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The General Services Administration and Federal Real Property Management: Overview and Current Legislation

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The General Services Administration and Federal Real Property Management: Overview and Current Legislation

Summary

The General Services Administration (GSA), through its Public Buildings Service (PBS), is the primary federal real property and asset management agency, with a portfolio consisting of 8,847 buildings and structures with an estimated replacement value of $68.8 billion in FY2006. GSA is also responsible for identifying and completing needed repairs to the federal buildings it manages. The Federal Buildings Fund (FBF), established by Congress in 1972, is the primary means by which GSA finances the operating and capital costs associated with its federal building inventory. Created as a revolving fund, the FBF receives revenue deposits from rent payments charged to federal agencies occupying GSA's office space. While revenue to the FBF is the principal source of funding, Congress annually authorizes how GSA may allocate its FBF assets as new obligational authority in appropriations funding. In addition, Congress may appropriate more money for the fund. Generally, FBF revenues are first used for GSA's building operating expenses. Congress then allocates FBF funds for construction of new buildings, as well as for repairs to existing buildings.

On February 4, 2004, President George W. Bush implemented new asset management guidelines for executive branch agencies with Executive Order 13327. Section 4 established a Federal Real Property Council (FRPC) within the Office of Management and Budget to provide oversight for the executive branch's real property inventory. With the issuance of E.O. 13327, GSA's Office of Governmentwide Policy was formally recognized as the administrator of the executive branch's centralized real property database, known as the Federal Real Property Profile (FRPP).

A major concern for GSA is maintaining its inventory of aging federal properties, since the FBF has not historically produced sufficient rent revenues to finance all repair and alteration needs. Investigations by the Government Accountability Office (GAO) have revealed that GSA and other landholding agencies could give greater attention and funding to maintaining a streamlined federal inventory by identifying and disposing of unneeded buildings and structures. Introduced in the Senate on June 20, 2007, S. 1667 would authorize the establishment of a five-year pilot program to allow for the expedited disposal of surplus or underutilized federal real properties. The same day, the legislation was referred to the Senate Committee on Homeland Security and Governmental Affairs. On November 14, 2007, the committee approved, by voice vote, an amendment that would include a provision to allow for no-cost conveyance of surplus federal property to homeless assistance groups. S. 1667, as amended, was ordered to be reported favorably by the committee on November 14, 2007.

Contents

List of Tables

The General Services Administration and Federal Real Property Management: Overview and Current Legislation

Introduction and Background

Prior to enactment of the Public Buildings Act in 1926, construction authority for each federal building was approved and funded in separate legislation.[1] This 1926 act provided the basic authority for construction of federal buildings by the congressional authorizations and appropriations process. Congress later enacted the Public Buildings Act of 1949 to authorize the acquisition of sites and design plans for federal buildings located outside of Washington, DC, and for improvements to existing federal buildings.[2] The same year, Congress enacted the Federal Property and Administrative Services Act of 1949.[3] This act established the General Services Administration (GSA) and gave the GSA Administrator responsibility for administering federal real property. In 1954, Congress amended the Public Buildings Act of 1949 to authorize the GSA Administrator to acquire titles to real property and to construct federal buildings through lease-purchase contracts.[4] Under this procedure, a building was financed by private capital, and the federal government made installment payments on the purchase price in lieu of rent payments. Title to the property vested in the federal government at the end of the contract period, generally of at least 10, and not more than 30, years.

When authority for lease-purchase contracts expired in 1957, Congress approved a successor statute, the Public Buildings Act of 1959.[5] The 1959 act re-established earlier requirements to provide for direct federal construction of public buildings through the congressional appropriations and authorizations process. This act, as amended and recodified over the years, remains the basic statute authorizing the construction and renovation of federal civilian facilities. The act vests the Administrator of General Services with sole authority to acquire, construct, alter, repair, remodel, improve, or extend most federal buildings, and to acquire the sites or additions to sites for such buildings.

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[1] 44 Stat. 630.

[2] 63 Stat. 176.

[3] 63 Stat. 377; 41 U.S.C. §251 et seq. Since 1949, the enabling law's original provisions have been frequently and substantially amended.

[4] 68 Stat. 518.

[5] 73 Stat. 478; 40 U.S.C. §3301 et seq.

The legislation also requires GSA to submit to the congressional authorizing committees a detailed prospectus of each proposed building project costing more than $2.59 million (in FY2008) prior to the appropriation of funds, and requires GSA to submit an annual report to Congress on all projects and to conduct an ongoing survey of federal building needs.

The Public Buildings Act Amendments of 1972 established the Federal Buildings Fund (FBF) within GSA to be used for acquisition and maintenance of real property.[6] Beginning in 1975, the FBF replaced direct appropriations to GSA as the primary means of financing the operating and capital costs associated with federal buildings. Created as a revolving fund, the FBF receives revenue from rent payments charged to federal agencies occupying GSA's office space. While these deposits to the FBF are the principal source of funding, Congress annually authorizes how GSA may allocate its FBF assets as new obligational authority in appropriations funding. In addition, Congress may appropriate additional money into the fund. Generally, FBF revenues are first used for GSA's building operating expenses. Congress then allocates FBF funds for construction of new buildings, as well as for repairs to existing buildings.[7]

The FY2008 Consolidated Appropriations Act, signed into law on December 26, 2007, authorizes that an additional amount of $84 million be deposited in the Federal Buildings Fund.[8] The President's FY2009 budget requests that $525 million be deposited in the FBF.[9]

Current Conditions of Federal Building Inventory

GSA, through its Public Buildings Service (PBS), is the primary federal real property and asset management agency. In FY2006, GSA's portfolio consisted of 8,847 real property assets with an estimated replacement value of $68.8 billion.[10]

In addition to GSA, 27 other federal agencies have independent landholding authorities that enable them to acquire or construct specific types of buildings or facilities (see **Table 1**). Numerous studies by the Government Accountability Office (GAO) reveal that a large portion of the federal government's real property inventory is urgently in need of significant and costly repairs.[11] In many instances, federal

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[6] 86 Stat. 216.

[7] U.S. General Accounting Office, *Federal Buildings: Funding Repairs and Alterations Has Been a Challenge — Expanded Financing Tools Needed*, GAO-01-452, April 2001, pp. 6-7.

[8] P.L. 110-161, December 26, 2007.

[9] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009 – Appendix* (Washington: GPO, 2008), p. 1065.

[10] U.S. General Services Administration, The Federal Real Property Council, *FY2006 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, July 2007, p. 6.

[11] In 2004, GAO changed its name from the General Accounting Office to the Government (continued...)

facilities are vacant or no longer needed because of agencies' changing missions. Problems persist in administering the real property portfolio because of a lack of reliable data, funding limitations, and GSA's continued reliance on leasing for office space.

Table 1. FY2006 Federal Agency Profile: Real Property Assets and Replacement Value

Agency Name	Real Property[a] Assets		Replacement Value[b]	
	Number	% of Total	Amount	% of Total
Agriculture	59,879	4.776%	$46,834,160,262	3.065%
Air Force	171,352	13.666%	$235,808,469,245	15.432%
American Battle Monuments Commission	183	0.015%	4,423,800,000	0.290%
Army	264,961	21.132%	$262,865,575,017	17.203%
Commerce	1,340	0.107%	$2,315,006,096	0.152%
Corps of Engineers	146,838	11.711%	216,877,416,823	14.193%
Defense/WHS	203	0.016%	2,787,946,939	0.182%
Energy	18,620	1.485%	$85,697,308,479	5.608%
Environmental Protection Agency	270	0.022%	$741,922,448	0.049%
General Services Administration	8,847	0.706%	$68,818,536,686	4.504%
Health and Human Services	3,357	0.268%	$9,867,744,843	0.646%
Homeland Security	27,079	2.160%	$9,935,179,474	0.650%
Independent Government Offices	431	0.034%	$106,028,671	0.007%
Interior	184,347	14.703%	$185,218,464,155	12.121%
Justice	4,363	0.348%	$15,150,700,400	0.992%
Labor	2639	0.210%	$4,537,534,555	0.297%
National Aeronautics and Space Administration	4942	0.394%	$20,609,244,894	1.349%
National Archives and Records Administration	41	0.003%	$1,747,256,609	0.114%
National Science Foundation	612	0.049%	$1,099,880,301	0.072%
Navy	143,897	11.477%	$228,819,202,172	14.975%
Office of Personnel Management	3	0.000%	$0[c]	0.000%
Peace Corps	417	0.033%	$8,868,943	0.001%
State	16,843	1.343%	$11,543,484,787	0.755%
State (USAID)	1,371	0.109%	$672,727,412	0.044%
Tennessee Valley Authority	422	0.034%	$0[d]	0.000%
Transportation	69,411	5.536%	$6,309,796,350	0.413%

[11] (...continued)
Accountability Office. 118 Stat. 811.

Agency Name	Real Property[a] Assets		Replacement Value[b]	
	Number	% of Total	Amount	% of Total
Treasury	110	0.009%	$1,056,055,014	0.069%
United States Postal Service	111,960	8.930%	$20,262,644,625	1.326%
Veterans Affairs	9,083	0.724%	$83,930,650,740	5.493%
Total	**1,253,821**	**100.000%**	**$1,528,045,505,940**	**100.000%**

Source: U.S. General Services Administration, *The Federal Real Property Council's FY2006 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets,* July 2007, p. 6.

a. Real property assets are federal buildings and structures primarily used for office space, post offices, warehouses, laboratories, hospitals, vehicle maintenance and repair facilities, industrial and utility plants, and housing facilities.
b. Replacement value is defined as the cost to replace the existing asset in current dollars.
c. The Office of Personnel Management reported $0 replacement value in FY2006.
d. The Tennessee Valley Authority did not report replacement value in FY2006.

Aging Federal Properties. GSA is responsible for identifying and completing needed repairs to the federal buildings it manages. Maintaining these facilities is a challenging task, since many of GSA's largest buildings were constructed more than 50 years ago, and are often designated as being historically significant. In 1999, GSA estimated that nearly $4 billion was needed to complete repairs and alterations to 903 buildings, or approximately 54% of its total inventory. Of this total, 44 buildings were described as large office buildings or courthouses, with an average age of 49 years and with estimated repair costs of more than $20 million for each facility.[12]

GAO investigations reveal that a significant inventory of repairs and alterations are necessary to renovate federal buildings that have deteriorated, become functionally obsolete, or have health- and safety-related problems.[13] Available data indicate that, in addition to GSA, other major real property-holding agencies also have a large inventory of facilities that are deteriorating, underutilized, or vacant. In January 2003, GAO issued a report on federal property as part of its high-risk series, which identifies areas vulnerable to mismanagement, waste, or fraud, and concluded that "a major commitment is necessary to either modernize these facilities or to dispose of them."[14] Inspections of several deteriorating federal buildings revealed inadequate and malfunctioning air ventilation and fire safety systems; unsafe water supplies; and continued structural deteriorations caused by long-standing plumbing leaks. Other factors impeding adequate workplace conditions included outdated cooling and heating systems, resulting in significantly higher operating costs, and

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[12] U.S. General Accounting Office, *Federal Buildings: Billions Are Needed for Repairs and Alterations,* GAO/GGD-00-98, March 2000, pp. 3-4.

[13] U.S. General Accounting Office, *Federal Real Property: Executive and Legislative Actions Needed to Address Long-standing and Complex Problems*, GAO-03-839T, June 2003, pp. 6-7.

[14] U.S. General Accounting Office, *High-risk Series: Federal Real Property,* GAO-03-122, January 2003, p. 15.

obsolete electrical systems unable to accommodate new information technology.[15] Aging and deteriorating office space can also adversely impact federal employee recruitment, retention, and productivity.

More Reliable Real Property Data Needed. The deteriorating physical condition of many federal buildings and the corresponding underutilization and vacancy of many government facilities has serious implications for GSA's real property portfolio. Investigations by GAO have revealed that many properties in the federal inventory are not financially self-sustaining and are no longer relevant to their agencies' changing missions.[16] By identifying and disposing of unneeded properties, GSA and other landholding agencies could give greater attention and funding to the repair of a streamlined federal inventory. Due to the vast size and diversity of its real property portfolio, GSA is often not able to fully identify and assess each of its properties to determine those that need repairs, and those for which there is no longer any substantial federal purpose. In May 1991, GAO first reported that GSA had not fully implemented a systematic approach for managing its inventory because of a lack of reliable real property data, causing even more delays in needed building repairs.[17]

GSA annually reported summary data on real property owned and leased by the federal government worldwide, based on inventory reports submitted by the individual agencies. These inventory reports were not, however, required under law, and there was no statutory requirement for landholding agencies to submit accurate or timely data. In July 2000, GAO reported to Congress that a comprehensive and reliable inventory of federal real property holdings was the first step in identifying and subsequently managing the government's large portfolio of federal assets. GAO investigations also revealed that GSA and the other landholding agencies had poor or inadequate data assessing the current market value of their properties.[18] However, GAO acknowledged that agency compliance with proposed statutory requirements for a comprehensive property inventory would be a "challenging task," based on its research that the federal government lacked the necessary standards to ensure complete and reliable information on its property assets.[19]

Lacking a reliable and comprehensive listing of federal properties, GSA and the other landholding agencies continued to have limited success in the identification, maintenance, or disposal of their federal inventories. In response to its earlier criticisms, GAO reported in June 2003 that GSA had begun to conduct more systematic reviews of individual facilities, giving funding priority to projects that might return more rent revenues to the FBF, and disposing of properties for which

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[15] Ibid, p. 22.

[16] Ibid, p. 2.

[17] U.S. General Accounting Office, *Federal Buildings: Actions Needed to Prevent Further Deterioration and Obsolescence*, GAO/GGD-01-57, May 1991, pp. 3-5.

[18] U.S. General Accounting Office, *Federal Real Property: Views on Management Reform Proposals*, GAO/T-GGD-00-175, July 2000, p. 5.

[19] Ibid.

there is no long-term federal purpose.[20] According to GSA officials, GSA intended to complete implementation of its portfolio restructuring project in 2007, reflecting a streamlined inventory of self-sustaining and mission-relevant properties.[21]

Funding Limitations. Even with GSA's improved accounting of real property data, funding limitations will likely continue to be the greatest obstacle to completing urgent repairs and renovations to aging federal facilities. In 1991, GAO reported that both GSA and the Office of Management and Budget (OMB) estimated that nearly $4 billion would be required to be deposited into the FBF to complete needed repairs to federal facilities.[22] Ten years later, GAO estimated that $5.7 billion was required to fund needed building repairs to the nearly 1,700 federal buildings that GSA manages.[23]

A major concern for GSA is that the FBF has not historically produced sufficient rent revenues to finance capital improvements. Generally, FBF revenues are first used for GSA's building operating expenses. Congress then allocates FBF funds for construction of new buildings, as well as for repairs to existing buildings. Between FY1995 and FY2001, GAO estimated that the FBF received about $5.3 billion each year in incoming rent revenues. Of this total, nearly 90% of the available funds was used for GSA's operating costs, rental payments for leased space, and construction of new buildings, with, on average, only $606 million remaining each year for completing repairs and renovations.[24] Although Congress has annually increased authorized funding for repairs and alterations within the FBF, these funds are not expected to be adequate to maintain GSA's current building inventory. Funding data compiled by GSA in FY2001 indicate that, in seven previous fiscal years, Congress had authorized $4.2 billion, or 63%, of the $6.8 billion in new obligational authority that GSA had requested for building repairs and alterations.[25]

The federal government's real property inventory is not static; that is, even as certain repairs are completed, new problems are identified. In addition, the amount of funding needed for repairs is greater each year due to cost increases in maintaining an expanded inventory of properties. As a solution, GAO has stated that GSA must find a way to generate the additional revenue necessary to upgrade its federal

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[20] GAO, *Federal Real Property: Executive and Legislative Actions Needed to Address Long-standing and Complex Problems*, p. 7.

[21] U.S. General Accounting Office, *Federal Real Property: Vacant and Underutilized Properties at GSA, VA, and USPS,* GAO-03-747, August 2003, p. 11.

[22] GAO, *Federal Buildings: Actions Needed to Prevent Further Deterioration and Obsolescence,* pp. 3-4.

[23] U.S. General Accounting Office, *Financial Condition of Federal Buildings Owned by the General Services Administration*, GA0-02-854R, August 2002, p. 1.

[24] U.S. General Accounting Office, *Federal Buildings: Funding Repairs and Alterations Has Been a Challenge — Expanded Financing Tools Needed*, GAO-01-452, April 2001, p. 15.

[25] Ibid, p. 14.

inventory.[26] In order to increase the amount of funding available to adequately maintain these federal properties, GSA officials have also expressed support for legislative reforms that would authorize the agency to enter into contracts with the private sector to renovate and rehabilitate federal buildings.

Reliance on Leased Properties. Another factor that adversely affects FBF revenues and limits monies available for needed property maintenance is GSA's reliance on leased office space. Generally, the federal construction or purchase of buildings provides the most cost effective approach to meet space requirements over a long period of time.[27] In the past decade, however, GSA has primarily relied on lease agreements to acquire office space because of insufficient funding available to construct new buildings or repair old ones.[28]

Over the past decade, GAO has documented GSA's increasing use of operating leases to secure needed office space. In 1995, GAO reported that GSA had entered into 55 long-term lease agreements that would ultimately cost the federal government $700 million more in extended rent payments than would have total construction costs for the same space. A 1999 investigation by GAO auditors of nine major lease agreements proposed by GSA revealed that construction would have been the most economical option in eight instances, resulting in an estimated $126 million in savings to the federal government. While this GAO investigation focused on GSA's leasing practices, GAO had previously found that the other landholding agencies with leasing authorities also relied heavily on operating leases. [29]

As of September 2004, GSA spent $4.4 billion to lease 162.9 million square feet of building space, about 70% of the government's total rental costs (see **Table 2**, below).[30] The same year, it was reported that GSA had leased more than 100,000 square feet of office space in Arlington, VA, as well as leasing partial space in two other office buildings, totaling 143,000 square feet.[31]

The annual congressional appropriations and authorizations process favors operating leases over construction or purchasing agreements, since they appear less costly in any given year. While operating leases are more expensive over a 10-year

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[26] Ibid, p. 14.

[27] According to GAO findings, *lease-purchase* contracts, where payments are extended over a 10- to 30-year period and ownership is eventually transferred to the government, are generally more expensive than construction contracts, but less expensive than lease agreements. See U.S. General Accounting Office, *High-Risk Series: Federal Real Property*, p. 30.

[28] GAO, *Federal Real Property: Executive and Legislative Actions Needed to Address Long-standing and Complex Problems*, p. 8.

[29] GAO, *High-Risk Series: Federal Real Property*, p. 30.

[30] U.S. General Services Administration, Office of Governmentwide Policy, *Overview of the United States Government's Owned and Leased Real Property: Federal Real Property Profile, as of September 30, 2004*, p. 6.

[31] Dana Hedgpeth, "Job Gains Drive Lease Market in Suburbs," *Washington Post*, April 12, 2004, p. E1.

period, these total costs are not reflected in a single year's appropriations request. In contrast, total costs necessary for proposed construction and lease-purchase contracts must be included in the first year's budget authority. According to studies by GAO, the current budget process enables more expensive leasing transactions to appear to be more economical in the short term, thus encouraging an "over-reliance" on them for meeting the government's space requirements.[32]

Table 2. Agency Rental Cost for Leased Real Property Within the United States, September 2004

Agency	Leased Building Area (Square Feet)	Annual Rental Cost		
		Total Dollars	% of Total	Per Square Foot
General Services Administration	162,935,354	$4,367,795,701	70.69%	$26.81
United States Postal Service	101,376,121	$793,437,960	12.84%	$7.83
Agriculture	11,950,446	$193,804,441	3.14%	$16.22
Army	10,247,040	$152,745,599	2.47%	$14.91
Veterans Affairs	6,466,005	$109,883,052	1.78%	$16.99
Transportation	7,139,919	$90,304,258	1.46%	$12.65
Health and Human Services	3,520,966	$86,947,570	1.41%	$24.69
Navy	6,550,700	$73,304,293	1.19%	$11.19
Homeland Security	3,511,862	$51,861,657	0.84%	$14.77
Treasury	1,364,601	$45,390,806	0.73%	$33.26
Interior	2,792,558	$37,869,139	0.61%	$13.56
Corps of Engineers	3,166,178	$36,324,163	0.59%	$11.47
Remaining Agencies (16)[a]	22,724,993	$138,848,579	2.25%	$6.11
Total	**343,746,743**	**$6,178,517,218**	**100.00%**	**$17.97**

Source: *Federal Real Property Profile as of September 30, 2004* (website visited Jan. 16, 2007), [http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.doc], p. 8. Please note that GSA no longer publishes data for annual rental costs for leased properties, as of September 30, 2004.

a. Interior, Commerce, Justice, Energy, Smithsonian, Independent Government Offices (Commodity Futures Commission and Broadcasting Board of Governors), Environmental Protection Agency, Labor, National Aeronautics and Space Administration, Air Force, Government Printing Office, Federal Communications Commission, National Science Foundation, American Battle Monuments Commission, Peace Corps, National Archives and Records Administration.

Past Congressional Reform Initiatives

Two major legislative initiatives were introduced in the 106th Congress to revise federal property management policies. S. 2805, sponsored by Senator Fred Thompson, would have required the GSA Administrator and landholding federal agencies to establish and maintain asset management principles for real and personal property; establish a worldwide inventory of all real property holdings; and establish

[32] GAO, *High-Risk Series: Federal Real Property: Federal Real Property*, p. 31.

financial incentives for federal agencies to improve their property management practices. H.R. 3285, sponsored by Representative Pete Sessions, would have authorized the GSA Administrator to enter into partnerships with non-federal sources to lease federal property. Neither bill was reported out of committee before the adjournment of the 106th Congress.

In the 107th Congress, S. 1612, introduced by Senator Fred Thompson on November 1, 2001, was based in large part on President George W. Bush's "Freedom to Manage" administrative initiative. Title III of the proposed legislation, entitled "Federal Property Asset Management Reforms," incorporated the major provisions of both S. 2805 and H.R. 3285, which were introduced in the 106th Congress. S. 1612 was not reported out of committee before adjournment of the 107th Congress.

Two similar bills were introduced in the 108th Congress to revise federal property management policies, H.R. 2548 and H.R. 2573. The first, H.R. 2548, the Federal Property Asset Management Reform Act, was more comprehensive in its attempt to allow landholding agencies greater flexibility to manage directly their own federal properties. Its provisions were similar to those of S. 1612, introduced in the 107th Congress. The proposed legislation would have modified existing federal property statutes to authorize landholding agencies to enter into the following transactions: interagency transfers or exchanges of property; subleases of unexpired portions of existing leases; property exchanges or sales with non-federal sources; or outleases[33] of underutilized real property that must remain in federal ownership. GSA would have been authorized to review and approve of any such transaction to ensure compliance with federal property management requirements. If enacted, H.R. 2548 would have authorized federal landholding agencies to retain the proceeds from their real property transactions. New statutory requirements would have been provided for the crediting of monetary proceeds to existing agency accounts, which would then be used to fund that agency's capital asset expenditures. In order to better administer these real property assets, H.R. 2548 would have established the position of Senior Real Property Officer within each federal landholding agency. H.R. 2548 was ordered to be reported, as amended,[34] by voice vote on July 17, 2003. No further action occurred during the 108th Congress.

The second bill, H.R. 2573, the Public Private Partnership Act, focused on public-private partnerships as a method to increase funding for the FBF and would have authorized GSA to administer these transactions. The proposed legislation would have authorize GSA to enter into agreements with non-federal entities for the acquisition, lease, construction, maintenance, or renovation of real property under the jurisdiction of GSA, or other landholding agencies. If enacted, H.R. 2573 would

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[33] The term *outlease* refers to an agreement granting the use of property which temporarily is not required for public use, for a specified period of time, revocable at will or as otherwise provided in the agreement, for an adequate, specified consideration.

[34] The House Government Reform Committee added an en bloc amendment that would allow landholding agencies to withhold property records for reasons of national security, as authorized by law. The amendment would also require, in certain instances, that cultural resource surveys or comprehensive preservation plans be completed before a federal property is sold, transferred, or leased. There is no written committee report.

have amended current law to authorize GSA to convey interests in real property to non-federal sources, and would exempt such agreements from existing congressional approval requirements, and waive other specified legal requirements as necessary. GSA would have also been authorized to enter into real property transactions under the jurisdiction of non-landholding agencies only upon the request of agency heads. GSA would have been required to transmit a report to Congress on all proposed property transactions as a prerequisite to entering into such agreements. Proceeds from all real property transactions would be deposited into the FBF. The proposed legislation would have authorized GSA to enter into real property agreements for a six-year period from the date of enactment. H.R. 2573 was reported favorably from the House Government Reform Committee to the full House by voice vote on June 25, 2003.[35] No further action was taken on H.R. 2573.

Although no final action was taken on either H.R. 2548 or H.R. 2573, the 108th Congress revised GSA's property management policies with the passage of the FY2005 Consolidated Appropriations Act on December 8, 2004.[36] Section 412 authorizes the GSA Administrator to convey real property by sale, lease, exchange, or leaseback agreements, with net proceeds deposited into GSA's Federal Buildings Fund for future real property capital acquisitions and improvements.

Bush Administration Activity

On February 4, 2004, President George W. Bush implemented new federal property guidelines for executive branch agencies with his establishment of Executive Order 13327, entitled "Federal Real Property Asset Management."[37] Many of its provisions are based on his earlier administrative initiatives pertaining to federal property asset management reforms, which were incorporated as Title III of S. 1612, introduced during the 107th Congress. In order to increase agency accountability for real property asset management, E.O. 13327 established the position of Senior Real Property Officer within each executive branch agency. Section 3(b) required that each officer prepare and submit to OMB an initial asset management plan composed of data on the agency's real property assets, and proposals for cooperative arrangements with the commercial real estate community.

Federal Real Property Council. Section 4 established a Federal Real Property Council (FRPC) within OMB to develop guidance and provide oversight for the executive branch's real property inventory. The chairman of the council is OMB's Deputy Director for Management. Members include each agency's Senior Real Property Officer, OMB's Financial Management Controller, the Administrator of GSA, and any other federal officials deemed appropriate by the chairman.

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[35] There is no written committee report.

[36] 118 Stat. 3259.

[37] U.S. President (Bush), "Federal Real Property Asset Management,"E.O. 13327, *Federal Register*, vol. 69, February 6, 2004, pp. 5897-5900. President Bush also added federal real property asset management as the sixth government-wide initiative to be included in the President's Management Agenda.

The council was authorized to consider the following performance measures in assessing the success of the executive branch's real property activities:

- cost comparisons justifying methods used to acquire new property leases, exchanges, lease-purchases, or new construction;
- total life-cycle costs associated with each federal facility, from acquisition to final disposition;
- statistics on real property disposal activities, such as time, costs, and final profits;
- operating, maintenance, environmental, and security costs for each federal facility;
- data on vacant or under-utilized federal property;
- realization of equity value in real property assets;
- opportunities for real property transactions with the private sector; and
- development of an improved working environment to increase productivity.

Section 5 required GSA, in consultation with the FRPC, to provide policy oversight, and to manage selected properties for the executive branch agencies that requested such assistance. GSA was authorized by Section 5(b) to establish and maintain a comprehensive database of the executive branch's real property inventory, except when otherwise precluded for reasons of national security. GSA is also required to publish any asset management measures or standards that may be adopted by the Federal Real Property Council. E.O. 13327 further required GSA to consult with OMB and the other landholding agencies to develop new legislative initiatives to improve the federal government's management of real property activities. Section 2(b) recognizes that the provisions of E.O. 13327 do not supersede existing real property law.

In FY2005, the FRPC issued new federal property reporting requirements for executive branch agencies, which replaced GSA's existing reporting requirements and the agency's comprehensive annual report on federally owned and leased properties. With the issuance of E.O. 13327, GSA's Office of Governmentwide Policy was formally recognized as the administrator of the executive branch's centralized real property database, known as the Federal Real Property Profile (FRPP). Published in June 2006, the Federal Real Property Council's first executive summary, the *FY2005 Federal Real Property Report*, was compiled from data submitted by executive branch agencies as of December 15, 2005.[38] The issuance of E.O. 13327 did not mandate the reporting of data for public domain land and certain other types of assets which had previously been compiled and reported by GSA. In addition, statistics for leased properties are no longer published by GSA.

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[38] U.S. General Services Administration, *The Federal Real Property Council's FY2005 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, June 2006.

Proposed Legislation in the 109th Congress

H.R. 3134, the Federal Real Property Disposal Pilot Program and Management Improvement Act of 2005, was introduced in the House by Representative Tom Davis and one co-sponsor, on June 30, 2005. The proposed legislation established a five-year pilot program to allow for the expedited disposal of surplus or underutilized federal real properties. The OMB Director would be authorized to select the federal properties to participate in the program, based on the cost and time required to dispose of real property assets and the availability of unneeded federal properties. A selected federal property would be sold at or above fair market value, and the agency that owned the property would be authorized to retain a portion of the proceeds. If enacted, H.R. 3134 would have codified certain provisions authorized by E.O. 13327, such as the establishment of a Federal Property Council and the creation of senior real property officer positions in the federal agencies.

Two amendments were adopted by voice vote on October 26, 2005. The first amendment authorized the GSA Administrator to notify local governments of the federal government's intent to dispose of federal property in their jurisdictions. In addition, a federal property determined by GSA to be a public benefit conveyance for use by homeless groups would not be eligible for the five-year pilot program. The second substitute amendment required that the OMB Director submit an annual report on the status of the Federal Real Property Disposal Pilot Program to the House Government Reform Committee and the Senate Homeland Security and Governmental Affairs Committee. H.R. 3134, as amended, was reported favorably by the House Committee on Government Reform on October 26, 2005. No further action was taken in the 109th Congress.

Congressional Initiatives in the 110th Congress

Investigations by the Government Accountability Office (GAO) have indicated that GSA and other landholding agencies could give greater attention and funding to maintaining a streamlined federal inventory by identifying and disposing of unneeded properties.[39] Vacant and underutilized federal properties are costly to maintain GAO reported, and could be "put to more cost-beneficial uses, exchanged for other needed property, or sold to generate "revenue" for the federal government.[40] GSA's Office of Property Disposal administers the disposal of real property that is no longer needed by executive branch agencies. Underutilized federal property can vary widely, and may include land, office buildings, warehouses, former post offices, farms, family residences, commercial facilities, or airfields located in the United States, Puerto Rico, the U.S. Virgin Islands, or the U.S. insular areas in the Pacific

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[39] U.S. General Accounting Office, *High-risk Series: Federal Real Property*, GAO-03-122, January 2003, pp. 15-22.

[40] U.S. Government Accountability Office, *Federal Real Property: Most Public Benefit Conveyances Used as Intended, but Opportunities Exist to Enhance Federal Oversight*, GAO-06-511, June 2006, p. 1.

Ocean.[41] When a federal agency determines that it no longer needs a property to carry out its mandate, it reports the unneeded or excess property to GSA. As authorized by statute, GSA must first make an excess property available to other executive branch agencies.[42] If GSA determines that another federal agency has a need for the excess property, the property is transferred to that agency in accordance with the authority delegated and regulations prescribed by the GSA Administrator. If GSA determines that there is no need within the federal government for a federal property, it becomes surplus property, and may be made available to state or local governments and qualified tax-exempt nonprofit institutions through GSA's public benefits conveyance (PBC) program.[43] In June 2007, the Office of Management and Budget (OMB) reported that the federal government owned 18,393 excess assets with a replacement value of almost $13.8 billion, and 3,409 surplus properties valued at approximately $3.9 billion.[44]

S. 1667 was introduced on June 20, 2007, by Senators Tom Carper and Tom Coburn.[45] The proposed legislation would authorize the establishment of a five-year pilot program to allow for the expedited disposal of surplus or underutilized federal real properties. The OMB Director, in concurrence with agency heads, would be authorized to select federal properties to participate in the program. Section 623 would authorize the expedited disposal of real properties to be sold for cash at not less than the fair market value. Federal properties selected for the pilot program would not be authorized for disposal by "exchange, trade, transfer, acquisition of like-kind property, or other non-cash transaction." If the proposed legislation were enacted, federal properties selected for the expedited disposal program would not be subject to GSA requirements and procedures for public benefit conveyance of federal surplus property. An agency that sold a surplus property through the expedited disposal process would receive reimbursement for any administrative costs incurred through the sale of the property. In addition, S. 1667 would authorize that 20% of the balance of any proceeds received by the disposal of a surplus property would be deposited into that agency's account. The remaining 80% of the proceeds would be deposited into the U.S. Treasury as miscellaneous receipts. On June 20,

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[41] U.S. General Services Administration, Office of Property Disposal, *Acquiring Federal Property for Public Uses*, p. 1, available at [http://www.propertydisposal.gsa.gov].

[42] 40 U.S.C. § 524.

[43] GSA has primary responsibility for the administration of the program but, as required by statute (10 U.S.C. § 2687 note), has delegated conveyance authority to the Department of Defense (DOD) for DOD properties that are closed or realigned as part of the Base Realignment and Closure (BRAC) process. For additional information, see CRS Report RS20630, *Surplus Federal Property*, by Stephanie Smith.

[44] When a federal agency determines that it no longer needs a property to carry out its mandate, it reports the unneeded or excess property to GSA. As authorized by statute, GSA must first make an excess property available to other executive branch agencies. If GSA determines that there is no need for a federal property within the federal government, it becomes surplus property. Executive Office of the President, Office of Management and Budget, *Response to Section 408 of Public Law 109-396*, June 15, 2007, p. 2.

[45] An identical bill, H.R. 3049, was introduced in the House on July 16, 2007. The bill was referred to the House Committee on Oversight and Government Reform on July 16, 2007.

2007, the legislation was referred to the Senate Committee on Homeland Security and Governmental Affairs. On November 14, 2007, the committee approved, by voice vote, an amendment that would include a provision to allow for no-cost conveyance of surplus federal property to homeless assistance groups. S. 1667, as amended, was ordered to be reported favorably by the committee on November 14, 2007.

Policy Considerations

The federal government's real property inventory is vast, comprising 3.7 billion square feet of office space. Of this total, GSA is responsible for 387.7 million square feet of executive branch office space, or 10.4% of total federal space. Maintaining these facilities is a challenging task, since many of GSA's largest buildings, constructed more than 50 years ago, are in poor condition and have become functionally obsolete. It has been estimated that nearly $5.7 billion would be needed to restore or repair the 1,700 buildings and structures that GSA manages.

It has been documented that incoming rent revenues deposited into the FBF have been insufficient to fund needed repairs. Moreover, GSA's efforts to deal with a long-standing backlog of needed repairs have been hindered by a lack of reliable and detailed information about specific properties. In addition, real property law restricts GSA's, and other landholding agencies', ability to generate the additional revenues necessary to upgrade federal buildings, or to dispose of them when they are no longer of use. Some observers contend that existing statutory requirements that have been in place since 1949 often constrain effective federal property management that is necessary to meet agencies' changing mission requirements.

The 108th Congress revised GSA's property management policies with the passage of the FY2005 Consolidated Appropriations Act, on December 8, 2004. Section 412 authorized the GSA Administrator to convey real property by sale, lease, exchange, or leaseback agreements, with net proceeds deposited into GSA's Federal Buildings Fund for future real property capital acquisitions and improvements.

Introduced in the 110th Congress, S. 1667 would establish a five-year pilot program to allow for the expedited disposal of surplus or underutilized federal real properties. An agency that sold a surplus property would be authorized to keep 20% of the proceeds, with the remaining 80% of the proceeds to be deposited in the U.S. Treasury. Both GSA and GAO have long supported reform efforts that would provide revenues from real property transactions. It also appears that certain types of transactions with the private sector would continue to be encouraged as the most cost-effective means to restore federal properties, and to dispose of properties that the government no longer needs. The following issues may arise as part of congressional oversight of property management:

- Should GSA and/or individual agencies be allowed to enter into real property transactions?
- Should individual agencies be allowed to retain revenues from real property transactions, or should revenues be deposited into the FBF?
- Do individual agencies currently have the proven ability to effectively manage their own properties?

- What type of safeguards must be in place to ensure that such transactions are effectively administered?

Enactment of reform initiatives, such as S. 1667, could fundamentally change existing law by giving federal agencies new incentives to manage and dispose of their real property inventories. Other issues regarding property management may also need to be addressed to resolve long-standing problems. GAO has reported that the federal government's continued reliance on leased property remains as one of the major obstacles to a viable and self-sustaining federal property portfolio. As stated earlier, the current budget process favors lease agreements that appear more economical. One option that Congress may choose to consider would be to include a reference to the total cost of lease agreements in the annual appropriations and authorizations process to better reflect the actual long-term costs associated with leasing.

President Bush's establishment of the Federal Real Property Council and the appointment of Senior Real Property Officers have initiated reforms in property management for executive branch agencies. Congressional enactment of H.R. 3134 in the 109^{th} Congress would have codified these provisions into law. To emphasize the broad applicability of property management reform, President Bush included federal real property asset management as the sixth government-wide initiative of the President's Management Agenda in February 2004.

Increased accountability among OMB, GSA, and the executive agencies may produce more reliable and detailed budget submissions to Congress in the future. In addition to Congress and the executive branch, local and foreign governments, the private sector, and various advocacy groups, such as historic preservation organizations, all have a vested interest in how the federal government acquires, manages, and disposes of its real property. A diversity of views could be expected should Congress choose to directly address this issue.