

TO AMEND TITLE 40, UNITED STATES CODE, TO MODIFY THE TREATMENT
OF CERTAIN BARGAIN-PRICE OPTIONS TO PURCHASE AT LESS THAN
FAIR MARKET VALUE, AND FOR OTHER PURPOSES

NOVEMBER 1, 2021.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. DEFAZIO, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2220]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 2220) to amend title 40, United States
Code, to modify the treatment of certain bargain-price options to
purchase at less than fair market value, and for other purposes,
having considered the same, reports favorably thereon without
amendment and recommends that the bill do pass.

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PURPOSE OF LEGISLATION

The purpose of H.R. 2220 is to modify the treatment of certain
bargain-price options in leases to purchase real estate at less than
fair market value by the General Services Administration (GSA).

BACKGROUND AND NEED FOR LEGISLATION

GSA is authorized to enter into lease agreements for commercial real estate for the purposes of providing space for a federal agency.¹ According to the Government Accountability Office (GAO), negotiating an option to purchase as part of a lease agreement could reduce costs to the taxpayer by providing a future option to own the building as often GSA may lack the budget authority to purchase a building outright.²

In the 1990s, changes in budgetary scorekeeping rules established by the Office of Management and Budget (OMB) adjusted how the inclusion of discounted purchase options in leases are treated under the budgetary scoring rules.³ For example, OMB scoring rules state that, “[w]hen the lease agreement contains an option to purchase at less than fair market value . . . and the option can be exercised without additional legislation, it will be presumed that the option will be exercised . . .”⁴ As a result, when GSA includes such options in its leases, OMB will presume GSA will exercise those options and eventually own the property. Such leases—leases leading to ownership—are generally treated as capital leases for the purposes of budgetary treatment and scoring.⁵ The budget authority needed for a capital lease in essence is the total cost of such lease over the entire lease term.⁶ As a result, GSA would need to have the full budget authority for the total value of the lease upfront making it impractical given the budgetary constraints as noted by the GAO.⁷

A recent example of the impact of the current OMB scoring rules on GSA’s management of buildings is the Department of Transportation (DOT) headquarters building in Washington, D.C. In 2002, GSA sold property at the then-federally owned Southeast Federal Center to a private company for \$40 million to develop and build a new DOT facility.⁸ OMB scoring rules limited the ability of GSA to maintain an interest in the real property for these purposes, such as through a leaseback arrangement which would have allowed GSA to maintain equity in the property.⁹ In 2006, GSA began leasing the newly built building and while the lease included an option to purchase, due to the scoring rules, such option could not be at a discounted amount unless GSA had the budget authority upfront for the full cost of the lease over the term of the lease.¹⁰ If GSA had access to full, upfront funding, GSA may have been able to construct the DOT building for \$294 million and avoid leasing altogether.¹¹ Instead, GSA leased the building and spent \$753

¹40 U.S.C. § 585.

²*Federal Real Property: Leases with Purchase Options Are Infrequently Used but May Provide Benefits*, Government Accountability Office, GAO-16-536R.

³*Id.*

⁴OMB Circular No. A-11, Appendix B.

⁵*Id.*

⁶*Id.*

⁷*Supra* note 2.

⁸*Budget Issues: Alternative Approaches to Finance Federal Capital*, Government Accountability Office, GAO-03-1011, August 21, 2003.

⁹See OMB Circular No. A-11, Appendix B.

¹⁰*Capital Fund Proposal: Upfront Funding Could Benefit Some Projects, but Other Potential Effects Not Clearly Identified*, Government Accountability Office, GAO-21-215, September 10, 2021; see OMB Circular No. A-11, Appendix B.

¹¹*Capital Fund Proposal: Upfront Funding Could Benefit Some Projects, but Other Potential Effects Not Clearly Identified*, Government Accountability Office, GAO-21-215, September 10, 2021.

million from 2006 to 2020.¹² Unable to negotiate a discounted purchase option upfront, GSA purchased the building in 2020 for \$768 million based on its fair market value.¹³

Despite examples of savings from GSA's use of purchase options below market value, GSA's ability in recent years to negotiate leases with such options has been severely limited due to the budgetary scoring rules.¹⁴

H.R. 2220 amends GSA's leasing authority to allow GSA to include discounted purchase options in its leases by conforming such authority to the current budgetary scoring rules by requiring congressional authorization for GSA to exercise such options. By removing the presumption outlined in the rules that such options will be exercised resulting in a capital lease, inclusion of such a purchase option in a GSA lease in and of itself would not trigger a capital lease.

HEARINGS

For the purposes of rule XIII, clause 3(c)(6)(A) of the 117th Congress, the following hearing was used to develop or consider H.R. 2220:

On May 13, 2021, the Subcommittee held a hearing titled "Federal Real Estate Post-COVID-19 Part One: A view from The Private Sector." The Subcommittee received testimony from Ms. Kay Sargent, Senior Principal, Director of WorkPlace, HOK, on behalf of the International Facility Management Association; Ms. Genevieve Hanson, Principal, Strategy & Transactions, Real Estate Planning, Execution and Operations, Ernst & Young LLP; Ms. Kelly Bacon, Principal, Global Practice Lead, Workplace Advisory Design and Consulting Services, AECOM; Ms. Marcy Owens Test, Senior Vice President, CBRE Federal Lessor Advisory Group; and Mr. Norman Dong, Managing Director, FD Stonewater. This hearing provided Members an opportunity to examine the impact of COVID-19 on future federal office space planning and managing and included discussion regarding alternative financing for federal space.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 2220 was introduced in the House on March 26, 2021, by Mr. Guest, Mr. Webster of Florida, and Mr. Pence and referred to the Committee on Transportation and Infrastructure. Within the Committee, H.R. 2220 was referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management.

The Subcommittee on Economic Development, Public Buildings, and Emergency Management was discharged from further consideration of H.R. 2220 on July 28, 2021.

The Committee considered H.R. 2220 on July 28, 2021 and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

¹²*Id.*

¹³*Id.*

¹⁴*Supra* note 2.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

No record votes were requested during consideration of H.R. 2220.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to conform GSA's leasing authority to budgetary scorekeeping guidelines to facilitate the ability of GSA to negotiate discounted purchase options in lease agreements.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 2220 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Ac-

accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 2220 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Limitation on discounted purchase options

Amends Section 585 of title 40, U.S.C., to add a new subsection (d) requiring that any bargain-price option to purchase in any lease agreement entered into on or after January 1, 2021, may be exercised only to the extent provided for in appropriations or other acts of Congress.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 40, UNITED STATES CODE

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**SUBTITLE I—FEDERAL PROPERTY AND
ADMINISTRATIVE SERVICES**

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CHAPTER 5—PROPERTY MANAGEMENT

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**SUBCHAPTER V—OPERATION OF BUILDINGS AND RELATED
ACTIVITIES**

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§ 585. Lease agreements

(a) **IN GENERAL.—**

(1) **AUTHORITY.—**The Administrator of General Services may enter into a lease agreement with a person, copartnership, corporation, or other public or private entity for the accommodation of a federal agency in a building (or improvement) which is in existence or being erected by the lessor to accommodate the federal agency. The Administrator may assign and reassign the leased space to a federal agency.

(2) **TERMS.—**A lease agreement under this subsection shall be on terms the Administrator considers to be in the interest of the Federal Government and necessary for the accommodation of the federal agency. However, the lease agreement may not bind the Government for more than 20 years and the obligation of amounts for a lease under this subsection is limited to the current fiscal year for which payments are due without regard to section 1341(a)(1)(B) of title 31.

(b) **SUBLEASE.—**

(1) **APPLICATION.—**This subsection applies to rent received if the Administrator—

(A) determines that an unexpired portion of a lease of space to the Government is surplus property; and

(B) disposes of the property by sublease.

(2) **USE OF RENT.—**Notwithstanding section 571(a) of this title, the Administrator may deposit rent received into the Federal Buildings Fund. The Administrator may defray from the fund any costs necessary to provide services to the Government's lessee and to pay the rent (not otherwise provided for) on the lease of the space to the Government.

(c) **AMOUNTS FOR RENT AVAILABLE FOR LEASE OF BUILDINGS ON GOVERNMENT LAND.—**Amounts made available to the General Services Administration for the payment of rent may be used to lease space, for a period of not more than 30 years, in buildings erected on land owned by the Government.

(d) *Any bargain-price option to purchase at less than fair market value contained in any lease agreement entered into on or after January 1, 2021, pursuant to this section may be exercised only to the*

extent specifically provided for in subsequent appropriation Acts or other Acts of Congress.

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