOEs) on the northern and southern border. Two specific projects that I would like to bring to the Subcommittee's attention are the expansion of the Alexandria Bay LPOE in Upstate New York and the Calexico West LPOE in Southern California.

Now that Congress has recently funded specific phases of these projects, as well as passed the United States-Mexico-Canada Agreement, it is important that GSA controlled LPOEs on the northern and southern border are modernized and sustainable for the future. This will ensure that our partners at U.S. Customs and Border Protection, the Food and Drug Administration, and the U.S. Department of Agriculture—just to name a few—will have state of the art facilities that promote legal trade, tourism, and commerce with our North American partners.

GSA's leased portfolio consists of more than 8,000 leases equating to almost 200 million rentable square feet of space. Leasing represents more than half of PBS's total expenditures and 66 percent of those leases are due to expire during the next five years. That's more than 100 million square feet of leased set to expire. The lifetime contract value of these leases is about \$60 billion dollars. Over the next few years, GSA will work closely with this Subcommittee, through the lease prospectus process, to cut billions of dollars from that figure by negotiating longer term terms with lessors in order to secure lower rental rates, concessions, and other discounts.

Finally, I would like to highlight to the Subcommittee an issue that continues to negatively impact GSA's ability to invest in its existing buildings and construct new facilities—not providing GSA the authority to access and spend all of the revenues collected in the Federal Buildings Fund (FBF).

The FBF is an intra-governmental fund authorized and established by Congress that is subject to annual spending limits as part of the appropriations process. Beginning in 1975, the FBF replaced direct appropriations from Congress as the primary means of funding the operating and capital costs associated with public buildings under the custody and control of GSA. Specifically, GSA charges federal agencies rent for space they occupy in GSA-owned or leased facilities and deposits those funds into the FBF. Congress then exercises control over the FBF through the appropriations process, by setting annual obligational limits on how much of the fund can be expended for various activities.

Since FY2010, total deposits and collections into the FBF have substantially exceeded the amounts Congress has allowed GSA to spend. As a result, the year-over-year fund balance in the FBF has continued to grow and now exceeds \$8 billion, forcing GSA to delay repairs on dozens of buildings. In recent years, this problem has grown even more acute with GSA receiving nearly \$4.4 billion less than it has requested over the last four fiscal years.

This funding shortfall has most severely impacted the backlog of GSA's capital investment needs over the same time period: GSA now has a backlog of \$1.93 billion in immediate repairs needed to restore or maintain a building's acceptable condition. Only approximately half of GSA's requested projects have received full or partial funding over the last three years. The impact of this shortfall will only continue to grow unless Congress takes action since GSA operates and maintains a portfolio of over 1,600 federally owned assets, in which the average building age is more than 50 years. Furthermore, historic assets, meaning those listed or eligible for listing on the National Register of Historic Places, comprise 25 percent of GSA's portfolio. As appropriation allowances continue to fall below the amount of rent collected, GSA is forced to defer critical repairs, suspend capital reinvestment, and forego new construction and consolidation opportunities.

I would ask that Members of this Subcommittee support and advocate for GSA's annual budget request to be able to spend projected FBF collections. This will allow GSA to make critical maintenance and repair investments in existing infrastructure, as well as construct new facilities, allowing the Federal government to better carry out its mission.

With that, I again thank the Committee for their time today and welcome any questions.

Ms. TITUS. Thank you very much. We appreciate the testimony. We will now move on to Member questions. Each Member will be recognized for 5 minutes, and I will start by recognizing myself just to ask some questions. Going forward, I want to focus on going forward.

In October, Eric Trump, who is your boss' son, confirmed that the Trump Organization was considering selling their lease of the Old Post Office Building here in Washington that your agency oversees. According to marketing material obtained by the Washington Post, last Thursday was the deadline for initial proposals to purchase the 60-year lease from the Trump Organization, which had hopes to sell for as much as \$500 million, as I mentioned.

So I would ask you, has the Trump Organization shared with GSA the names of potential buyers of the lease?

Ms. MURPHY. To the best of my knowledge no, they have not.

Ms. TITUS. Section 15.3 of the lease allows for the owner of the lease to sell it to a "qualified transferee." Can you tell us what a qualified transferee is? What does that mean?

Ms. MURPHY. So, under section 15 of the lease, there is a seven-part test for qualified transferee. It goes towards the character of the party. It goes towards their financial responsibility, their ability to actually pay us the rent, their past history of maintaining historic property.

I would be happy to provide you with the clause—

Ms. TITUS. Can I ask how GSA is going to evaluate the potential leases or lessees, or will you do this for the whole list of them, if they give you three or four that might be potentially qualified?

Just what do you consider as you come to the determination that they are qualified?

You heard the chairman mention—could the Saudi Arabian Crown Prince qualify? He has about a \$500 million yacht and a \$300 million French chateau. It sounds like, by what you just listed, he might be considered a qualified transferee. Or the China Construction Bank, for example, might be able to make a profit, and they could apply to purchase it. Could you give us an answer of how you consider applicants like that?

Ms. MURPHY. So I want to answer the first part of your question first, which was do we anticipate that we are going to get a slew of offers to evaluate. And right now we don't know if we are going to get a single offer to evaluate. That is going to be up to the tenant, once they have completed their negotiations. At that point in time they would give us who they are proposing as a qualified transferee. Only at that time would GSA's role begin.

So, at this point in time, anything would be hypothetical. That said, you know, not knowing what offer we are going to get, it is very hard for me to give you a hard and fast "we are going to do this or this." We are going to evaluate the offer we get, and we are going to do the right thing with that offer.

Ms. TITUS. So they make the first determination, they give you the name of their potential buyer, and that would be the one you would evaluate?

Ms. MURPHY. That is correct, ma'am.

Ms. TITUS. The Constitution explicitly forbids the President from accepting emoluments or payments from foreign entities. Would

you rule out any foreign entities as an applicant, if that is what is presented to you?

Ms. MURPHY. So at this time—I want to be very careful in answering this question, because there is litigation pending on the Emoluments Clause. It was filed before I ever began at GSA, and the Department of Justice has ruled that—it is publicly stated and argued that there is not an emolument at this point.

Given that I do not know what the offer is going to be, I don't want to make a judgment on that. It would be very improper for me to weigh in on the Emoluments Clause.

That said, this is going to be my first time of having that issue come before GSA when I have been in charge. And we are going to do the right thing.

Ms. TITUS. Well, let's just take this away from the Post Office and talk about future outleasing. Do you think it is appropriate to outlease Federal buildings to foreign entities?

Ms. MURPHY. I think that we would—under the current laws, we would have to—we have to follow the current requirements that are in place for—in title 4041 on how we are handling our leasing.

I am unaware of any leases we have with foreign entities at this time, and I know that we would want—that is going to be governed by the terms of our leases themselves.

Ms. TITUS. Who in your agency is responsible for doing this evaluating?

Ms. MURPHY. Of this specific lease, or in general?

Ms. TITUS. Well, either—both, either. Is it a contracting officer?

Ms. MURPHY. For any specific lease, any individual lease, it is the contracting officer who is vested with that authority by law.

As we look at policies across the General Services Administration, we have an Assistant Commissioner for leasing who reports to the Federal Buildings Commissioner. And we ensure we work with them to make sure we have got the right policies in place with General Counsel's Office, with other support offices.

Ms. TITUS. Does the general counsel—does the GSA general counsel get involved in that?

Ms. MURPHY. So the general counsel in the prior administration got involved in December of 2016, and that was the individual—so it was the Obama administration's general counsel who made the decision not to go to the Department of Justice on—

Ms. TITUS. I am talking about the future selling of the leases, not the past. Let's talk about the future.

Ms. MURPHY. So I think, in the future, we are going to have whoever we need to be involved in that—in evaluating the lease involved. We have a—there is a lot of very solid career attorneys in GSA.

Ms. TITUS. So what I am hearing you say is that there aren't any rules, there aren't any guidelines. Anybody is eligible to apply. And you will worry about that down the road because nothing is in place.

Ms. MURPHY. No. What I am saying, ma'am, is that the lease itself governs how I act.

Ms. TITUS. But can the lease be changed with a new tenant when they sell the lease?

Ms. MURPHY. We could enter into a bilateral negotiation with that——

Ms. TITUS. Who decides that?

Ms. MURPHY. That would, again, be something that we would need to propose to the tenant, or the tenant could propose to us. It would be a separate—it is a separate process, though, from that provision——

Ms. TITUS. It seems to me we need to put in place some guidelines for that consideration, going forward.

My time is up. I now recognize Mr. Pence, but we may come back to that.

Ms. MURPHY. Yes, ma'am.

Mr. PENCE. Thank you, Chairwoman Titus.

Administrator Murphy, following our first hearing on the Old Post Office last year, Chair DeFazio and subcommittee Chair Titus sent a letter to you in October reiterating their requests for financial records related to the OPO. According to your testimony, GSA has provided more than 3,700 documents, totaling more than 10,000 pages to the committee on this topic.

You continue to explain today that the only outstanding documents fall into two categories. The first is legal opinion, and it is the longstanding practice of administrations not to disclose internal legal advice. And the second category includes confidential financial records, and that is included in the lease.

On October 24th, Chairs DeFazio and Titus issued a subpoena for these documents, the first T&I subpoena issued in almost a decade. In your testimony you note that, prior to the subpoena, GSA was unable to provide confidential financial records without violating the terms of the OPO lease.

I am holding here two letters that you sent in response to Chair DeFazio and Titus on November 12th and 18th, offering the committee an in camera review of the requested financial records, provided the committee does not publicly disclose the information. And an explanation as to why you had taken that route.

Administrator Murphy, am I correct in my understanding that GSA offered not once, but twice, to set a time for the committee to review the relevant financial records?

Ms. MURPHY. Actually, Congressman, it is more than twice, because there were also phone calls between the respective staffs where we have made that offer. And it is an outstanding offer. We would be very happy to have the committee come in and review those records pursuant to those conditions.

Mr. PENCE. So I think you just answered my next question. Did any member of the committee take you up on that offer?

Ms. MURPHY. No, sir.

Mr. PENCE. OK. Is the offer still open to come and review——

Ms. MURPHY. Yes, sir.

Mr. PENCE [continuing]. The financial information that——

Ms. MURPHY. Yes.

Mr. PENCE [continuing]. We have been discussing in this and the previous hearing?

Ms. MURPHY. Yes, sir.

Mr. PENCE. In your testimony you said—and I quote—“GSA’s offer was not to resist congressional oversight, but rather to pre-

serve the confidentiality of proprietary information.” Can you explain why the GSA—and you touched on it a little bit—takes this position, and why the security of this information is important?

Ms. MURPHY. So, sir, we have 68 billion contracts. We have another 8,000 leases and 600 outleases. If the parties that we are entering into contracts with can’t trust us to live up to our side of the bargain, then they are not going to do business with us. And I am a firm believer that competition is good. And so I want to make sure that we are creating at GSA an environment where we do the right thing, we live up to our obligations under the contracts, and that we are encouraging competition, so that we get the best results for the taxpayer.

Mr. PENCE. So you have a contractual obligation here to not share that information. But how could releasing that information make it more difficult to do business with GSA?

Ms. MURPHY. Well, because I think that if our tenants and other contractors see that we are not as good as our word, not living up to the bargain that was struck in 2012, they are not going to want to do business with us in the future. They will walk away from doing business with GSA.

Mr. PENCE. And to go and change an existing arrangement such as this would require both parties to agree to that change. Is that correct?

Ms. MURPHY. Yes, sir. I believe Chairman DeFazio referred to a letter that was sent to this committee. The reason that letter was sent was because GSA, prior to the issuance of the subpoena, had actually asked the tenant organization to consent to disclosure, which was one of the ways we could disclose those documents under the lease. They declined to do so, and we shared that information with the committee in an attempt to be transparent.

Mr. PENCE. So as a person that has been involved for decades in real estate, I can relate to what you are saying about—if I strike a deal with another party, I really don’t want that deal shared with just anybody. Or even if I am going to bid on something, I think it is improper that my offer or my terms and agreement are just shared with the public, as well. So I support the position that GSA has. I think it is good business practice. It is a way to carry forward in the future, as well.

Thank you, and I yield back.

Ms. TITUS. The gentleman yields back. Just to follow up on that, you mentioned how many leases you oversee. How many of those are outleases? How many of those are outleases to elected officials? And how many of those outleases involve foreign governments?

Ms. MURPHY. I believe we have a little over 600 outleases, that they are worth a total of \$28 million. I think only five or six of them are for more than 20 percent of a building. So there—

Ms. TITUS. Five or six?

Ms. MURPHY. Yes, the—that is the vast majority of the dollars. The majority of our outleases are for parking spots.

Ms. TITUS. And how many are to elected officials?

Ms. MURPHY. So the only one that I know that could be construed as to an elected official is the one we are discussing today.

Ms. TITUS. And do any of those involve foreign governments?

Ms. MURPHY. Not that I am aware of, ma’am, but I—

Ms. TITUS. OK, so this is an unusual circumstance. I think we need to point that out.

Mr. DeFazio?

Mr. DEFAZIO. Thank you, Madam Chair. We had, at the earlier hearing, revealed correspondence between the contracting officer and the President's daughter. And in one of them, in mid-November, just after the election, he basically stated that there was absolutely no concern about emoluments.

Isn't that a bit unusual, that this unsettled technical legal issue regarding emoluments and a personal relationship, or attempt at a personal relationship—getting together for coffee and other things—isn't that a little bit unusual?

Wouldn't a contracting officer consult with counsel, and wouldn't a contracting officer act a little bit more at arm's length from the tenant or the tenant's daughter?

Ms. MURPHY. So I believe that the—you are referring to the email that was in the paper about a fair bit of nonsense, sir. Is that the one that you are—

Mr. DEFAZIO. There were a number of—there was an email exchange—

Ms. MURPHY. I want to make sure I am—

Mr. DEFAZIO. Yes.

Ms. MURPHY. Yes. I think that is exactly why we make sure that our contracting officers work in partnership with our General Counsel's Office, and with others, to make sure that they are not operating alone.

I know that the IG has actually reviewed the decisionmaking process, and found that there was no political interference in that decisionmaking process. They found that—they disagreed with the decision December of 2016 to not consult with the Department of Justice, but that decision was made long before I joined GSA.

Mr. DEFAZIO. So you think that the contracting officer, by stating this before they had an opinion from legal counsel, and having—attempting to have a more personal relationship with the tenant is all just sort of normal conduct by GSA?

Ms. MURPHY. I wouldn't use those words to construe it, but I—I mean, my job, as the Administrator, is to make sure that the decisions themselves are not made in vacuums.

Mr. DEFAZIO. Right. Would you consider replacing this contracting officer before the hotel lease is transferred?

Ms. MURPHY. So the contracting officer you are referring to is seven levels down in the organization from me, sir.

Mr. DEFAZIO. Yes. Well, you would have the authority to reassign him, I assume.

Ms. MURPHY. And my—I think that my doing so, and my getting involved in micromanaging which contracting officers are assigned to which projects would be my putting the finger—you know, putting my finger on the scales, which I have tried very hard not to do.

Mr. DEFAZIO. OK. So you are not concerned—

Ms. MURPHY. I think that the appropriate place—

Mr. DEFAZIO. Fine. Fine. You are not concerned by his conduct.

Let's move on to the foreign ownership issue. In 2018, Congress expanded CFIUS' jurisdiction to include proposals from foreign pur-

chasers to lease or purchase real estate near sensitive U.S. Government properties and military installations.

Would you agree that this hotel is in a sensitive place, since it is across the street from the FBI?

Ms. MURPHY. I would—I want to be careful in my saying that I believe it is in a sensitive spot, versus whether that meets the definition of CFIUS. I am not a CFIUS expert.

Mr. DEFAZIO. Right.

Ms. MURPHY. The CFIUS—

Mr. DEFAZIO. But let's just say your personal opinion.

Ms. MURPHY. The CFIUS issue—

Mr. DEFAZIO. I mean my personal opinion is it is across the street from the FBI. Kind of what Congress wants here is CFIUS to review this. Would you ask for a CFIUS review?

Ms. MURPHY. If a CFIUS review is warranted, I will ask for a CFIUS review. Again—

Mr. DEFAZIO. OK, and under what conditions would it be warranted?

Ms. MURPHY. It is going to depend on what offer—if we receive an offer from the tenant, which is subject to qualified transferee, it would depend on what that offer is. So there are—we are several ifs away from us ever receiving that.

And again, it is not an area, as you pointed out, where it is GSA's determination. That would be one where we would talk to the Department of the Treasury—

Mr. DEFAZIO. OK. If a CFIUS review is initiated, will you wait until that review—there is a timeline on how long you have to approve the transfer of the lease. What happens if CFIUS takes longer than your timeline?

Ms. MURPHY. Sir, we are going to do the right thing. You are asking me about hypotheticals here that haven't even—

Mr. DEFAZIO. OK. Well—

Ms. MURPHY [continuing]. Begun to occur.

Mr. DEFAZIO. It is a pretty important hypothetical, given the location.

Now, the gentleman carried on a bit about us reviewing the records and that. If we had followed your conditions—you, a Federal agency—regarding this building, we would not have been able to pursue issues that are very pertinent to the problems with the death of 346 people in the Boeing MAX, because we received hundreds of thousands of pages of documents, every single one of which was stamped proprietary. But we were able to negotiate with Boeing, a private for-profit entity, that we could release such documents, and—some of which have led to some revelations and changes at that company, and potentially changes in the law.

So you think it is reasonable that we can come in and look at the books, but we can't talk about it. Even if we find extraordinary improprieties, we can't talk about it. You think that is reasonable? Yes or no?

Ms. MURPHY. May I—

Mr. DEFAZIO. No, no, just yes or no. Yes or no. You think that is reasonable?

Ms. MURPHY. I think our offer was a first attempt at accommodation, and that if we see those documents, it would then give you—

us the ability to further decide whether there is a way to further accommodate your requirement——

Mr. DEFAZIO. The——

Ms. MURPHY. When I was——

Mr. DEFAZIO [continuing]. House counsel advised us that your offer was unacceptable to take that restriction. I just say that. Now——

Ms. MURPHY. When I was a House staffer, I—working for committees doing oversight, we did accept similar restrictions.

Mr. DEFAZIO. Right. Now, GSA's watchdog, the OIG, concluded that you failed to consider the Emoluments Clause when evaluating the lease, and they recommended that you revisit this issue. Are you doing that?

Ms. MURPHY. So, sir, if I could read you the IG's recommendation, I think—it is very brief, and I think it is pertinent. What they recommended was that, before continuing to use the language, GSA determine the purpose of the “interested parties” provision, conduct a formal legal review by the Office of General Counsel that includes the Foreign and Presidential Emoluments Clauses, and then revise the language to avoid ambiguity.

GSA agreed with that recommendation as a prospective recommendation for future contracts. What we decided was that the—based on the IG's research and our research—or based on the IG's research, that the——

Mr. DEFAZIO. So you didn't need to revisit it in this case because of a secret legal document which you also refused to disclose to the Congress.

Ms. MURPHY. Well——

Mr. DEFAZIO. And how could that—how is it that a determination on emoluments regarding the President of the United States and this lease would discourage future transactions by GSA with private entities? That doesn't make any sense. I don't think we are going to have another President who has an outstanding outlease with the GSA. So how can you say that it is right and proper that you withhold from us this critical document that determines that the President in this lease somehow did not violate emoluments?

And the—again, the pertinent language is an elected official of the United States of America shall not benefit. Now, he is elected, I think. And I guess he is benefiting. So why can't we see that document?

Ms. MURPHY. So I apologize, but I think you are conflating the two reasons we are giving.

So we are not providing the financial——

Mr. DEFAZIO. No, I get that. But you also—there are two things that are outstanding. You gave us 10,000 pages of drivel, including, you know, audits by the tenant itself, who is allowed to self-audit, which even have blacked out the name of the person who signed the cover letter, which is all we got. So that is—you know, I just find that unacceptable.

Thank you, Madam Chair.

Ms. TITUS. We have allowed a little overtime, so we will give the same indulgence to you, Mr. Graves, if you have some questions. Mr.—what happened to Mr. Graves? Oh, well, Mrs. Miller, then. I am sorry.

Mrs. MILLER. Thank you, Chairwoman Titus. And thank you for being here today.

It is very important to acknowledge that outleasing plays a crucial role in sustaining long-term historic building longevity. And it is a critical solution to repairing the physical condition and futures of these buildings for the general public, and to the communities where these buildings are located.

How many historic buildings does the GSA oversee?

Ms. MURPHY. We—about one-quarter of our own portfolio is historic buildings. We have got about 1,600 Federal assets. So it is a little bit over 400, between 400 and 500 historic buildings, ma'am.

Mrs. MILLER. 400 to 500 very important buildings.

In your opinion, how critical is the outleasing process to these historic buildings?

Ms. MURPHY. So it is absolutely critical, because it allows us to go into these historic buildings and make sure that they—the current building we are talking about, we had \$200 million in investment that was made in bringing that building back up to standard so that it will continue to be an asset of the Federal Government for years to come.

The—and the revenues we are getting from that allow us to invest in other historic buildings.

Mrs. MILLER. Absolutely. We are currently focused on the big outlease projects like the Old Post Office and the old Tariff Building. While these outleases are important, can you describe some of the other various types of outleases that the GSA oversees?

Ms. MURPHY. So our largest category of outleases is parking. We have also antennas, which really help us provide rural broadband by having antennas on our roofs. We have credit unions and coffee shops in our buildings. We allow for some filming of television shows and movies that take place in some buildings. I know the Old Custom House in Louisiana, they use it frequently in "NCIS: New Orleans," I believe. So they—all of these are ways that we are continuing to make sure that these buildings are preserved, we have revenue coming in, and, frankly, it also mitigates against having vacant space in the Federal portfolio.

Mrs. MILLER. Absolutely. In your testimony you mention that it is the GSA's goal to update and modernize facilities. Are these GSA facilities on the right track towards completion, and ready to promote trade, given the impending signing of the USMCA?

Ms. MURPHY. So I think that the two LPOEs I mentioned are on track. We are going to be at—so we have asked for funding for both Alexandria—received funding in two phases for Alexandria Bay and for Calxico. I believe that there is going to be one more request coming on Calxico West. So those are moving forward.

I would say, though, that over our entire portfolio, as I mentioned, we have got a \$7 billion backlog for repairs and maintenance. And it has led to some—in the chairwoman's district we had a courthouse that didn't have a working fire alarm for a period of time. Now we have gotten funding now, and we are addressing that. But just yesterday a pipe burst there. And so that courthouse is not working again today. And we hope to have it fixed by the close of business today, but these repairs are vitally important.

Mrs. MILLER. What is keeping you from doing the repairs if the money is there?

Ms. MURPHY. We—our appropriations process is such that, even though we collect rent, we can't spend the money unless we are authorized or appropriated those funds again by Congress. So we have got about an \$8 billion surplus in the Federal Buildings Fund.

Mrs. MILLER. It sounds to me like we need to work on that, as well.

And I will yield back the remaining time to Mr. Pence.

Ms. TITUS. You are yielding it to Mr. Pence?

Mr. PENCE. To me?

Ms. TITUS. Mr. Pence?

Mr. PENCE. Just to clarify, so we can go in and take a look at this agreement, right, and get the specifics, instead of kind of guess what may or may not be in that, is that correct?

Ms. MURPHY. You can—you are welcome to come and see the financial records. The legal memorandum, no, but the financial records we are happy to—

Mr. PENCE. OK. It is kind of my understanding—I could be wrong—that Boeing had a nondisclosure agreement which they waived in their agreement with the Government, and that is why that information became public.

Let me just be—how often do you have nondisclosure agreements in leases?

Ms. MURPHY. I don't think it is uncommon to have these in our leases. In fact, there are some that are required by statute requiring—the Integrity Act and others—that require we protect that financial information, sensitive business information of our customers.

Mr. PENCE. Last question: When was this lease signed?

Ms. MURPHY. 2012, sir.

Mr. PENCE. 2012? Thank you. I yield back.

Ms. TITUS. Thank you. If Boeing can waive a nondisclosure, you would think the President of the United States would find it in the public's interest to do the same, but apparently not.

Who is next?

Ms. DAVIDS would be recognized for 5 minutes.

Ms. DAVIDS. Thank you, Chairwoman.

So I—Administrator Murphy, I just—I wanted to ask you a bit about the process, and what things will look like, going forward. I think that the folks in my district really just want to make sure that we are managing our resources and spending the taxpayer dollars that they are sending to the Federal Government well.

And so, as we are getting into this process of the—of finding a new purchaser for the Trump Hotel and, you know, we are going to be forward-looking on this, how do you think the process that you have followed before, that the GSA followed before, worked? Do you think it was a good process? Do you think it was effective? Was it a failure? Was it somewhere in between that?

Ms. MURPHY. Are you talking about the 2012 process?

Ms. DAVIDS. I think the whole—the process, as a whole, whether or not—I guess I am wondering—do you think this has been a good use of our time and energy?

Ms. MURPHY. So I think that we took a building that was costing taxpayers \$6 million a year and, at this committee's direction, converted that building to a property that is generating about \$250,000 a month for taxpayers. So I—and where we ended up having a substantial amount of historic preservation take place to make sure that building remains in good condition into the future.

So I think that that has, overall, been a very good—and it was actually a bipartisan directive from Congress for GSA to do this, long before I was there.

Ms. DAVIDS. OK.

Ms. MURPHY. So I don't take any credit for it. I think——

Ms. DAVIDS. So——

Ms. MURPHY [continuing]. It was a wonderful idea. I believe that your colleague was actually the one who——

Ms. DAVIDS. Thank you. So, as you engage in outleasing, again, of—100 percent outleasing of a historic building, are you going to—do you think that the lease will look the same?

One of the things that I am wondering about—I haven't seen all of the provisions of the lease, but it seems to me that there might be room for provisions that maybe address a significant change in circumstance. It is not unusual to have assignment provisions. It is not unusual to have change in ownership provisions.

And in the case of a building that is owned by the Federal Government, do you foresee having any new provisions that might address the potential for having someone who was not an elected official becoming an elected official, and making sure that we are not having to take up all of this time doing all of this oversight?

Ms. MURPHY. I think that is something I would love to work with this committee on trying to craft the appropriate language in looking at those.

I would point out we only have, I believe, five or six outleases where more than 20 percent of the building is outleased. So this is a very rare circumstance for GSA.

Ms. DAVIDS. OK. It is a rare circumstance, but you also indicated that this was absolutely critical to maintaining and addressing the historical buildings and that sort of—you said there were 400 to 500 historic buildings. I just want to make sure it is critical or it is not critical.

Ms. MURPHY. So it is—the—there are two questions. Is the funding we receive from outleasing great for our historic preservation? Yes. As a portion of GSA's entire portfolio, though, these 600 outleases, as I said, only 5 or 6 of them are more than 20 percent. The entire portfolio of outleases are only about \$28 million a year.

Ms. DAVIDS. OK.

Ms. MURPHY. So——

Ms. DAVIDS. So I just want to make sure that, as we move forward, that you all are really forward-thinking about the way that you do this leasing process when you are talking about outleasing to private entities, and that you are making sure that, one, there is auditing that is happening. Because when I spoke—when the person was here before that I spoke to from GSA, he was supposed to be running the program, and was completely unaware of whether or not they were doing auditing.

And then, two, making sure that this is actually—if it is critical, that is great, but making sure that we are forward-thinking about what potential might come up. I think there are a lot of professionals who have seen a lot of circumstances in the GSA, and that we probably could have avoided this, had the lease been drafted better.

And then this—the last thing, I guess I just want to know, like, do you think that this is so critical that it needs to continue, or do you think that we should look at selling these buildings outright, and not doing this?

Ms. MURPHY. I think that selling some of these historic buildings outright would mean that they would not remain—that that would be a loss to the Government.

We are looking and working—we have worked with the FASTA board and with others on trying to sell properties that are not—that are underutilized or unused, so that we can start expediting the sale of those, and get those off the books—

Ms. DAVIDS. But that are not historic buildings.

Ms. MURPHY. But they are not historic buildings, yes.

Ms. DAVIDS. OK. So we should definitely make sure that we are holding onto our historic buildings, and maintaining them.

Ms. MURPHY. I think it is a cost-benefit analysis of the historic building, the expected return on investment from keeping that building, the amount of repairs that are needed, whether we can find a suitable tenant for that building. So I think that it is—there are multiple factors that go into that. But generally, I just—some of these buildings are beautiful, and—

Ms. DAVIDS. Yes.

Ms. MURPHY [continuing]. The thought of losing them is sort of heartbreaking.

Ms. DAVIDS. Yes, I agree. I agree. OK, thank you very much. I yield back.

Ms. TITUS. I now recognize Mr. Palmer for 5 minutes.

Mr. PALMER. Thank you, Madam Chairman. I want to go back to the question my colleague just raised about being good stewards of the taxpayers' money.

Again, for the record, you assert that, prior to the Trump Organization taking possession of this property and converting it to a hotel, we were losing over \$6 million a year in taxpayer money. Is that correct?

Ms. MURPHY. That is what I understand, sir, yes.

Mr. PALMER. OK. And you also asserted that the Trump Hotel now generates \$250,000 per month in revenue. That is \$3 million a year.

Ms. MURPHY. Yes, sir.

Mr. PALMER. And for those who are math challenged, that would indicate that the taxpayer benefit would be somewhere between \$9 and \$10 million a year, given the losses that were being incurred.

Ms. MURPHY. Yes, sir.

Mr. PALMER. Would you agree that that is a positive for the taxpayers?

Ms. MURPHY. I believe so, sir.

Mr. PALMER. Even for those who are math challenged?

Ms. MURPHY. Yes, sir.

Mr. PALMER. You would agree? I think so, too.

The GSA gets—is audited. Is that an independent audit or a self-audit?

Ms. MURPHY. Yes, we have an independent auditor who comes and reviews our—

Mr. PALMER. For those who dispute this benefit to the taxpayers, would you provide to this committee a letter from your auditor that—without violating any of the privacy requirements—that simply shows that the GSA is getting a return of \$3 million a year?

Ms. MURPHY. I am happy to ask the auditors for that and provide it to the committee.

Mr. PALMER. I think if—particularly if it is an independent audit, a reputable auditor, that should be sufficient to show that this is a substantial benefit to the taxpayers.

Ms. MURPHY. Yes, sir.

Mr. PALMER. If you could do that, I would appreciate it.

Ms. MURPHY. Yes, sir.

Mr. PALMER. The GSA has also offered to provide Congress—this committee, specifically—access to the documents that will answer many of the questions that are being raised. And the only qualification that you assert is that the documents can't be made public. Is that an accurate assessment?

Ms. MURPHY. That they not be made public without our prior permission. Yes, sir.

Mr. PALMER. Without your prior permission. And you have made that offer several times?

Ms. MURPHY. Yes, sir.

Mr. PALMER. Yet this committee has declined that offer?

Ms. MURPHY. They have not accepted it yet. I am hoping that they are going to accept it at some point.

Mr. PALMER. I think, frankly, we should accept it. And if there are people who have trouble reading financial reports, could the GSA provide some people who could walk members of the committee through that, and explain it to them in simple language?

Ms. MURPHY. I would be happy to make that—those experts available, sir.

Mr. PALMER. That would be greatly appreciated. And hopefully there will not be any leaks that would violate any of the privacy agreements. And then we could reach an agreement with GSA on what could be released.

With that, Madam Chairman, I will yield back. I will yield to Mr. Pence.

Ms. TITUS. Mr. Pence?

Mr. PENCE. Thank you, Madam Chair. I just want to kind of make some points, and then you say that is correct or that is incorrect.

So in 2008 the OPO lease was directed by Democratic legislation. Is that correct?

Ms. MURPHY. Yes, sir.

Mr. PENCE. OK. And the law required this committee to receive a report before the lease was signed. Is that correct?

Ms. MURPHY. I believe so, sir. Yes.

Mr. PENCE. And that report was received in 2013. Is that correct?

Ms. MURPHY. That sounds correct. Again, that was before I came to GSA.

Mr. PENCE. OK.

Ms. MURPHY. So yes—

Mr. PENCE. And there were no objections to the provisions that were presented—

Ms. MURPHY. None that I am aware of.

Mr. PENCE [continuing]. To the committee.

Ms. MURPHY. No.

Mr. PENCE. OK. Thank you. I yield back. I yield back to Mr. Palmer.

Mr. PALMER. Yes. There is one other thing that I wanted to raise. In the last hearing, Madam Chairman, it was the chairman of the full committee, Mr. DeFazio, indicated that there was a meeting with a GSA official, and that he was informed of—that, via a phone call and by email. I asked that the information from that meeting be provided to the committee. That has not been provided as of this date. I would like to get that information, if possible. I think you agreed to do that.

Ms. TITUS. I will look into it.

This is for the witness?

Mr. PALMER. Well, the question for the witness is are you aware of a meeting between members of this committee and GSA?

Ms. MURPHY. So I believe the meeting that is being referenced is a meeting that took place in December of 2016 between the Deputy PBS Commissioner and some members of the Democratic staff here. I have asked about that meeting. It, obviously, took place before I was at GSA, and was actually still working on the House side at that point in time. And I have got—received contemporaneous email accounts of what took place in those meetings. I would be happy to share that with the committee. But it—

Mr. PALMER. Would you provide—

Ms. MURPHY. Yes.

Mr. PALMER [continuing]. Those contemporaneous notes to me? I don't know if any other members of the committee would be interested, but I would definitely be interested.

I yield back.

Ms. TITUS. Thank you.

Mr. DEFAZIO. Madam Chair, may I just clarify? I have no objection. That was a House staffer on this committee, Elliot. And also a Republican staffer was present at the meeting. And so this was no secretive meeting. There were no Members of Congress there.

We were raising questions about emoluments, which GSA initially said was a big problem. And then, oh, later, they changed their mind. So we will, you know—whatever she can provide, we would love to have.

Ms. TITUS. OK, thank you.

According to Mr. Palmer's math challenge, we—the taxpayer would have gotten \$27 million from the hotel. If Mr. Trump sells it for \$500 million, how much of that will go to the taxpayers?

Ms. MURPHY. So, again, that—the lease itself governs how the proceeds of the sale are—

Ms. TITUS. What would that be? What would that come to?

Ms. MURPHY. I don't know the specific—

Ms. TITUS. I think it is zero.

Ms. MURPHY. No, I don't believe that that is correct, ma'am. I believe that there is—the lease does provide for the taxpayer to receive some portion of that.

Ms. TITUS. Maybe you could find the answer out——

Ms. MURPHY. I would be happy to get back——

Ms. TITUS. OK, we will recognize Ms. Holmes Norton.

Ms. NORTON. Thank you, Madam Chair. This hearing on the Trump Hotel is of special interest to me, since it was my bill that finally got this hulk of a building from which the Federal Government was earning nothing—in fact, losing money—finally got this bill through. I was in the minority. But the fact is that we worked together with the Republican majority.

Before I get to that, could I ask you something, another question about GSA's present posture of moving the—of the status of these Federal agencies, though serving the District of Columbia: Court Services and Offender Supervision Agency, Pretrial Services Agency, and Public Defender Service? All of these agencies have been kept within a synergy with the other side, the Metropolitan Police Department. The various actors on both sides have been kept within a certain short distance from the courthouse because they can be called, and the courts do not want delay.

But GSA is insisting upon moving the public defender more than a mile away, the U.S. Attorney is four blocks away. That breaks with long history. So what was the rationale for moving the public defender further from the courthouse than the U.S. Attorney?

Ms. MURPHY. Congresswoman, I am not certain. I would like to—I am not familiar with the situation. I would like to have the opportunity to look into it and come back and brief you on it. That would be——

Ms. NORTON. I would ask you to get back within 30 days, so we can understand your rationale.

Ms. MURPHY. I am sorry, I missed the——

Ms. NORTON. Get back within 30 days so we can understand your rationale.

Ms. MURPHY. Of course, yes.

Ms. NORTON. Now, as I indicated, the Old Post Office was my bill. My friends on the other side talk about benefit to the taxpayer. Of course there is a benefit to the taxpayer. But the question is how much benefit to the taxpayer. There is no benefit to the taxpayer if the hotel doesn't—it doesn't also benefit the—at this point, the Trump Hotel.

So the Trump Hotel—the Trump Organization wants to sell the lease. That suggests that it is not as profitable for them as they desire and expect. What does that tell you about how the lease should be handled when it goes to a new party?

Ms. MURPHY. So GSA's——

Ms. NORTON. Do you know why they want to sell the lease?

Ms. MURPHY. I don't know why they—and I have not had any conversations with them about that. The——

Ms. NORTON. They won the lease in a very competitive process. They paid millions of dollars to upgrade it, because it was a historic property and, presumably, made it profitable. But GSA should

be concerned that, so soon after, in fact, in a competitive process getting the hotel, they want to outlease the hotel.

Have you—in deciding how to handle this matter going forward, or similar matters, have you studied this matter enough to know whether or not this was worth it, and what to do as they outlease to another party who may have the same problems?

Or is there—did these problems develop after he became President? Did that have anything to do with whether or not the property was, in fact, being leased?

Of course, he wasn't President when he won it. But if —is that perhaps the reason that the hotel is not making enough money for him to want to keep it?

Ms. MURPHY. So I wouldn't want to speculate as to why the tenant is making any business decisions. What I am concerned with is that GSA is receiving its rent each month, that the property is being properly maintained, and that GSA is listed appropriately on the insurance certificate.

If and when we are presented with a proposed qualified transferee, those will be among the questions that—the lease requires that we ask also, does the—would the proposed qualified transferee have the necessary assets—

Ms. NORTON. The other side—

Ms. MURPHY [continuing]. To pay us.

Ms. NORTON [continuing]. Talked about the benefit to the taxpayer. I am trying to decide whether there could have been more benefit to the taxpayer—suggests that we are not getting the benefit we expected, because the Trump Organization wants to get rid of it. Surely they made some profit. But they would not want to be getting rid of a very profitable property, unless it fell below their expectations. If it falls below their expectations, then the Government is not getting what it expected from the property, either.

And that is the question I have for you: Are we getting what we expected in dollars and cents from the outlease of this property to the Trump Organization?

And how will you make sure that the Government gets the profit it desired when it outleased it to the Trump Organization?

Ms. MURPHY. So the Government is currently being paid. We are being paid every month on—I believe it is the 5th of the month we receive our rent payment. Our rent payment is due, regardless of profit or loss. We get paid. And that is what GSA's concern has been, because that is how we protect the taxpayer.

If we are asked to look at a qualified transferee, we would look at whether or not that transferee has the necessary assets to make sure that the taxpayers will continue to receive that payment.

Ms. NORTON. Thank you, Madam Chair.

Ms. TITUS. Miss González-Colón?

Miss GONZÁLEZ-COLÓN. Thank you, Madam Chair. And good morning to Administrator Murphy.

I want to begin by saying thank you for your involvement in the rebuilding process in Puerto Rico as we continue to phase the recovery process from the hurricanes. I know, as per our conversation, that you are going to be visiting the island during the next weeks regarding many of those buildings that were not prepared for hurricanes. So there were either earthquakes—and GSA is

doing the investment to put them to withstand that situation. So thank you for that and for the visit to the island.

I have been reading about this. This is not the first hearing we've got about this hotel. And actually, you have been saying time and again that this was approved prior to your being the GSA Administrator. This bid process commenced—began in 2012, correct?

Ms. MURPHY. So the process began in 2008, when the legislation was passed, and the contract—the competition took place in 2012. That is when, I believe, the lease was drafted. And it was signed, and it moved forward from there.

Miss GONZÁLEZ-COLÓN. And at that time, President Trump was not even President or even running for President.

Ms. MURPHY. No, ma'am.

Miss GONZÁLEZ-COLÓN. And that contract award of using the lease was awarded prior to that. And he was—I recall that, even during the 2016 campaign, nobody brought that issue about this building.

Ms. MURPHY. I wasn't party to any conversations about it then. I was working for the Armed Services Committee at that point, so—

Miss GONZÁLEZ-COLÓN. So the employees that usually work with the awarding of these outleases are career employees, correct?

Ms. MURPHY. Yes, ma'am.

Miss GONZÁLEZ-COLÓN. So this is a regular process that goes on in GSA, where regular career employees revise and recommend an award, whoever is going to be the tenant for these outleases, correct?

Ms. MURPHY. All contracting decisions, whether they be leases, outleases, or other contracts, are made by career employees, yes.

Miss GONZÁLEZ-COLÓN. So we can't say that any Trump administration official or political employee influenced, at that time, any of the career employees in GSA.

Ms. MURPHY. That is correct. And I think, if you look at the inspector general's report, she looked at 16 months and found—there was no finding of any political influence being brought to bear.

Miss GONZÁLEZ-COLÓN. And just to state a fact, it was approved during the Obama administration.

Ms. MURPHY. Yes, ma'am.

Miss GONZÁLEZ-COLÓN. So not under the current administration.

Ms. MURPHY. Correct.

Miss GONZÁLEZ-COLÓN. And, as Mr. Palmer and Mr. Pence stated in their opening statements, this committee received information regarding these during that time. Nothing—there was no opposition to the lease at that time, correct?

Ms. MURPHY. There was—I am sorry, I am not sure I am understanding the question. I want to make sure I am precise—

Miss GONZÁLEZ-COLÓN. Well, I mean, we received notification about the lease, but there was no opposition in the committee at that time.

Ms. MURPHY. I wasn't with GSA at that time, but I was unaware—I have never been made aware of any opposition being raised.

Miss GONZÁLEZ-COLÓN. So the opposition begins after the President was inaugurated.

Ms. MURPHY. Yes, I believe that is when the——

Miss GONZÁLEZ-COLÓN. So it is clear that this is just because it is the Trump Hotel. Are we doing this kind of investigation with any other outleashes that GSA has?

Ms. MURPHY. Not that I am aware of.

Miss GONZÁLEZ-COLÓN. Thanks. With that I yield the rest of the time to Mr. Pence, if he wants to use it.

No? With that I yield back.

Ms. TITUS. Thank you. Let's just be clear that the reason this is an issue is because Mr. Trump is President. If he were still a private businessman, we wouldn't be concerned about emoluments. So all this discussion of Obama entering into an agreement when Trump was a private citizen is fairly irrelevant.

We will go now to Mr. Garamendi.

Mr. GARAMENDI. Well, thank you, Madam Chair. That is precisely where I was going to start. This issue is not one of where the lease began. This issue is one of the President—of the lessee, Mr. Trump, becoming President, and now in direct violation of the Emoluments Clause.

So my question to you really deals—Administrator Murphy, could you please confirm for the record that the GSA has no idea whatsoever as to how much spending by foreign governments accounts for the income and profits at the Trump Hotel?

Ms. MURPHY. That is correct, sir.

Mr. GARAMENDI. So you have no idea about foreign expenditures at the hotel. Correct?

Ms. MURPHY. I—the only thing I know is what I have read in the paper.

Mr. GARAMENDI. I am sorry, the only thing you know is——

Ms. MURPHY. The only thing I know is what has been reported in the papers.

Mr. GARAMENDI. I see. Have you ever made an attempt to request information from the Trump Hotel organization regarding foreign spending at the hotel?

Ms. MURPHY. No, sir.

Mr. GARAMENDI. Why not?

Ms. MURPHY. That is—again, that would be the lease contracting officer's determination, and——

Mr. GARAMENDI. I see.

Ms. MURPHY [continuing]. It is not within the scope of the contract——

Mr. GARAMENDI. So it is the contracting officer.

You were sworn in as an official of the U.S. Government?

Ms. MURPHY. Yes.

Mr. GARAMENDI. And you took an oath of office?

Ms. MURPHY. Yes, sir.

Mr. GARAMENDI. Did that oath include upholding the Constitution?

Ms. MURPHY. Yes, sir.

Mr. GARAMENDI. Including Article I?

Ms. MURPHY. Yes, sir.

Mr. GARAMENDI. Section 9, Clause 8? Specifically, the Emoluments Clause?

Ms. MURPHY. Yes, sir.

Mr. GARAMENDI. So that is included, but yet you have not asked any questions whatsoever from the Trump Hotel organization about foreign spending?

Ms. MURPHY. So——

Mr. GARAMENDI. Which is an emolument.

Ms. MURPHY. The Emoluments Clause has been—issue is being currently litigated in three lawsuits I am aware of. Those were filed before I became the Administrator.

I believe when there is a——

Mr. GARAMENDI. And, therefore, it is not your responsibility. Is that what you are saying?

Ms. MURPHY. The Department of Justice has publicly argued that there is not an Emoluments Clause violation.

Mr. GARAMENDI. I see.

Ms. MURPHY. They speak for the executive branch on issues of constitutionality. When there is a conflict, it is resolved in the courts. And when there is a final determination in the courts——

Mr. GARAMENDI. Thank you.

Ms. MURPHY [continuing]. GSA will act accordingly.

Mr. GARAMENDI. We understand stonewalling very well around here.

Let's see. It says, "Without the consent of the Congress." It was earlier suggested that this committee has no interest—I would suggest that all of us read the Emoluments Clause. And it says, "Without the consent of the Congress." Has Congress consented to foreign expenditures at the Trump Hotel?

Ms. MURPHY. Again, sir, it would be inappropriate for me to——

Mr. GARAMENDI. The answer is no, we have not. You are aware of that, I suppose.

So you are basically saying that, in direct contradiction to the inspector general, you have no interest in determining whether there is foreign expenditure at the hotel?

Ms. MURPHY. The inspector general has not recommended that we undertake any such action. The inspector general gave us one recommendation, and that was that we prospectively alter the clause in the contract. And we have done——

Mr. GARAMENDI. Have you attempted to do that?

Ms. MURPHY. Yes, we have agreed to alter the clause, and we now actually use a reference to the underlying statutes, instead, sir.

Mr. GARAMENDI. Have you—so you have no idea about foreign expenditures. You offered to the committee to show the records. Is that correct?

Ms. MURPHY. Yes——

Mr. GARAMENDI. So long as we keep it secret.

Ms. MURPHY. Yes, sir.

Mr. GARAMENDI. And you now tell us that those records have no—there is nothing in that record about foreign expenditures. That is who the guests are at the hotel?

Ms. MURPHY. No, those records, it is my understanding, would not include that information. Those records are—financial records we receive from the tenant are those that are required by the lease. They include the audited financial statements. We received that in-

formation. It does not give the level of specificity, though, that I believe you are asking about.

Mr. GARAMENDI. I would suggest that we need to get those records in order to determine if there are, indeed, foreign expenditures at the hotel, which, of course, we know there have been.

With regard to the lease sale, very—I want a very specific answer. Are you going to investigate any potential sale of the lease as to whether it is from a foreign entity or a foreign government?

Ms. MURPHY. I am not going to speculate on hypotheticals. I am going to assess—

Mr. GARAMENDI. That is not a hypothetical. That is a specific question. Are you going to investigate whether the sale of the lease involves a foreign government or a foreign entity?

Ms. MURPHY. When we receive—if we receive an offer from the tenant to substitute a qualified transferee, we will do the assessment that is required.

Mr. GARAMENDI. So the answer to my question is no, you will not?

Ms. MURPHY. If that is required, that is what we will do. I don't know what the offer is going to be at this time. I don't know if we will receive an offer—

Mr. GARAMENDI. May I suggest that you carefully read the Constitution of the United States and your oath of office, in which you said you would uphold the Constitution, including the Emoluments Clause?

I yield back.

Ms. TITUS. Let's clear up something else. You said that, prospectively, you have changed this in compliance with the IG's recommendation about emoluments. But let's be clear. Didn't you only change it to apply to Members of Congress, not to the President, or potentially other people—

Ms. MURPHY. So—

Ms. TITUS [continuing]. Who are in Government?

Ms. MURPHY. So the change that we made was—so the recommendation from the IG was that we—before continuing to use the language, we determine the purpose of the “interested parties” provision, and then—and act in accordance with that.

So the IG, in conducting her own review of the “interested parties” provision, was also unable to determine exactly why we had that provision. And the best that we had was it was based on the statutory predecessor to title 18 and some other statutes.

So what GSA did was say that, prospectively, we will refer to the statutes that are governing. And if and when there is an additional statute that governs how we deal with these leases, we will amend the lease, accordingly.

Ms. TITUS. So you just relied on one statute that mentioned Members of Congress, as opposed to expanding it to say other members of Government.

Ms. MURPHY. Correct, ma'am.

Ms. TITUS. Well, that is—I think that is something this committee better clear up so that you won't have any doubt about that, going forward.

All right, who is next?

Mr. Perry?

Mr. PERRY. I thank my friend from the great State of Nevada. Administrator, just out of curiosity—I am offended. I don't know that you are, but I am offended for you at the implication, the inference that you are not upholding the oath of office that you have taken. In that regard, do you consider, if the courts don't find in favor of the opinions of some of my colleagues on the other side of the aisle, would you consider that to be stonewalling?

Ms. MURPHY. No, sir.

Mr. PERRY. That would be the process. And sometimes we agree with the court's findings and sometimes we don't, as Americans. Right?

Ms. MURPHY. Yes, sir.

Mr. PERRY. Just—I know you were cut off on numerous occasions when the chairman was asking you questions, and unable to fully complete your answer. I just wanted to give you the opportunity to do that now, and I—with the specific interest in your—if you can remember—the IG recommendations regarding these issues.

Ms. MURPHY. So again, the IG gave us one very specific recommendation, and GSA agreed to that recommendation. We have taken the actions in accordance with that recommendation. We read the recommendation as being prospective, and so we have applied it prospectively.

The—and we continue to, you know, have a working relationship with—a good working relationship with the IG. I meet with her monthly to see how we can better manage GSA.

Mr. PERRY. Administrator, do you think that all Americans, regardless of their stature, financial position, connection to politically powerful people, organizations, institutions, deserve the same standard of treatment under your organization's rules and procedures?

Ms. MURPHY. Yes, sir.

Mr. PERRY. So do you believe, then, that because the Old Post Office is owned by—or leased, correction, leased—by the Trump Organization, that they should withstand a different set of circumstances than every other American or every other country—company operating such leases in America?

Ms. MURPHY. So, sir, I want to be really careful in answering your question, because I think we are starting to conflate two issues, one of the Emoluments Clause and one of the lease.

And the—as I mentioned earlier, the first lawsuit on the Emoluments Clause was filed before I ever started at GSA. And then, on the lease, the contracting—our contracting officer determined the tenant was in full compliance with that lease in March of 2017. I didn't become Administrator until December of 2017. And when he made that determination he issued a certificate of estoppel.

So my opinion is absolutely irrelevant. I am estopped from taking any action. There is a final decision that has been made. The only time I am going to have an opportunity to make a decision is if—and again, I say if—we receive this qualified transferee. And at that point in time I am going to do the right thing.

Mr. PERRY. So, just to go back on your own statement there, you said that the organization was in full compliance. Is that correct?

Ms. MURPHY. Yes.

Mr. PERRY. In full compliance. So, based on that, having no reason to change things, I am not sure why we are here.

I come from south central Pennsylvania, where the roads are clogged up at 7 o'clock and 5 o'clock in the evening with traffic. We are not in this committee, Transportation and Infrastructure—people are looking for improvements in their lives, whether it is the road network, water, gas, sewer, broadband, cable. Yet here I sit in another hearing about the Old Post Office in Washington, DC.

Let me just ask you this: Boeing was brought up in the context of this conversation, where Boeing is the subject of scrutiny and investigation regarding the untimely and unfortunate deaths of hundreds of people. Whether they have anything, you know, directly to do with that is yet to be determined, is being determined at this time. Does that have any relevance whatsoever to the issue at hand regarding the Old Post Office in Washington, DC?

Ms. MURPHY. Not that I am aware of.

Mr. PERRY. Not that I am aware of, either, ma'am.

You said that we are allowed to peruse financial information and records, but not legal records in this instance. Is that different than any other instance in the entire portfolio that you manage?

Ms. MURPHY. No, sir, and it is not different than the—I can't think of any administration that has provided—any GSA Administrator who has ever provided those legal memoranda.

Mr. PERRY. So why should we—what is the reason we would single out this one? What is the reason?

Ms. MURPHY. I would defer to the committee for—to answer that question, sir.

Mr. PERRY. Madam Chair, I yield back the balance.

Ms. TITUS. Thank you. Can you think of any other circumstance where the President has a lease, outlease, or any kind of lease that would make this like any other lease because the President is not involved?

Ms. MURPHY. No, ma'am.

Ms. TITUS. No? OK, thank you. All right.

Mr. Johnson?

Mr. JOHNSON OF GEORGIA. Thank you, Madam Chair. You know, it amazes me how it seems that my friends on the other side of the aisle are willing to compromise their values and their prerogatives as Members of the Congress to oversee operations of the executive branch, particularly when it would come to a money-making venture that the President of the United States benefits from. It just—I don't understand why they can't understand the significance of overseeing these types of situations.

Maybe it is because everybody likes to go to the Trump Hotel, to the watering hole, then hang out in the Trump lobby with Lev Parnas and everybody else over there. I think he called it a cess-pool over there, where you got a bunch of folks trying to get ahead. And it seems like everybody—all of my friends on the other side of this dais want to try to get into the favor of the President. So I probably wouldn't doubt that many of them frequent the Trump bar over there at the hotel.

But at any rate, as the Administrator of the General Services Administration, Ms. Murphy, you do understand the Emoluments Clause, the Foreign Emoluments Clause, do you not?

Ms. MURPHY. I do, sir. I won't claim to be an expert on it.

Mr. JOHNSON OF GEORGIA. You are aware of the fact that the Trump Organization has made plans to sell the Trump International Hotel, and in marketing materials provided by Jones Lang LaSalle, which is their sales agent, the Trump Hotel has admitted that it has experienced only a 57-percent occupancy this year, which, compared to a 75-percent occupancy rate for competing high-end hotels, indicates that the Trump Hotel is not living up to expectations with respect to the leasing of hotel rooms.

But do you have that—any of that information having to do with its banquet facilities, its bars, or other operations?

Ms. MURPHY. Sir, I have never looked at the financial records. It is my understanding that they look at whether—how rent is calculated, what the gross receipts are, I don't believe that it goes into the detail. But again, as I—

Mr. JOHNSON OF GEORGIA. You don't think that is important, from an emoluments standpoint?

Ms. MURPHY. From the emoluments standpoint, or from a perspective of—

Mr. JOHNSON OF GEORGIA. From an emoluments standpoint. You are aware of the Emoluments Clause, you are the Administrator of the GSA. You don't take the Emoluments Clause seriously?

Ms. MURPHY. I take the Constitution very seriously, sir, but—

Mr. JOHNSON OF GEORGIA. Well, let me ask you this.

Ms. MURPHY [continuing]. The Department of Justice—

Mr. JOHNSON OF GEORGIA. Let me ask you this. Marketing materials from JLL assert that the hotel is “organically positioned to market and solicit foreign government business” because of its close proximity to the White House.

Would you agree with me that a President of the United States of America being positioned to market and solicit foreign government business is precisely what the Emoluments Clause seeks to avoid?

Ms. MURPHY. Sir, given that there is ongoing litigation, which I believe—

Mr. JOHNSON OF GEORGIA. Well, I am—

Ms. MURPHY [continuing]. Members of this subcommittee—

Mr. JOHNSON OF GEORGIA [continuing]. Asking you for your opinion, since you are aware of the Emoluments Clause, and—

Ms. MURPHY. But—

Mr. JOHNSON OF GEORGIA. And you understand it.

Ms. MURPHY. Given that there is ongoing litigation—

Mr. JOHNSON OF GEORGIA. Isn't that the—

Ms. MURPHY. It would be—

Mr. JOHNSON OF GEORGIA. Isn't that—

Ms. MURPHY [continuing]. Inappropriate for me to comment—

Mr. JOHNSON OF GEORGIA. Hold on one second, ma'am. Isn't that the exact scenario that the Emoluments Clause seeks to avoid? Yes or no?

Ms. MURPHY. The Department of Justice has stated that there—

Mr. JOHNSON OF GEORGIA. OK, so you are not going to answer that question.

Ms. MURPHY [continuing]. Is not an emolument—

Mr. JOHNSON OF GEORGIA. OK. All right. So let me ask you this. When the inspector general, Carol Ochoa, appeared before this committee in September of last year she testified that GSA inappropriately failed to consider the Emoluments Clause before declaring the Trump International Hotel lease valid in March of 2017.

Ms. Ochoa recommended that GSA update their outlease language to avoid concerns of compliance in the future. And GSA has yet to make those amendments. Can you explain to the committee why GSA has resisted implementing the inspector general's recommendations?

Ms. MURPHY. So I would like to first say that the GSA IG found the decision to not evaluate the Emoluments Clause was made by the prior administration. No one in this administration was involved in that decision. The——

Mr. JOHNSON OF GEORGIA. Well, now, you are not answering the question I just asked.

Ms. MURPHY. The IG made a recommendation, and it was specifically that the continuing—before continuing to use the language, GSA determined the purpose of the “interested parties” provision, conduct a formal legal review by the Office of General Counsel that includes consideration of the Foreign and Presidential Emoluments Clauses, and revise the language to avoid ambiguity.

GSA agreed that the—with the single recommendation, and said that we will take action consistent with that recommendation prior——

Mr. JOHNSON OF GEORGIA. But you have not done so yet.

Ms. MURPHY [continuing]. To continuing to use that language. And we have. We have modified the language that we will use in future outleases.

Mr. JOHNSON OF GEORGIA. You have?

Ms. MURPHY. We have.

Mr. JOHNSON OF GEORGIA. OK. All right, thank you. I yield back.

Ms. TITUS. Just to be clear, in September 2019 the IG said that the agency's proposed corrective action is not responsive to the recommendation, and therefore considers it an outstanding recommendation. So has this changed since September?

Ms. MURPHY. GSA considers that we have taken final corrective action. The——

Ms. TITUS. They just don't accept it as valid.

Ms. MURPHY. The——

Ms. TITUS. Apparently.

Ms. MURPHY. I——

Ms. TITUS. OK.

Ms. MURPHY [continuing]. Not agree with it.

Ms. TITUS. Mr. Massie?

Mr. MASSIE. Thank you, Madam Chairwoman.

Ms. Murphy, you said in your opening statement that Dan Mathews, the Commissioner of GSA's Public Buildings Service—you reminded us that he testified last September and gave us a timeline of the lease of the Old Post Office. And I would like to go through some of that timeline. Even though you didn't dedicate too much of your opening statement to that, I would like to go through some of that right now.

Prior to 2008, the Old Post Office operated at a loss of \$6.5 million a year. Is that correct?

Ms. MURPHY. Yes, sir.

Mr. MASSIE. And in 2008, Washington, DC, Delegate Norton introduced the Old Post Office Building Redevelopment Act of 2008, directing the GSA to relocate Federal tenants there and redevelop the Old Post Office. Is that correct?

Ms. MURPHY. Yes, to find a higher and better purpose for the building, I believe, was the—

Mr. MASSIE. Higher and better purpose. And then, there was a competition in 2011. I believe the President at the time was President Obama. And in 2012 the Trump Old Post Office LLC was selected as the winner.

In other words, under the prior administration, under President Obama, it was determined by the GSA that the highest and best purpose for that building was to lease it to the Trump Organization because they were going to invest millions of dollars into the redevelopment of it. Is that correct?

Ms. MURPHY. That is my understanding. I was, again, not a GSA official at the time, so—

Mr. MASSIE. So in 2013 who was the President?

Ms. MURPHY. President Obama.

Mr. MASSIE. President Obama. And the lease agreement was executed under President Obama. In 2014, under President Obama and his administration, the GSA delivered exclusive possession of the premises to Trump Old Post Office LLC. In 2016, construction completed, and a temporary certificate of occupancy went to the Trump Organization. And in 2016, October 2016, the hotel officially opened.

During that entire time who was the President?

Ms. MURPHY. Barack Obama was the President, sir.

Mr. MASSIE. President Barack Obama oversaw all of that, and determined that it was the best purpose for that building.

I just want to remind folks that we are debating this lease. Is there anything in that lease that was negotiated by Obama that empowers the GSA to go into the finances of the person who—or organization that leased the building, and demand the things that are demanded today by the other side of the aisle?

Ms. MURPHY. GSA has the right to these—to audit the statements that we are receiving right now. You know, we have—if we are facing an issue where we are not being paid, or the building is—if we feel that there is an issue with compliance, we do have an ability at that point in time to exercise some additional authorities. But we haven't had an issue where we are not being paid our rent, or the building is not being maintained, or that, you know, we have a concern about the certificate of insurance, or any of those types of—

Mr. MASSIE. So they are in compliance. You—

Ms. MURPHY. To the best of my knowledge, they are in compliance.

Mr. MASSIE. OK.

Ms. MURPHY. Yes.

Mr. MASSIE. So, just quickly, how does the lawsuit right now that is underway constrain what you can do?

Ms. MURPHY. So there are three lawsuits underway right now. And because the Department of Justice speaks for executive branch on legal matters, they have been publicly arguing that there is no violation of the Emoluments Clause. It would be inappropriate for me, as the GSA Administrator, to be opining one way or the other. That is the Department of Justice's decision to—making those.

Mr. MASSIE. And you mentioned there is an estoppel.

Ms. MURPHY. So that is all—that is in regards to the lease clause, and that estoppel certificate was issued—it was a—in March of 2017, that found that the tenant was in compliance with the lease.

And so, at that point in time, we were estopped from going back and asserting that they were not in compliance with that provision of the lease.

Mr. MASSIE. So you are basically doing your job right now, as—under the constraints that are put on you.

Ms. MURPHY. Yes, sir.

Mr. MASSIE. Thank you very much. I am going to yield the remaining minute of my time to Mr. Palmer from Alabama.

Mr. PALMER. I thank the gentleman for yielding. I have a question for Administrator Murphy.

If the President has turned over operational control of the Trump Organization, then why would the Trump Hotel be required to deny occupancy to a representative of a foreign government? Should the hotel post signs at the doors that says that individuals in service to a foreign government are not welcome here?

Should we not allow anyone in service to, say, the Government of Mexico or Canada to pay a market rate for a room there, or should it only be U.S. citizens?

Ms. MURPHY. And, sir, I apologize, I am going to have to give you the same answer I am giving everyone else, which is that it is inappropriate for me to comment on the application of the Emoluments Clause, given the ongoing litigation.

Mr. PALMER. Well, the thing that is going on here that concerns me is that, considering the constant badgering about the hotel from my colleagues, the Democratic colleagues, I am not surprised that the Trump Organization wants to get out of the lease.

When the contract was negotiated, the lease was negotiated, they did it as a business decision. It was not a political decision. It has become a political football, another opportunity to badger the President and, frankly—and I am ashamed of some of the questions that have been directed to you that insinuate a lack of character on your part, the badgering of witnesses.

And I just finally want to point out that an individual from a—representing a foreign government staying at the Trump Hotel and paying the market rate is quite different than some things that have happened in the history of this country regarding U.S. officials, such as King Louis XVI giving a portrait of himself that was surrounded by diamonds to Ben Franklin, or the King of Spain giving a horse to John Jay. An individual paying a market rate to stay at the hotel is quite different.

And with that, Madam Chairman, I yield back.

Ms. TITUS. Thank you. I don't recall John Jay or Benjamin Franklin ever serving in the White House as President.

So let's—we will now move on to Mrs. Fletcher.

Mrs. FLETCHER. Thank you, Chairwoman Titus. Thank you for holding this hearing today.

And thank you, Ms. Murphy, for being here to testify. I do want to follow up on this issue, because I do think it is important. And my constituents at home expect our Government to be efficient, effective, and ethical. And the questions that we are asking in this committee go to all three of those things. And I think that it is certainly the case, when we are talking about using or leasing assets that belong to us, the people.

And so, it is with that in mind that I have some questions for you about the process. And hopefully, it will be something constructive, where we can talk about what we on this committee can do to help address and alleviate the kinds of issues that we are seeing, and the kinds of concerns that we have, going forward. And I think that that is the purpose of this hearing. It is very forward-looking.

So it is my understanding that you are an acquisitions expert. And so I want to talk a little bit about that, because it is my understanding there are multiple layers of rules and regulations that direct GSA's acquisitions of goods, services, and lease space.

The FAR is more than 1,000 pages long. It is 50-some-odd volumes. The GSA acquisition manual, GSAR—I have the leasing desk guide here—it is a big, big book. The—it is almost 900 pages long. There is a lot of guidance when it comes to a lot of things except, it appears, for outleasing.

And I have a copy of the outlease program guide, which is much smaller than most of the other regulations that you deal with. And it is my understanding that that has created some of the problems that we are experiencing now. And so I think it is useful for us to talk about what it is we can do to be helpful.

I am correct, am I not, that the FAR, GSAR, and leasing desk guide do not apply to outleases, correct?

Ms. MURPHY. The FAR and the—the FAR does not apply to outleases. It doesn't apply to leasing at all.

Mrs. FLETCHER. Right.

Ms. MURPHY. And the GSAR—there are provisions in it that I believe we have written for leasing, because it is GSA's manual. Each agency has its own supplement.

The leasing guide is for when we are buying—you know, we are leasing space from others.

And then outleasing is when, obviously, we are taking space—is Federal space and making it available to others.

So they are all, you know, very different sets of circumstances.

Mrs. FLETCHER. Sure. But there are extensive regulations in these other contexts that don't apply when it comes to outleasing.

Ms. MURPHY. Correct.

Mrs. FLETCHER. And, in fact, we have a 90-some-odd-page outlease program guide as the guidance here.

And it is my understanding, too, when GSA wants to lease something, it comes to us on this committee with a prospectus to approve the lease.

Ms. MURPHY. Yes, that is—

Mrs. FLETCHER. Correct?

Ms. MURPHY. That is our—yes.

Mrs. FLETCHER. Right.

Ms. MURPHY. That is what we do.

Mrs. FLETCHER. And—but no outleasing comes before this committee.

Ms. MURPHY. No, because it is—we are not asking permission to spend taxpayer dollars, authorization for that. We are actually receiving funds in.

Mrs. FLETCHER. But if some of those questions came to this committee, there might be the opportunity to address some of the things that have shown themselves to be challenges. Would you agree with me on that?

Ms. MURPHY. I would. I would want to highlight that the average outlease that GSA does, over the course of the outlease, is worth less than one-quarter of a million dollars. So it is——

Mrs. FLETCHER. Sure.

Ms. MURPHY. Most of these are very small. So I would be concerned with making it really hard to get, you know, that lease on a roof.

Mrs. FLETCHER. Well——

Ms. MURPHY. An antenna on a roof, I was going to say.

Mrs. FLETCHER. No, I appreciate that. And I think that you would agree with me that outleasing an entire historic building, such as the Old Post Office, should be handled differently as outleasing space on a rooftop for an antenna, or space in a lobby for a coffee shop, correct?

Ms. MURPHY. Yes. And I believe that, at Chairman DeFazio's request, GAO looked at our outleasing program about a year ago, and came back with some recommendations, because there only are about five or six of these large outleases.

And so I think it would—I would love to have the opportunity to partner with this committee on figuring out how we do a better job of managing those large outleases.

Mrs. FLETCHER. And that anticipates my next question for you, because, understanding that you have this background and expertise, can you tell us a little bit of—in preparing for this hearing on outleasing, which I know was not your expertise coming into this, what has surprised you about the process where you think we can make improvements?

And, kind of coupled with that, will you agree to work with us to craft appropriate and meaningful regulations for outleasing to avoid some of the kinds of issues that we have been discussing, including transparency, reporting, procedures, and forward-looking evaluations?

Because I would note—I made a lot of notes all over, and I may have to do some questions for the record, but, you know, one of the things that did concern me is that, as I read the lease, once there is a proposal for a sale or a transfer, there is 45 days to approve it, which, to me, means we need a plan in place and the questions identified, such as is there going to be an analysis of who the purchaser is, where are we in terms of some of those—those essential questions. It seems like we do need to do a plan, if there is a 45-day turnaround.

So will—tell us your thoughts on what surprised you, and then what we can do to work together to craft regulations that will be meaningful.

Ms. MURPHY. The first thing that surprised me was, frankly, how small most of these outleases are.

The second thing that surprised me is that we don't distinguish between those where we are providing space to a State or local government, or an educational institution. So, for example, the University of Massachusetts, it has one of the large outleases. And we don't distinguish between that and an outlease for commercial purposes.

So it—I think there are lots of ways—I always would welcome the opportunity to work together with this committee on finding ways that we can be better stewards of taxpayer dollars and of resources. So you have got my commitment that we are happy to work with you on that.

Mrs. FLETCHER. Thank you, and I see I have exceeded my time. So thank you for that, and I yield back.

Ms. TITUS. Mr. Cohen?

Mr. COHEN. Thank you.

You have got a tough job. You used to work for Mr. Graves, now you work for Mr. Trump. One guy is the Show Me State, the other guy is not going to show you nothing. So it is difficult.

Several of the people up here have said, well, Obama approved this, or Obama's people approved that. You would agree with me that doesn't necessarily make it the gold standard, or right, does it?

Ms. MURPHY. I think that they are simply reflecting what happened, sir. So I don't know that there is a gold standard for an outlease along these lines.

Mr. COHEN. Right. You look at what is right and what is the best thing for the country, and not necessarily Obama did it, or Calvin Coolidge did it, or whoever.

One of the questions that has come up has been the Monaco Hotel. And as I understand it, and the response to the questions we asked of your committee, there is confidential information concerning the lease of the Monaco under the terms and conditions of the lease. And GSA was contracting the officer to get the—see if the tenant would consent to release the information to the committee. These were in answers to our questions subsequent to the hearing in September.

Do you know if the Monaco has responded to your—the contracting officer who requested to release the information of the committee?

Ms. MURPHY. So I apologize, sir, I don't know. But I am happy to look into that and get back to you very quickly.

Mr. COHEN. Sure. Well, that is question number 4 of my questions with—on—for that date. It is toward the end of the questions. And it said the GSA contracting officer has requested the tenant's consent to release the information to the committee. Subject to such consent, GSA will forward the lease to the committee under separate cover.

So I appreciate your letting me know if they have consented.

Ms. MURPHY. OK.

Mr. COHEN. Secondly, why is the lease—does the lease have that requirement? A lease is between you and the lessee. Why would a Government agency, who is responsible to the public, and responsible to Congress for oversight of what you are doing in the public's good, why would you have a confidentiality clause in a lease? Why would you agree to that?

Ms. MURPHY. So I can't speak to why anything in 2012 was negotiated the way it was, the terms of the lease. That is—I wasn't party to that discussion, so—

Mr. COHEN. This is apparently not just this lease. This is, apparently, all leases. This is referring to the Monaco, and it said it is confidential information, or the terms and conditions of the lease. Why would we have confidentiality on any leases?

Ms. MURPHY. Because I believe that most companies who are doing business with us are very concerned that others are going to be able to get a competitive advantage by seeing their financial records. And so, in order to make sure that we have companies willing to do business with us—

Mr. COHEN. Does the lease have anything about their financial records? The lease, doesn't it just say what they are obligated to pay in rent? And that is public information, is it not?

Ms. MURPHY. So the—and we have disclosed that we are—you know, the amount that we are receiving under the OPO lease at this point in time. I am not as familiar with the Hotel Monaco lease, but the—my understanding is that most of our leases do go—when they are for larger amounts of money, or if there is any calculation that is based on gross, we are going to ask for additional financial information.

Mr. COHEN. In the lease it asks for additional financial information from the lessee?

Ms. MURPHY. For—in an outlease, where the—there is a base rent, or the rent could be based on a percentage of gross, yes, we do ask for and we—I know, at least—

Mr. COHEN. That is not in the lease. The request for information might be in the lease, or the requirement to disclose, but the data concerning their financial situation is not in the lease.

Ms. MURPHY. I am sorry, the requirement to provide GSA with that data is in the lease. Is that what you are—

Mr. COHEN. Right. This says that the—

Ms. MURPHY. I apologize. I must have—

Mr. COHEN. The lease is confidential information, under the terms and conditions of the lease, that—the lease itself is.

Please provide—the question was please provide the committee with an unredacted copy of the Monaco lease, and all accompanying amendments to the lease. And the response was that is confidential under terms and conditions of the lease. Did—that means that the lease cannot be revealed to the public. That is ridiculous.

Ms. MURPHY. And I apologize, sir. I am not familiar with this lease, and I would be happy to get back to—

Mr. COHEN. If you would look into it, it is question number 4.

Ms. MURPHY. OK.

Mr. COHEN. We want to see the lease, we want to see—and see why you even make that confidential. You are putting—you are

agreeing to something to keep the public out of it. That is not your job. You should not agree to that. And if a tenant wants to not have the lease be public, there is something wrong with the lease. That is number 1.

Number 2, have you looked at the Monaco—they pay more, they pay above the base rent, so you have audited them, or they have voluntarily done it. Why have you not audited the Trump Hotel, post office, like the Monaco has done, to pay more than the base lease?

Ms. MURPHY. So the decision to conduct an audit would be that of the lease contracting officer. That—

Mr. COHEN. Excuse me?

Ms. MURPHY. That decision would not be a decision that I make, sir. That is a decision the contracting officer makes. And the—I think that the—if you all would be willing to come in and take a look at those financial records, I think that a lot of this information would—it would be a lot easier to understand.

Mr. COHEN. In fact, I just have 1 last second, Madam Chairman.

I would suggest—you said that you would—if it was required, that you would look into the new owners of the hotel, and were they a foreign influence. If it was required. If it is not required, let me suggest you find a way to make it required. You ought to do that if they lease this and sell this.

And one other question. The Saudis apparently bought 500 rooms in the hotel. Do you have any basis to believe any of those rooms were even occupied?

Ms. MURPHY. I am not familiar with the day-to-day operations of the hotel.

Mr. COHEN. Well, we ought to look into it, because 57 percent occupancy—I would like to know what percentage of the rooms were sold. And you could sell rooms to a—anybody, a foreign power, an American group, anybody. The rooms could be sold and not used. And that is a way to provide graft, and that is what the problem is here, in the—it is the Emoluments Clause, but it is also to make sure they are not just cleaning money or funneling money through room reservations, and not using the rooms.

I yield back the balance of my time.

Ms. TITUS. Mr. Palmer?

Mr. PALMER. In regard to some of the questions that have been raised, I think there are potentially some constitutional issues here in trying to direct the GSA. And I just want to point out, again, as Mr. Massie pointed out, Mr. Perry pointed out, and others, that the contract was negotiated and signed during the Obama administration. And this committee was briefed. There was a 30-day period. The committee was briefed on it. All of the things that—the issues that have been raised, the subletting, all of that is in the briefing document. And there were no objections raised by any member of this committee at that time.

And I will contend that the only reason objections are raised now is it is purely political. It has nothing to do with the execution of the contract, or the fact that you have gone from losing over \$6 million a year to making \$3 million a year. It is all political.

And I make this point, too. The Old Post Office lease was submitted to this committee to review to—prior—pursuant to the authority that the committee has, and there were no objections.

With that I yield back.

Ms. TITUS. Thank you. And I would point out that Donald Trump was not President when he entered into that lease agreement.

I have some questions, just to kind of sum up. I don't think you are going to be able to answer them, because you haven't so far. But would you find somebody in your office who can explain the lease to us, and let us know how much money taxpayers will get if Donald Trump sells the hotel for \$500 million, as he is asking?

Second, we have determined there are very few guidelines for outleasing of major buildings, yet there are a number of guidelines for just the regular leasing process, including one which you failed to acknowledge or pay any attention to when you followed the IG, or allegedly followed the IG's recommendation that you clean up the Emoluments Clause. And this is one of your conditions of leasing that says no person holding a federally elected office may directly or indirectly participate or benefit from the lease. Why you can have this in your leasing provision, but not in your outleasing provision, is beyond me. So maybe you could explain that.

The third thing I am curious about—and this was mentioned by Ms. Fletcher—is the 45 days. It took over a year, originally, with the RFP, to come to this lease as it was first written. But now only 45 days. You have got no rules, no nothing to guide you. Maybe you will investigate, maybe you will find out if they are a foreign power. Maybe you will just depend on their self-disclosure. And you are going to have to do it in just 45 days, which probably is not going to be enough.

But the rest of that clause is what is so interesting. If you don't get it done in 45 days, then the Trump Organization will just issue a second notice that this is who we are going to sell it to, and transfer of the lease will be deemed approved without any kind of sign-off from the Federal Government at all. So if you can't get it done in 45 days, they will just do it automatically.

Now, do you want to address those three things? Do you have any way to enlighten us further than what you have done so far? Or do you want to take those for the record?

Ms. MURPHY. I am—I had four down, so I also—maybe I want to make sure that I have got all three of them correctly and then get back to you on them, because I, for some reason, have four items—

Ms. TITUS. Well, if there are four, maybe that is four. Maybe I miscounted. Maybe that was some of my creative math I have been accused of earlier.

Ms. MURPHY. So I think your first request is that we work with having someone come in and walk through the terms of the lease and how those provisions work. Of course, we will be happy—

Ms. TITUS. And how much money will the taxpayers receive if it is sold for the \$500 million.

Ms. MURPHY. And then the second question you had was about the outleasing versus leasing, and why there is a provision in the leasing that isn't present in outleasing. Am I correct, ma'am?

Ms. TITUS. Yes, the provision about the federally elected officials benefitting.

Ms. MURPHY. And so I would be happy to get back to you on it, but I believe the reason is that within the last few years this committee has started including that language in its prospectuses. And so we have been including that in our leases.

Ms. TITUS. That doesn't answer my question of why you wouldn't use this as the guideline for meeting the IG's recommendation, as opposed to going back to some statute from many years ago that was just referring to Congress, where we were self-policing.

Ms. MURPHY. Again, we are using that for all outleasing. So the—in the current lease that we have, we don't have the ability to go back and change that—

Ms. TITUS. I got that. But you told me you had done this prospectively, but you had relied on an old statute that had only mentioned Congress. I am saying you got this in your leasing provisions that refers to all Federal officials. Why didn't you use that as the guideline, instead of some old statute that you dug up?

Ms. MURPHY. Well, I think that they are current statutes that we are using right now, that they are—

Ms. TITUS. Well, this is current. This is current. This is your own rule for leasing.

Ms. MURPHY. So let me go ask my leasing—

Ms. TITUS. All right, so that is number 2. What do you have for three?

Ms. MURPHY. The 45-day question was what I had—

Ms. TITUS. That is right. How can you get this done in 45 days? It took over a year to do it initially. Now you are going to investigate somebody they are going to sell the lease to in 45 days? And if you don't get it done, then they can just do it anyway.

Ms. MURPHY. So we have—

Ms. TITUS. How did that—how did you come up with that provision?

Ms. MURPHY. I did not, ma'am. That came—that was included in the lease in 2012, long before I was—I was still working on the House Small Business Committee in 2012.

Ms. TITUS. Well, can you—you think you are going to be able to get it done in 45?

Ms. MURPHY. If 45 days is what we have, 45 days is what we are going to do. And we are not going to cut corners to do it, though.

Ms. TITUS. Well, that is reassuring. All right, that is three. What is your fourth?

Ms. MURPHY. I am trying to read my own handwriting on my fourth, ma'am, and I apologize—

Ms. TITUS. Well, if you can't read it, and I can't remember it, we will go on to the next person.

Ms. MURPHY. OK.

Ms. TITUS [to Mr. Palmer]. You're good?

Mr. DEFAZIO. Thanks, Madam Chair. So—and here is just a general question. Is the Constitution—does that trump a statute?

Ms. MURPHY. Yes, sir.

Mr. DEFAZIO. I mean if the court finds that a statute is in violation of the Constitution, it goes away, right? I mean that is a simple question. Yes, OK, that is the answer.

Here, so in this case, emoluments are applied to Members of Congress by a statute. And in this case, emoluments are applied to the President of the United States under the Constitution. So—and we had a discussion earlier about oath of office and that.

So here is the issue. There are two things that GSA says. The contracting officer says, well, they can't pierce the LLC, and that it is a—so we don't really know who is the beneficiary. And secondly, the contracting officer says the President wasn't President when he signed the lease. Fair enough, true. And the Obama administration negotiated the lease. True. And then Congress reviewed the lease. True, there was no question of emoluments of—by the President of the United States. He wasn't President.

Now, on August 2, 2017, at the request of the Acting Commissioner of GSA Public Buildings Service, the Department of Justice filed a complaint in the U.S. District Court for the District of South Carolina, seeking to condemn a leasehold interest in a minor office space owned by—that is my addition, “minor”—office space owned by Rice REI, LLC, because, according to the complaint, contracts between Members of Congress and the Federal Government are prohibited, and the lease in question was voided—get this—upon his election and assumption of office.

Now we get another guy who was elected—I don't know if your legal opinion says he wasn't, but I think he was elected—and assumed office. But somehow this is OK. It is in the Constitution. It is not just a statute. And GSA went to court because a Member of Congress, a person had—with a minor lease had gotten elected and assumed office.

Now, why doesn't that apply in this case?

Ms. MURPHY. So the statute you are referring to was drafted and it applies specifically to Congress. You are talking about a lease versus an outlease. And you are talking about a case where—

Mr. DEFAZIO. I don't think there is any distinction between leases and outleases.

Ms. MURPHY. Well, sir, in a lease we needed that space. It was an FBI office, if I am correct, and—if I am recalling correctly. And we could not—

Mr. DEFAZIO. It was leased. And, you know, you went to court to void the lease. And in this case there is—

Ms. MURPHY. I don't think we—

Mr. DEFAZIO. We don't care. I mean he is President, we have a secret legal opinion that says it doesn't violate emoluments, Congress can't see it, and this is routine. It was entered into under the Obama administration, so it is all good.

You know, this is a remarkable lack of curiosity on the part of GSA. We allow Trump LLC to self-audit, and we have been provided—oh, almost 10,000 pages of documents—you provided us a cover sheet for every self-audit and financial report. The cover sheet, with even the name of the person who submitted it redacted. Now, do you think that is forthcoming? Seriously? And that is adequate for our oversight?

Ms. MURPHY. Sir, I—can I address your issue on the legal memos? Because I think you said something that maybe I can clarify without violating the attorney-client concerns we had, which is you suggest that you would like to see the—how those legal memoranda address the Emoluments Clause.

I have not read those legal memoranda, but my understanding from the IG's report is that those legal memoranda are not about the Emoluments Clause, and do not—

Mr. DEFAZIO. They said that you didn't consider the Emoluments Clause, but the contracting officer said in November, in personal correspondence to Ivanka Trump, everything is hunky dory, this is all a bunch of BS, don't worry about it.

Ms. MURPHY. I am not sure I would agree with—

Mr. DEFAZIO. That is not exactly a quote, but that is the gist of what the guy said, this professional who is overseeing this lease, who you are not concerned about and is eight levels down, so you can't direct anything that might say, well, gee, maybe this guy isn't impartial, and maybe we should put someone else in charge of this, especially if we are now looking at bin Salman, or Xi Jinping, or, you know, one of Putin's cronies leasing this hotel.

Thank you, Madam Chair.

Mrs. FLETCHER. I just have one followup question that we were chatting about on this 45 days, because it does concern me. And it seems that there is some vagueness in the lease language. So what I see in front of me is that it says if the landlord fails to respond within 45 days of this tenant submitting all necessary qualified transferee information, the landlord tenant shall provide a second written notice, and then the landlord qualified transferee confirmation shall be deemed given.

So it seems to me that there is some uncertainty of what it means to respond, and it certainly seems like we could explore whether a response is simply providing notice of receipt, and then implementing a process to thoroughly review and vet and address some of the concerns that have been raised today in terms of security, in terms of the prospective purchasers. So this, I think, is a good area where we could work out a plan.

But my concern continues to be waiting to develop that plan until receiving notice. So I would love to get your agreement today that we could work with this committee and with your office to develop a plan to deal with this, whether it happens next month or next year or in 10 years, that we can have a plan going forward that can address some of the concerns with this 45-day provision.

Ms. MURPHY. So, Congresswoman, perhaps a good place for us to start would be if we got some of the GSA experts to meet with you or your staff and discuss what exactly is covered in that section 15 provision, what—and what that means. Because you are raising some very good questions about that, and I think that would be a great area for us to explore.

Mrs. FLETCHER. I think it would be very useful for us to explore to make sure that the American people are protected when it comes to the potential transfer of this building, and also to put steps in place for any of the other major outlease assets.

So I appreciate that, and we will follow up. Thank you very much, and I yield back.

Mr. PALMER. I just have a question for Congresswoman Fletcher. Are you talking about changes to the current contract, or to future contracts?

Mrs. FLETCHER. Well, as a lawyer who spent a lot of time interpreting contracts, I think there is some vague language in this contract about what it means to respond, and whether that means a full vetting process within 45 days or simply engaging in a process.

So I think, if we can work out a process that will address some of the concerns about a transfer, both for this and forward-looking, ongoing agreements, I think that that would be very useful for everyone to have that clarity.

Mr. PALMER. Well, the point that I would raise is that the committee's prospectus is—process is the Constitution, because it is tied to the need for appropriations. And if you are talking about making changes to a current contract, there would be an issue with the client because there are no appropriations involved. If you are talking about future contracts, I think that would be appropriate. But—

Mrs. FLETCHER. I think the issue here is really dealing with the vagueness in the agreement, and making sure that some of the concerns that were raised can be adequately addressed within a 45-day period.

And so what is a process upon receiving notice, certainly acknowledging receipt, is important. But this is an area where I think there could be some confusion as to what the obligations are, in terms of the receipt and response. And so, clarifying that could be useful.

Ms. TITUS. I think that is pretty clear, Mrs. Fletcher. You are not changing a contract, you are just clarifying some of the language as guidance for GSA, as it evaluates and responds to a prospective sale or lease.

Ms. MURPHY. And I only have a summary of the provision in front of me right now. So I would want to make sure that, you know, we were talking to our attorneys. And if there is ambiguity in there, let's talk about—or if I am not correctly describing what the provision is, or how that 45-day period governs—that we have that conversation.

Ms. TITUS. Thank you. And we have gotten language here in front of us, so I think it is pretty clear that that is—needs a little detail put in it so you can be protected as you move forward, and you will have guidance from us so we can avoid some of these kind of questions in the future.

Any further questions from the subcommittee?

Thank you. Seeing none, I will thank each—thank you, not each of our witnesses, but you, Ms. Murphy, for being here with us today, and for your testimony. It has been very informative and helpful, and we look forward to working with you as we move forward on this.

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

Without objection, so ordered.

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

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM HON. PETER A. DEFazio AND HON. DINA TITUS TO HON. EMILY W. MURPHY, ADMINISTRATOR, U.S. GENERAL SERVICES ADMINISTRATION

Selling the Outlease:

Question 1. If the lease for the Trump International Hotel Washington DC remains with the Trump Organization and Donald J. Trump is not re-elected as President, then the Trump Organization could potentially end up with an underperforming asset. What does GSA do when the owner of an outlease with GSA cannot meet the terms of the outlease? Is there a standard policy or contingency plan?

ANSWER. The lease sets forth GSA's rights in the event of a default by the tenant.

Question 2. What responsibilities remain with the Trump Organization if the lease is sold?

ANSWER. The lease contains several "survivability" clauses that remain in effect even if the Trump Old Post Office LLC sells its leasehold interest. For example, certain record keeping requirements survive the termination or expiration of the lease. See Lease at Section 5.4. In addition, certain indemnification and environmental provisions would also survive. See Lease at Sections 14.1 and 31.2.

Question 3. Please explain how much money taxpayers will receive if the Trump International Hotel Washington DC outlease is sold for \$500 million and how the money received by GSA is calculated?

ANSWER. The lease addresses how GSA's share of any sale proceeds would be calculated. Please refer to the Lease at Section 5.2.

Question 4. If the purchaser of the lease is an LLC—how will GSA know if that's just a front for a Russian oligarch, or a terrorist organization? What specific steps would GSA take to identify all of the LLC owners and anyone or any entity that has any financial stake in the LLC? If it turns out a potential buyer is, in fact, tied to a foreign entity or government who is attempting to purchase the hotel lease, will GSA notify Congress about that before allowing the sale to be completed?

ANSWER. The lease contains numerous provisions to protect the Government against an assignment to certain persons. For instance, Section 37.15 requires the tenant to represent and warrant as follows:

Neither Tenant nor, to Tenant's knowledge, any owner of a direct or indirect interest in Operator (i) is listed on any Government Lists, (ii) is a Person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of the Office of Foreign Assets Control ("OFAC") or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) is currently under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" means (1) the Specially Designated Nationals and Blocked Persons Lists maintained by

OFAC, (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Landlord notified Tenant in writing is now included in "Government Lists", or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Government Authority or pursuant to any Executive Order of the President of the United States of America that Landlord notified Tenant in writing is now included in "Government Lists".

Section 37.15 further requires the tenant to submit an organizational chart setting forth "all direct and indirect ownership of Tenant and Operator and ... all information required to be displayed in accordance with the definition of Organizational Chart in this Lease." Further, the lease defines the term "Organization Chart" as:

a chart ... showing all direct and indirect ownership of Tenant and Operator, with names of all Persons thereon, their relative percentage ownership of Tenant or Operator, the amount of their Equity as of the date of delivery of such Organizational Chart and their relationship to one another, and further showing any other Persons who may have management or Control rights with respect to Tenant or Operator, without regard to direct or indirect ownership in Tenant or Operator, further showing in reasonable detail the nature and amount of Debt and equity (and the providers thereof) of (x) Tenant and (y) each other Person which holds a direct or indirect legal or beneficial ownership or equity interest in Tenant or Operator, at each tier

Lastly, GSA will comply with all laws and regulations governing transactions involving foreign investment in the United States.

Security:

Question 1. Is GSA engaging with the FBI, Department of Justice or the Secret Service in regard to the potential sale of the lease given the fact that the Trump International Hotel Washington DC is next to the Department of Justice and across the street from the FBI headquarters, since depending on the ownership of the lease it could pose a national security threat to these agencies?

ANSWER. GSA has received no information from the tenant regarding the identity or even existence of a potential buyer. To the extent the tenant proposes a sale of its interest in the lease, GSA will engage other agencies if appropriate.

Question 2. The Department of Homeland Security has developed standards and policies for security in and protection of government-owned buildings. The Old Post Office Building seems to be particularly vulnerable from a security perspective—both as a potential target and as a platform for breaching the electronic or physical security of nearby high-security buildings such as the FBI headquarters building. Did GSA or any other Federal entity assess the security risks presented by the Old Post Office building and its outlease to the Trump Organization prior to the signing of the lease in 2013? If so, what countermeasures were identified to mitigate these risks? To what extent are these countermeasures being implemented?

ANSWER. In or around December 2012, GSA invited the U.S. Secret Service (USSS) to share any protective requirements it had in regard to the Old Post Office site (particularly during inaugural events), with the goal of possibly incorporating these requirements into the lease agreement. On April 25, 2013, the USSS requested that GSA incorporate the following language into the lease: "In connection with the Presidential Inaugural Parade, the Lessee shall allow the United States Secret Service to implement security measures on the leased property. These security measures may include, but are not limited to, traffic and pedestrian restrictions, the operation of vehicle and public screening checkpoints, and the establishment of secured areas."

As a result of these discussions and the request from the USSS, GSA negotiated what is now Section 37.24 of the lease, which states:

Tenant hereby acknowledges the usage limitations with respect to Pennsylvania Avenue during any presidential inauguration period as set forth in 36 C.F.R. 7.96 and as shown on Exhibit R, as the foregoing may be amended from time to time. In connection with the presidential inaugural parade or a threat to public safety, Tenant hereby agrees to allow the United States Secret Service to implement security measures on the Premises and Off-Site Areas. These security measures may include, but are not limited to, traffic and pedestrian restrictions, the operation of vehicle and public screening checkpoints, and the establishment of secured areas.

In addition, in November 2016, the Federal Protective Service (FPS) issued a Memorandum for the Record to document the Federal Security Level (FSL) for the Old Post Office building. FPS proposed a FSL 1 for the building, which is the lowest level of protection. The FSLs are as follows:

- Level I—Minimum
- Level II—Low
- Level III—Medium
- Level IV—High
- Level V—Very high

Question 3. Chapter 17 of GSA's Leasing Desk Guide lists requirements for security agency buy-ins for leased space. The Trump International Hotel Washington DC lease does not include any security requirements. Should outleases have security requirements? Especially when the buildings are in sensitive areas?

ANSWER. As noted in prior communication with the Subcommittee, GSA only has a few large outleases on the scale of the Old Post Office building. For those large outleases, security requirements are best handled on a case-by-case basis. For example, as noted above, GSA coordinated security requirements with both the USSS and FPS for the Old Post Office building. In addition, and by way of further example, when GSA looked into repositioning the Webster School, which is located at 940 H Street NW, Washington, DC, GSA included security requirements as part of the Request for Information issued to potential private sector developers.

Question 4. GSA's contract with the Trump Organization does not expressly define actions that the Trump Organization is required to take to promote the security and protection of the Old Post Office building. This seems to be an important omission. What will you do to make clear the lessee's security responsibilities both in the case of the Trump International Hotel Washington DC outlease and in future outleases that GSA executes?

ANSWER. Please refer to the previous response.

Outleasing Policy:

Question 1. Multiple layers of rules and regulations direct GSA's acquisition of goods, services and leased space. The Federal Acquisitions Regulations (FAR) is more than 1,000 pages long, GSA's Acquisitions Manual (the GSAR) is almost 500 pages long and GSA's Leasing Desk Guide—22 chapters and eight appendices—is almost 900 pages long. Do the FAR, GSAR or the Leasing Desk Guide apply to GSA outleases? If not, what aspects of these regulations and guidance should be applied to outleases? What steps do you plan to take to establish guidance for outleases that you determine is currently lacking?

ANSWER. No, outleasing is not subject to the FAR, the GSAR, or the Leasing Desk Guide, all of which apply to acquisitions.

GSA provides guidance to contracting officers on outleasing procedures in the Outleasing Program Guide.

Question 2. GSA's brokers and Lease Contracting Officers use a standard lease form, correct? Why is there no standard outlease form?

ANSWER. GSA's Outlease Program Guide recommends the use of the form GSA 3486 (Rev. 10/2013)—U.S. Government Lease of Real Property—for an outlease in which an interest in real property is conveyed to a non-Federal entity.

Question 3. GSA's standard form for Leasing Contract Officers requires that no person holding a federally elected office may directly or indirectly participate or benefit from the lease. However, the form only applies to leases. Why is that provision not included in outleases?

ANSWER. GSA's Outlease Program Guide recommends the use of the GSA Form 3486 (Rev. 10/2013)—U.S. Government Lease of Real Property—for an outlease in which an interest in real property is conveyed to a non-Federal entity. This form contains the following language:

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the lease agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to any corporation or company if the agreement be for the general benefit of such corporation or company.

This language is being updated to refer specifically to lessee requirements under 18 U.S.C. § 431 and 41 U.S.C. § 6306(a). GSA will also require any future outleases that do not use Form 3486 to use the same language.

QUESTION FROM HON. ELEANOR HOLMES NORTON TO HON. EMILY W. MURPHY,
ADMINISTRATOR, U.S. GENERAL SERVICES ADMINISTRATION

Question 1. What is the rationale for moving Pretrial Services Agency (PSA), the Court Services and Offender Supervision Agency (CSOSA), and the Public Defender Service (PDS) more than a mile from DC Superior Court and the DC Court of Appeals when the US Attorneys Office was recently moved only four blocks away?

ANSWER. In September 2018 GSA transmitted to and briefed the Committee on a FY 19 lease prospectus and housing plan for the Court Services and Offender Supervision Agency (CSOSA), Pretrial Services Agency (PSA), and Public Defender Service (PDS) in Washington, DC. GSA notes that CSOSA, PSA, PDA, GSA, and the Office of Management and Budget were in agreement with the proposed delineated area as outlined in the lease prospectus and the established guidelines in the subsequent solicitation.

Additionally, GSA took into consideration the needs of the agencies involved as well as their clients. As a result, the solicitation includes an exception regarding location parameters, allowing for a far narrower geographical area than is standard. Furthermore, GSA included a requirement in the solicitation to address transportation issues to and from the courthouse that, again, all involved agencies agreed to.

QUESTIONS FROM HON. STEVE COHEN TO HON. EMILY W. MURPHY, ADMINISTRATOR,
U.S. GENERAL SERVICES ADMINISTRATION

Question 1. Please provide a copy of the Tariff Building/Hotel Monaco outlease and any amendments to the lease.

ANSWER. As discussed further below, GSA requested, pursuant to Section 34.1 of the Tariff Building lease, the tenant's consent to release an unredacted copy of the lease to the Committee. The tenant declined that request. GSA will work with the tenant, as required by the lease, to make appropriate redactions. Once that process is complete, GSA will provide a copy of the redacted lease to the Committee.

Question 2. Please provide the text of any confidentiality clauses included in the Tariff Building/Hotel Monaco outlease.

ANSWER. Section 34.1 of the Hotel Monaco Lease states:

Landlord shall keep confidential, as confidential commercial or financial information, and shall not divulge to any Person any Confidential Information, provided, however, Landlord shall not be precluded from making disclosure regarding Confidential Information (i) in circumstances in which Tenant consents, which consent shall not be unreasonably withheld, (ii) to Landlord's counsel, accountants, and other professional advisors, who are not employees of Landlord, provided that such counsel, accountants and advisors are instructed in writing not to disclose the Confidential Information, (iii) to Landlord's employees who need to know such information in performance of their duties on behalf of the United States, and (iv) as required by law. If Landlord receives a request for Confidential Information pursuant to FOIA, Landlord shall promptly notify Tenant of such request and shall follow its procedures for processing FOIA requests for confidential commercial or financial information in accordance with the standards set forth in 41 CFR Part 105-60 as it may be amended or any successor regulation.

Question 3. How many GSA outleases include a confidentiality clause?

ANSWER. With respect to major outleases, it is my understanding that three include a confidentiality clause.

Question 4. What is the reasoning behind including a confidentiality clause for the Tariff Building/Hotel Monaco?

ANSWER. Generally speaking, confidentiality clauses are included in GSA's leases to protect the business interests of those who do business with the government.

Question 5. When did the GSA contracting officer submit a request to the tenant for its consent to release the unredacted copy of the Tariff Building/Hotel Monaco lease to the Committee?

ANSWER. The contracting officer requested the tenant's consent to release an unredacted version of the Tariff Building Lease to the Committee on March 13, 2020. That request was declined. To the extent that Commissioner Mathews' response to the Committee's previous Questions for the Record (QFRs) indicated that the request had already been made on December 12, 2019, the response was inaccurate. The error, which was due to an internal miscommunication, was unintentional.

tional. Upon realizing the error shortly after receiving these QFRs, GSA immediately took action to address it.

Question 6. Has the tenant responded to the GSA contracting officer's request? If yes, please provide a copy of the tenant's response.

ANSWER. The Tenant formally responded to the request on March 19, 2020 that they were not currently comfortable with the release of the unredacted version of the Ground Lease. They did indicate they would work with GSA in preparing a redacted version of the Ground Lease if that would satisfy the Committee.

