

GAO

Testimony

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Development, Public Buildings and Emergency
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COURTHOUSE CONSTRUCTION

Overview of Previous and Ongoing Work

Statement of Mark L. Goldstein, Director
Physical Infrastructure Issues



G A O

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Highlights of [GAO-05-838T](#), a testimony before the Subcommittee on Economic Development, Public Buildings and Emergency Management, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

Over the last 20 years, GAO has compiled a large body of work on courthouse construction and federal real property. The General Services Administration (GSA) owns federal courthouses and funds related expenses from its Federal Buildings Fund (FBF)—a revolving fund used to finance GSA real property services, including the construction and maintenance of federal facilities under GSA control. The judiciary pays rent to GSA for the use of these courthouses, and the proportion of the judiciary's budget that goes to rent has increased as its space requirements have grown. In December 2004, the judiciary requested a \$483 million permanent, annual exemption from rent payments to GSA to address budget shortfalls.

In this testimony, GAO (1) summarizes its previous work on courthouse construction and (2) provides information on FBF and GAO's ongoing work on the federal judiciary's request for a permanent, annual rent exemption of \$483 million from rent to GSA.

www.gao.gov/cgi-bin/getrpt?GAO-05-838T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark L. Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

COURTHOUSE CONSTRUCTION

Overview of Previous and Ongoing Work

What GAO Found

GAO's courthouse construction work to date has focused primarily on courthouse costs, planning, and courtroom sharing. In the 1990s, GAO reported that wide latitude among judiciary and GSA decision makers in choices about location, design, construction, and finishes often resulted in expensive features in some courthouse projects. The judiciary has since placed greater emphasis on cost consciousness in the guidelines for courthouse construction that it provides to GSA. Related to planning, GAO also found in the 1990s that long-range space projections by the judiciary were not sufficiently reliable, and that the judiciary's 5-year plan did not reflect all of its most urgently needed projects. The judiciary has made changes to improve its planning and data reliability. During previous work, GAO also found that the judiciary did not track sufficient courtroom use data to gauge the feasibility of courtroom sharing.

GSA has been unable to generate sufficient revenue through FBF over the years and thus has struggled to meet the requirements for repairs and alterations identified in its inventory of owned buildings. By 2002, the estimated backlog of repairs had reached \$5.7 billion, and consequences included poor health and safety conditions, higher operating costs, restricted capacity for modern information technology, and continued structural deterioration. GSA's inability to generate sufficient revenue in the past has been compounded by restrictions imposed on the rent GSA could charge federal agencies. Consequently, GAO recommended in 1989 that Congress remove all rent restrictions and not mandate any further restrictions, and the most restrictions have been lifted. Some narrowly focused rent exemptions, many of limited duration, still exist today, but together they represent roughly a third of the \$483 million permanent exemption the judiciary is currently requesting from GSA. The judiciary has requested the exemption, equaling about half of its annual rent payment, because of budget problems it believes that its growing rent payments have caused. GSA data show that GSA-owned space, occupied by the judiciary, has increased significantly. GAO is currently studying the potential impact of such an exemption on FBF, but past GAO work shows rent exemptions have been a principal reason why FBF has accumulated insufficient money for capital investment.

Mr. Chairman, Ranking Minority Member, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today on our work related to federal courthouse construction. As you know, we have done considerable work on federal courthouse construction and other related federal real property issues over the past 20 years. My testimony today will (1) summarize our previous work on this topic and (2) provide information on the Federal Buildings Fund (FBF) and our ongoing congressionally requested work related to the federal judiciary's request for a permanent, annual exemption of \$483 million from rent that the General Services Administration (GSA) charges the judiciary to occupy space in courthouses. GSA owns federal courthouses and funds courthouse-related expenses from FBF—a revolving fund used to fund GSA real property services, including space acquisition and asset management for federal facilities that are under GSA control. The exemption the judiciary is seeking would represent about half of the judiciary's 2004 rent payment of \$909 million, and the judiciary represents one of GSA's largest tenants. My testimony today will highlight the following points:

- GAO's courthouse construction work to date has focused primarily on courthouse costs, planning, and courtroom sharing. In the 1990s, we found that wide latitude in choices made by GSA and the judiciary about location, design, construction, and finishes often resulted in expensive features in some courthouse projects. Since then, the judiciary has placed greater emphasis on cost consciousness in its courthouse construction guidance for GSA. In the 1990s, we also found that the judiciary's long-term space projections were not sufficiently reliable, and that the judiciary's 5-year plan did not reflect all of the judiciary's most urgently needed projects. Since then, the judiciary has made the changes we recommended. With regard to courtroom sharing that could help reduce costs, we found that the judiciary did not collect sufficient data to determine how much sharing could occur. The judiciary disagreed with this finding and the related recommendation.
- GSA has historically been unable to generate sufficient revenue through FBF and has thus struggled to meet the requirements for repairs and alterations identified in its inventory of owned buildings. By 2002, the estimated backlog of repairs had reached \$5.7 billion, and consequences included poor health and safety conditions, higher operating costs, restricted capacity for modern information technology, and continued structural deterioration. GSA charges agencies rent for the space they occupy, and the receipts from the rent are deposited in FBF and are then available for the purposes of the fund. Restrictions imposed on the rent

GSA could charge federal agencies have compounded the agency's inability to address its backlog in the past. Consequently, we recommended in 1989 that Congress remove all rent restrictions and not mandate any further restrictions, and most rent restrictions have been lifted. The GSA Administrator has the authority to grant rent exemptions, and all of the current exemptions are limited to single buildings or were granted for a limited duration. Together, these current exemptions represent about a third of the \$483 million permanent exemption the judiciary is requesting from GSA. The judiciary has requested the exemption, equal to about half of its annual rent payment, because of budget problems that it believes its growing rent payments have caused. GSA data show that one reason the judiciary's rent is increasing is that the space it occupies is also increasing. We are currently studying the potential impact of such an exemption on FBF, but our past work shows that rent exemptions were a principal reason why FBF has accumulated insufficient money for capital investment.

Background

Since the early 1990s, GSA and the federal judiciary have been carrying out a multibillion-dollar courthouse construction initiative to address the judiciary's growing needs. In 1993, the judiciary identified 160 court facilities that required either the construction of a new building or a major annex to an existing building. From fiscal year 1993 through fiscal year 2005, Congress appropriated approximately \$4.5 billion for 78 courthouse construction projects. Since fiscal year 1996, the judiciary has used a 5-year plan to prioritize new courthouse construction projects, taking into account a court's need for space, security concerns, growth in judicial appointments, and any existing operational inefficiencies. The judiciary's most recent 5-year plan (covering fiscal years 2005 through 2009) identifies 57 needed projects that are expected to cost \$3.8 billion. GSA and the judiciary are responsible for managing the multibillion-dollar federal courthouse construction program, which is designed to address the judiciary's long-term facility needs. The Administrative Office of the United States Courts (AOUSC), the judiciary's administrative agency, works with the nation's 94 judicial districts to identify and prioritize needs for new and expanded courthouses. The *U.S. Courts Design Guide* (*Design Guide*) specifies the judiciary's criteria for designing new court facilities and sets the space and design standards that GSA uses for courthouse construction. First published in 1991, the *Design Guide* has been revised several times to address budgetary considerations, technological advancements, and other issues, and the guide is currently undergoing another revision.

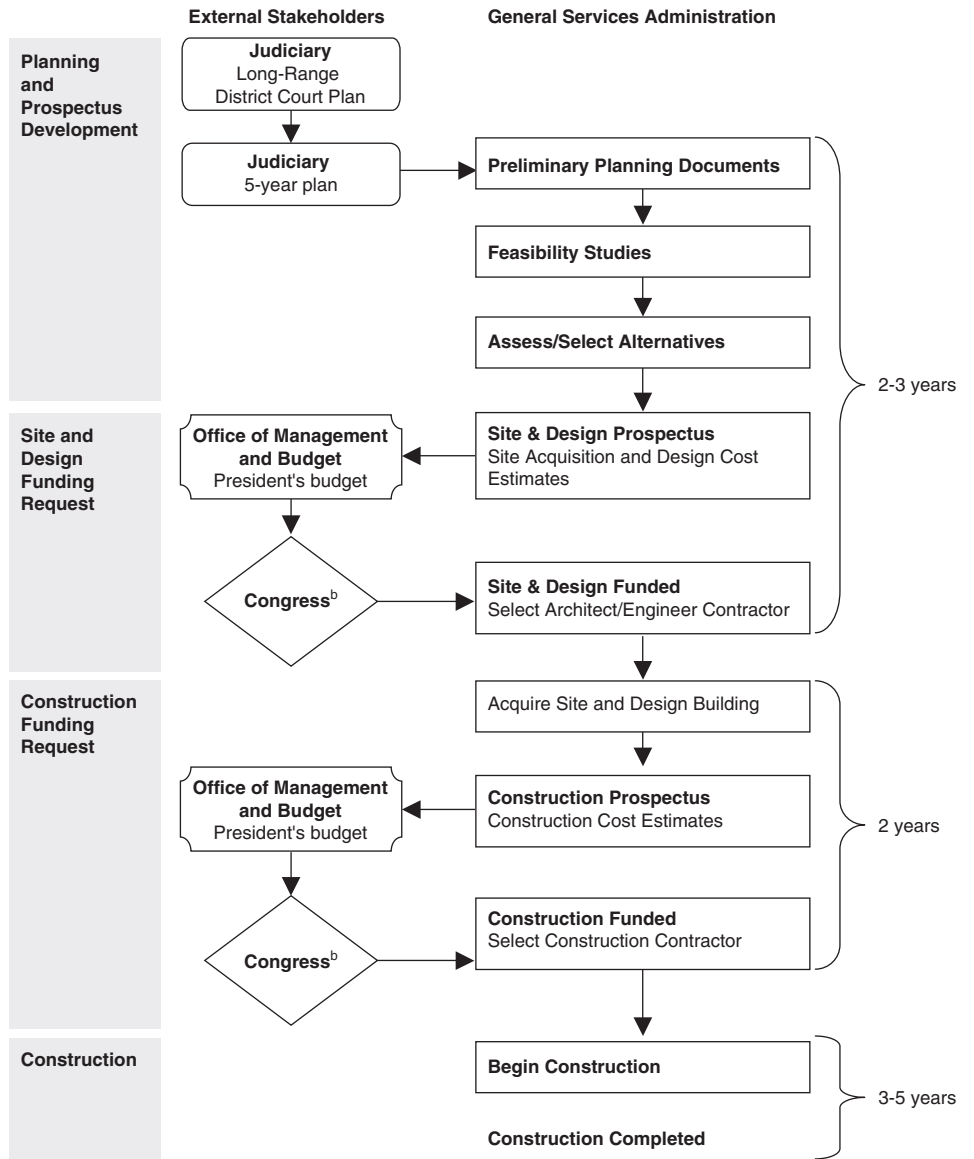
GSA provides a range of real property services including maintenance, repairs, alterations, and leasing to numerous federal agencies and the federal judiciary. The Public Buildings Amendments of 1972 made several important revisions to the Federal Property and Administrative Services Act. First, the 1972 law created a new revolving fund, later named FBF. Next, it required agencies that occupy GSA-controlled buildings to pay rent to GSA, which is to be deposited in the revolving fund to be used for GSA real property services.¹ GSA charges rent based on appraisals for facilities it owns and the actual lease amount for facilities it leases on the tenants' behalf.² The legislation also authorized any executive agency other than GSA that provides space and services to charge for the space and services. The rent requirement is intended to reduce costs and encourage more efficient space utilization by making agencies accountable for the space they use. GSA proposes spending from FBF for courthouses as part of the President's annual budget request to Congress.

GSA has been using the judiciary's 5-year plan for new courthouse projects since fiscal year 1996 to develop requests for both new courthouses and expanded court facilities. GSA also prepares feasibility studies to assess various courthouse construction alternatives and serves as the central point of contact with the judiciary and other stakeholders throughout the construction process. For courthouses that are to be selected for construction, GSA prepares detailed project descriptions called prospectuses that include the justification, location, size, and estimated cost of the new or annexed facility. GSA typically submits two prospectuses to Congress. The first prospectus generally requests authorization and funding to purchase the site and design the building, and the second prospectus generally requests authorization and funding for construction, as well as any additional funding needed for site and design work. Once Congress authorizes and appropriates funds for a project, GSA refines the project budget and selects private-sector firms for the design and construction work. Figure 1 illustrates the process for planning, approving, and constructing a courthouse project.

¹Previously, Congress appropriated money to GSA, and GSA paid for agency space requirements.

²Rent is based on approximate commercial charges for comparable space and services. This method was chosen over a cost-recovery basis in order to produce more income so that the revolving fund could finance construction and major repairs.

Figure 1: Development and Approval Process for Funding a Typical Courthouse^a



Source: GSA.

^aThis figure shows the typical process for a project that is procured through the design bid-build method. Projects may also be procured using the design-build method. Such projects require site, design, and construction funding at the same time and therefore may be submitted to OMB and Congress only once, rather than twice as shown in this figure.

^bCourthouse projects are financed through the Federal Buildings Fund (FBF), a revolving fund that is used to fund GSA real property activities with rent from tenant agencies. The President's annual budget request to Congress proposes spending from FBF. GSA submits detailed project descriptions called prospectuses to Congress as part of its Capital Investment Program. Prospectuses request authorization for new construction and for repair and alteration projects, including courthouses.

Courthouse projects continue to be costly, and increasing rents and budgetary constraints have given the judiciary further incentive to control its costs. The judiciary pays rent to GSA for the use of the courthouses, which GSA owns, and the proportion of the judiciary's budget that goes to rent has increased as the judiciary's space requirements have grown. According to the judiciary, rent currently accounts for just over 20 percent of its operating budget and is expected to increase to over 25 percent of its operating budget in fiscal year 2009, when the rental costs of new court buildings are included. Additionally, in fiscal year 2004, the judiciary faced a budgetary shortfall and, according to the judiciary, reduced its staff by 6 percent.

In September 2004, the judiciary announced a 2-year moratorium on new courthouse construction projects as part of an effort to address its increasing operating costs and budgetary constraints. During this moratorium, AOUSC officials said that they plan to reevaluate the courthouse construction program, including reassessing the size and scope of projects in the current 5-year plan, reviewing the *Design Guide's* standards, and reviewing the criteria and methodology used to prioritize projects. Judiciary officials also said that they plan to reevaluate their space standards in light of technological advancements and opportunities to share space and administrative services.

GAO's Courthouse Construction Work Has Focused on Costs, Planning, and Courtroom Sharing

Our work in the 1990s showed that decision makers within GSA and the judiciary had wide latitude in making choices that significantly affected costs. The judiciary's 5-year plan did not reflect all of the judiciary's most urgently needed projects. However, the judiciary has since made some of our recommended changes. We also found that the judiciary did not compile data that would allow it to determine how many and what types of courtrooms it needs. The judiciary concluded that additional data and analysis were not necessary.

Courthouse Construction Costs

In 1995, we testified that a primary reason for differences in the construction costs of courthouses was that GSA and the judiciary had wide latitude in making choices about the location, design, construction, and finishes of courthouse projects.³ These choices were made under circumstances in which budgets or designs were often committed to before requirements were established. In addition, design guidance was flexible, and systematic oversight was limited. As a result, some courthouses had more expensive features than others.⁴ While recognizing that some flexibility was needed and that some costly features may be justifiable, we found that the flexibility in the process should have been better managed. We recommended that GSA and AOUSC

- clearly define the scope of construction projects and refine construction cost estimates before requesting project approval and final funding levels;
- establish and implement a systematic and ongoing project oversight and evaluation process to compare courthouse projects, identify opportunities for reducing costs, and apply lessons learned to future projects; and
- establish a mechanism to monitor and assess the use of flexibility within design guidance to better balance choices made about courthouse design, features, and finishes.

GSA and the judiciary said that since 1996, they have also taken several actions to improve the courthouse construction program, including developing priority lists of locations needing additional space (the 5-year plan), revising the *Design Guide*, and placing greater emphasis on cost consciousness in its courthouse construction guidance for GSA.

In a 2004 congressional briefing, we reported that GSA had attributed some cost growth in courthouse construction projects to a number of factors, including changes in the scope of the projects. In Buffalo, New York, for example, GSA had to change the scope of the courthouse project and acquire an entirely new site in order to achieve the necessary security-based setbacks from the street. The judiciary said that funding delays have slowed the progress of the program by creating a backlog of projects, and

³GAO, *Federal Courthouse Construction: More Disciplined Approach Would Reduce Costs and Provide for Better Decisionmaking*, [GAO/T-GGD-96-19](#) (Washington, D.C.: Nov. 8, 1995).

⁴[GAO/T-GGD-96-19](#).

increased costs by 3 to 4 percent per year because of inflation. The judiciary also indicated that limiting the size of courthouses to stay within budget has resulted in space shortages sooner than expected at some courthouses. In a 2004 report related specifically to a new federal courthouse proposed for Los Angeles, we found that the government will likely incur additional construction and operational costs beyond the \$400 million estimated as needed for the new courthouse.⁵ Some of these additional costs are attributable to operational inefficiencies. Specifically, the court is split between a new building and an existing courthouse in Los Angeles, both of which will, according to the judiciary, require additional courtrooms to meet the district court's projected space requirements in 2031.

Judiciary Long- and Short-Term Space Planning

In 1993, we reviewed the long-term planning process used by the judiciary to estimate its space requirements.⁶ We found that AOUSC's process for projecting long-term space requirements did not produce results that were sufficiently reliable to form the basis for congressional authorization and funding approval of new construction and renovation projects for court space. Specifically, three key problems impaired the accuracy and reliability of the judiciary's projections. First, AOUSC did not treat all districts consistently. For example, the procedure used to convert caseload estimates to staffing requirements did not reflect differences among districts that affect space requirements. Second, according to AOUSC's assumptions about the relationship between caseloads and staff needs, many district baseline estimates did not reflect the districts' current space requirements. For example, when a district occupied more space than the caseload warranted, future estimates of needs were overstated. Third, AOUSC's process did not provide reliable estimates of future space requirements because the methodology used to project caseloads did not use standard acceptable statistical methods.

We recommended that AOUSC revise the long-term planning process to increase consistency across regions, establish accurate caseload baselines for each district, and increase the reliability of the projected caseloads by

⁵GAO, *L.A. Federal Courthouse Project: Current Proposal Addresses Space Needs, but Some Security and Operational Concerns Would Remain*, [GAO-05-158](#) (Washington, D.C.: Dec. 20, 2004).

⁶GAO, *Federal Judiciary Space: Long-Range Planning Process Needs Revision*, [GAO/GGD-93-132](#) (Washington, D.C.: Sept. 28, 1993).

applying an accepted statistical methodology and reducing subjectivity in the process. In May 1994, we testified that the judiciary had implemented some of these recommendations.⁷ For example, on the basis of our recommendation, whenever a decision was made to proceed on a particular building project, AOUSC provided GSA with detailed 10-year space requirements for prospectus development and an overall summary of its projected 30-year space requirements for purposes of site planning. In 2001, we reported that since 1994, AOUSC had continued its efforts to improve its long-term planning process in implementing our previous recommendations.⁸ Specifically, the judiciary began (1) using an automated computer program that applied *Design Guide* standards to estimate space requirements, (2) employing a standard statistical forecasting technique to improve caseload projections, and (3) providing GSA with data on its 10-year projected space requirements to support the judiciary's request for congressional approval of funds to build new facilities.

In 1996 we reported that the judiciary had developed a methodology for assessing project urgency and a short-term (5-year) construction plan to communicate its urgent courthouse construction needs.⁹ Our analysis suggested that its 5-year plan did not reflect all of the judiciary's most urgent construction needs. We found that the judiciary, in preparing the 5-year plan, developed urgency scores for 45 projects, but did not develop urgency scores for other locations that, according to AOUSC, also needed new courthouses. Our analysis of available data on conditions at the 80 other locations showed that 30 of them likely would have had an urgency score higher than some projects in the plan. We recommended that the Director of AOUSC work with the Judicial Conference Committee on Security, Space, and Facilities to make improvements to the 5-year plan, including fully disclosing the relative urgency of all competing projects and articulating the rationale or justification for project priorities, including information on the conditions that are driving urgency—such as specific security concerns or operational inefficiencies. In commenting on

⁷GAO, *Federal Judiciary Space: Progress Is Being Made to Improve the Long-Range Planning Process*, [GAO/T-GGD-94-146](#) (Washington, D.C.: May 4, 1994).

⁸GAO, *Federal Judiciary Space: Update on Improvement of the Long-Range Planning Process*, [GAO-01-308R](#) (Washington, D.C.: Jan. 25, 2001).

⁹GAO, *Courthouse Construction: Improved 5-Year Plan Could Promote More Informed Decisionmaking*, [GAO/GGD-97-27](#) (Washington, D.C.: Dec. 31, 1996) and [GAO/T-GGD-96-19](#).

the report, AOUSC generally agreed with our recommendations and indicated that many of the improvements we recommended were already under consideration. It also recognized that some courthouse projects, which were currently underway, may have had lower priority scores because the funding had already been provided by the time the priority scores were developed.

Courtroom Sharing

In 1997, we reported that the judiciary maintains a general practice of, whenever possible, assigning a trial courtroom to each district judge.¹⁰ However, we also noted that the judiciary did not compile data on how often and for what purposes courtrooms are actually used and it did not have analytically based criteria for determining how many and what types of courtrooms are needed. We concluded that the judiciary did not have sufficient data to support its practice of providing a trial courtroom for every district judge. We recommended that the judiciary

- establish criteria for determining effective courtroom utilization and a mechanism for collecting and analyzing data at a representative number of locations so that trends can be identified over time and better insights obtained on court activity and courtroom usage;
- design and implement a methodology for capturing and analyzing data on usage, courtroom scheduling, and other factors that may substantially affect the relationship between the availability of courtrooms and judges' ability to effectively administer justice;
- use the data and criteria to explore whether the one-judge, one-courtroom practice is needed to promote efficient courtroom management or whether other courtroom assignment alternatives exist; and
- establish an action plan with time frames for implementing and overseeing these efforts.

In 1999, AOUSC contracted for a study of the judiciary's facilities program to address, among other things, the courtroom-sharing issue and identify ways to improve its space and facility efforts. As part of this study, the contractor analyzed how courtrooms are used, assigned, and shared by judges. We reviewed the courtroom use and sharing portion of this study

¹⁰GAO, *Courthouse Construction: Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking*, [GAO/GGD-97-39](#) (Washington, D.C.: May 19, 1997).

and concluded, along with others, that the study was not sufficient to resolve the courtroom sharing issue.¹¹ We recommended that the Director, AOUSC, in conjunction with the Judicial Conference's Committee on Court Administration and Case Management and Committee on Security and Facilities, design and implement cost-effective research more in line with the recommendations in our 1997 report. We also recommended that AOUSC establish an advisory group made up of interested stakeholders and experts to assist in identifying study objectives, potential methodologies, and reasonable approaches for doing this work. In responding to the report, AOUSC disagreed with our recommendations because it believed the contractor study was sufficient and additional statistical studies would not be productive.

In a 2002 report, we found that the judiciary's policies recognized that senior district judges with reduced caseloads were the most likely candidates to share courtrooms and some active and senior judges were sharing courtrooms in some locations primarily when there were not enough courtrooms for all judges to have their own courtroom.¹² However, because of the judiciary's belief in the strong relationship between ensured courtroom availability and the administration of justice and the wide discretion given to circuits and districts in determining how and when courtroom sharing may be implemented, we concluded that there would not be a significant amount of courtroom sharing in the foreseeable future, even among senior judges.

Issues Related to FBF

We have reported over the years that GSA has struggled to address its repair and alteration needs identified in its inventory of owned buildings. In 1989, we found that FBF's inability to generate sufficient revenue in the past was due, in large part, to restrictions imposed on the amount of rent GSA could charge federal agencies, and we recommended in 1989 that Congress remove all rent restrictions and not mandate any further restrictions. It is also important to note that not all federal property is subject to FBF rent payments because GSA does not control all federal properties. We are currently conducting a review for this committee

¹¹GAO, *Courthouse Construction: Sufficient Data and Analysis Would Help Resolve the Courtroom-Sharing Issue*, [GAO-01-70](#) (Washington, D.C.: Dec. 14, 2000).

¹²GAO, *Courthouse Construction: Information on Courtroom Sharing*, [GAO-02-341](#) (Washington, D.C.: Apr. 12, 2002).

regarding the issues associated with the judiciary's request of a \$483 million permanent, annual exemption from rent payments to GSA.

Rent Restrictions Have Historically Contributed to Large Repair Backlogs

As part of our series on high-risk issues facing the federal government, we have reported that GSA has struggled over the years to meet the requirements for repairs and alterations identified in its inventory of owned buildings.¹³ By 2002, its estimated backlog of repairs had reached \$5.7 billion. We have reported that adverse consequences of the backlog included poor health and safety conditions, higher operating costs associated with inefficient building heating and cooling systems, restricted capacity to modernize information technology, and continued structural deterioration resulting from such things as water leaks.¹⁴ We reported that FBF has not historically generated sufficient revenue to address the backlog.

On the basis of the work we did in the late 1980s and early 1990s, we concluded that federal agencies' rent payments provided a relatively stable, predictable source of revenue for FBF, but that this revenue has not been sufficient to finance both growing capital investment needs and the cost of leased space. We found that FBF's inability to generate sufficient revenue during that time was compounded by restrictions imposed on the amount of rent GSA could charge federal agencies. Congress and OMB had instituted across-the-board rent restrictions that reduced FBF by billions of dollars over several years, and later continued to restrict what GSA could charge some agencies, such as the Departments of Agriculture and Transportation. Because these rent restrictions were a principal reason why FBF has accumulated insufficient money for capital investment, we recommended that Congress remove all rent restrictions and not mandate any further restrictions.¹⁵

According to GSA, most of the restrictions initiated by Congress and OMB have been lifted. However, the GSA Administrator has the authority to grant rent exemptions to agencies. GSA data show that several rent exemptions are currently in place. In general, these exemptions are narrowly focused on a single building or even part of a single building or

¹³GAO, *High-Risk Series: Federal Real Property*, [GAO-03-122](#) (Washington, D.C.: Jan. 2003).

¹⁴[GAO-03-122](#).

¹⁵GAO, *Federal Office Space: Increased Ownership Would Result in Significant Savings*, [GAO/GGD-90-11](#) (Washington, D.C.: Dec. 22, 1989).

are granted for a limited duration. Table 2 summarizes the current rent exemptions that exist in GSA buildings, according to data GSA provided.

Table 2: Current Rent Exemptions in GSA Buildings

Agency, address	Justification	Estimated forgone annual rent
Smithsonian Institution, National Museum of the American Indian, New York, NY	Legislatively mandated exemption.	\$4,566,632
U.S. Postal Service, 271 Cadman Plaza, New York, NY	GSA granted an exemption to the Postal Service as part of a 99-year rent-free agreement with GSA as a condition of the negotiated sale of the building in lieu of a transfer of funds from GSA.	\$1,820,000
National Building Museum, 5th & F Sts., Washington, DC	Legislatively mandated exemption.	\$1,300,000
Woodrow Wilson Center, 1300 Pennsylvania Ave., Washington, DC	GSA granted an exemption based on funding limitations imposed by Congress and the compelling purpose of memorializing the nation's 28th President.	\$5,400,000
Department of Commerce, 14th St. & Constitution Ave., Washington, DC	GSA granted an exemption covering the area of the building that is maintained at the expense of the tenant agency.	\$400,000
National Imaging and Mapping Agency, M Street, SE, Washington, DC	GSA granted a rent exemption of 50 percent because the tenant agreed to pay all maintenance, capital improvements, and security expenses due.	\$7,038,552
Department of Agriculture, multiple locations, Washington, DC	GSA granted a 100-percent rent exemption for the tenant's three headquarters buildings for fiscal years 1996 through 2006 to allow the tenant to accumulate funds needed for major repairs on these buildings. The tenant will then pay for the repairs.	\$52,406,234
Railroad Retirement Board, nationwide locations	GSA granted a partial rent exemption so that the tenant would only pay for the actual costs on these buildings through fiscal year 2013.	\$3,655,063
Centers for Medicare & Medicaid Services, nationwide locations	GSA granted a partial rent exemption so that the tenant would only pay for the actual costs on these buildings through fiscal year 2013.	\$15,717,264
Social Security Administration, Washington, DC	GSA granted a partial rent exemption so that the tenant would only pay for the actual costs on these buildings through fiscal year 2013.	\$72,417,477
Department of State, 1801 Pennsylvania Ave., Washington, DC	GSA granted an exemption for space used by the President's G-8 Economic Summit staff from August 2004 to November 2004 because neither the Department of State nor the G-8 Economic Summit has received appropriated funding for rent payments to GSA.	\$1,330,740
International Broadcasting Board of Governors, Washington, DC	GSA granted an exemption in 2004 based on the tenant's certification that it did not have funds available to meet the obligation. A new long-term occupancy agreement is being negotiated.	\$1,016,195
Presidential and Armed Forces Inaugural Committees, Mary E. Switzer Building, Washington, DC	GSA granted an exemption in 2004 because it found that it was not practical or feasible for the tenant to pay the rent.	\$2,415,440
U.S. Election Assistance Commission, Washington, DC	GSA granted an exemption for fiscal year 2004 because the tenant was appropriated only 12 percent of its authorized budget and did not have sufficient money to pay its rent.	\$100,060
Total		\$169,583,657

Source: GAO analysis of GSA data.

Note: According to GSA, the U.S. Senate does not pay market rates for its GSA facilities (district offices) because of an October 1996 signed memorandum of agreement between the U.S. Senate and GSA regarding tenant-requested improvements, but the U.S. Senate has not been granted a formal exemption

Direct Appropriations to FBF Generally Benefit the Fund

In fiscal year 2006, according to data from GSA, \$7.7 billion in expected FBF revenue is projected to come from rent paid by over 60 different federal tenant agencies, such as the Departments of Justice and Homeland Security. Congress sets annual limits on how much FBF revenue can be spent for various activities through the appropriations process. In addition, Congress may appropriate additional amounts for FBF and between fiscal year 1990 and fiscal year 2005, Congress made direct appropriations into FBF for all but 3 fiscal years.¹⁶ This additional funding was not tied directly to any specific projects or types of projects. The statutory language relating to the direct appropriations states that additional amounts are being deposited into FBF for the purposes of the fund.

It is also important to note that not all federal property is subject to FBF rent payments. While GSA owns and leases property and provides real estate services for numerous federal agencies, we reported in 2003 that GSA owns only about 6 percent of federal facility space in terms of building floor area. Other agencies, including the Department of Defense (DOD), the U.S. Postal Service, and the Department of Energy have significant amounts of space that they own and control without GSA involvement. In all, over 30 agencies control real property assets. Property-owning agencies do not pay rent into FBF or receive services from GSA for the space they occupy in the buildings that they own. For example, the Pentagon and military bases are owned by DOD, and national parks facilities are owned by Interior. As a result, these facilities are maintained by DOD and Interior, respectively.

Our Ongoing Work on the Judiciary's Request for an Exemption from Rent Payments to FBF

In December 2004, the judiciary requested that the GSA Administrator grant a \$483 million permanent, annual exemption from rent payments—an amount equal to about 3 times the amount of all other rent exclusions combined. This exemption would equal about half of the judiciary's \$900 million annual rent payment to GSA for occupying space in federal

¹⁶Congress did not make direct appropriations into FBF in fiscal years 1998, 2000, and 2005.

courthouses. The judiciary has expressed concern that the growing proportion of its budget allocated to GSA rent payments is having a negative effect on court operations. According to GSA data, the judiciary increased the owned space it occupies by 15 percent from 2000 to 2004. In February 2005, the GSA Administrator declined the request because GSA considered it unlikely that the agency could replace the lost income with direct appropriations to FBF. In April 2005, this subcommittee requested that we look into issues associated with the judiciary's request for a permanent, annual exemption from rent payments to GSA. Our objectives for this work are to determine the following:

1. How are rent payments calculated by GSA and planned and accounted for by the judiciary?
2. What changes, if any, has the judiciary experienced in rent payments in recent years?
3. What impact would a permanent rent exemption have on FBF?

Our work is still underway, but our past work on related issues shows that rent exemptions have been a principal reason why FBF has accumulated insufficient money for capital investment.

Scope and Methodology

We conducted our work for this testimony in June 2005 in accordance with generally accepted government auditing standards. During our work, we reviewed past GAO work on federal real property and courthouse construction issues, analyzed AOUSC and GSA documents, and interviewed AOUSC and GSA officials.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or the other Members of the Subcommittee may have.

GAO Contacts and Staff Acknowledgments

For further information about this testimony, please contact me at (202) 512-2834 or goldsteinm@gao.gov. Keith Cunningham, Randy De Leon, Maria Edelstein, Bess Eisenstadt, Joe Fradella, Susan Michal-Smith, David Sausville, and Gary Stofko also made key contributions to this statement.

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