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The Federal Assets Sale and Transfer Act of 2016: Background and Key Provisions

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Summary

Real property disposal is the process by which federal agencies identify and then transfer, donate, or sell real property they no longer need. Disposition is an important asset management function because the costs of maintaining unneeded properties can be substantial. Moreover, properties the government no longer needs may be used by state or local governments, nonprofits, or businesses to provide benefits to the public. Finally, the government loses potential revenue when it holds onto certain unneeded properties that might be sold for a profit.

Despite these drawbacks, federal agencies hold thousands of unneeded and underutilized properties. Agencies have argued that they are unable to dispose of these properties for several reasons. First, there are statutorily prescribed steps in the disposal process that can take months to complete. Second, properties may not be appealing to potential buyers or lessees if they require major repairs or environmental remediation—steps for which agencies lack funding to complete before bringing a property to market. Third, key stakeholders in the disposal process—including local governments, nonprofit organizations, and businesses—are often at odds over how to dispose of properties.

In addition, Congress may be limited in its capacity to conduct oversight of the disposal process because it currently lacks access to reliable, comprehensive real property data. The General Services Administration (GSA) maintains a database with information on most federal buildings, but those data are provided to Congress on a limited basis. Moreover, the quality of the information in the database has been questioned, in part because of inconsistent reporting of key data elements, such as how much space within a given building is unneeded. The lack of data may also hinder congressional oversight on the extent to which agencies enter into leases rather than purchase space. Leasing space is typically more expensive than owning, and the government's "overreliance on costly leased space" is one of the primary reasons federal real property is designated as a "high risk" issue by the Government Accountability Office (GAO).

The Federal Assets Sale and Transfer Act of 2016 (P.L. 114-287) established a new, centralized process for disposing of unneeded space. Under FASTA, agencies are required to develop a list of disposal recommendations, which could include the sale, transfer, conveyance, consolidation, or outlease of any unneeded space, among other options. These recommendations are then to be submitted to the GSA Administrator and the Director of the Office of Management and Budget (OMB) for review and revision. The revised list of recommendations is then vetted by a newly established Public Buildings Reform Board, and returned to the OMB Director for final approval or disapproval.

FASTA may address some of the obstacles agencies face when disposing of unneeded space. Properties on the recommendation list are exempt from certain statutory requirements, such as screening for public benefit, and FASTA provides funding for agencies to implement the board's recommendations. The use of a board to make disposal decisions may also reduce the impact of stakeholder conflict. In addition, FASTA requires GSA to create a public database with information that may enhance congressional oversight.

There may be drawbacks to FASTA. The law does not provide Congress with an opportunity to vote for or against the list of recommendations, nor is Congress directly involved in the creation of the list. It is possible that philosophical differences between the board and the OMB Director could lead to an impasse that would effectively shut down the FASTA disposal process. The required database may not include some information that could be useful to Congress, such as the repair needs and condition of each building.

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Background

The federal government holds a large and diverse real property portfolio that includes more than 2.8 billion square feet of building space, 496,000 structures, and 42 million acres of land.¹ These assets have been acquired over a period of decades to help agencies fulfill their diverse missions. Agencies own and lease buildings, for example, that provide space for offices, health clinics, warehouses, and laboratories. As agencies' missions change over time, so, too, do their real property needs, thereby rendering some assets less useful or unneeded altogether. Health care provided by the Department of Veterans Affairs (VA), for example, has shifted in recent decades from predominately hospital-based inpatient care to a greater reliance on clinics and outpatient care, with a resulting change in space needs.² Similarly, the Department of Defense (DOD) reduced its force since the Cold War ended and has engaged in several rounds of base realignments and installation closures.

As a consequence of shifting space needs, federal agencies hold thousands of properties—particularly buildings—that they no longer need. In FY2016, federal agencies owned 3,120 buildings that were vacant (unutilized), and another 7,859 that were partially empty (underutilized).³ Agencies are required to dispose of unneeded space and have a range of options for disposal, including transfer to another federal agency, demolition, sale, and conveyance to a state or local government or qualified nonprofit. Federal agencies have indicated, however, that their disposal efforts are often hampered by legal and budgetary disincentives, and competing stakeholder interests.⁴ The inability of agencies to dispose of unneeded space in a timely manner is one of the primary reasons the Government Accountability Office (GAO) has included real property management on its high-risk list since 2003.⁵

Disposition Requirements and Obstacles

As noted, the government holds thousands of unutilized or underutilized properties in its inventory. These properties not only incur costs to the government to operate and maintain,⁶ but could, in some instances, be utilized by nonfederal entities—state and local governments, nonprofits, private sector businesses—to accomplish a range of public purposes, such as providing services to the homeless or facilitating economic development. GAO reports have consistently noted that efforts to dispose of unneeded and underutilized properties are hindered by

¹ U.S. General Services Administration, *FY2016 Federal Real Property Report Open Data Set*, at https://app_gsagov_prod_rdcgwaajp7wr.s3.amazonaws.com/FY2016_FRPP_Summary_of_Findings_Real_Property_Data_Set.pdf.

² U.S. Government Accountability Office, *VA Real Property: VA Should Improve Its Efforts to Align Facilities with Veterans' Needs*, GAO-17-349, May 2017, p. 1, at <https://www.gao.gov/assets/690/683938.pdf>.

³ *Ibid.*

⁴ U.S. Government Accountability Office, *Federal Real Property: Efforts Made, but Challenges Remain in Reducing Unneeded Facilities*, GAO-16-869, September 2016, pp. 3-5, at <https://www.gao.gov/assets/690/680008.pdf>. U.S. Government Accountability Office, *Federal Real Property: The Government Faces Challenges to Disposing of Unneeded Buildings*, GAO-11-370T, February 10, 2011, pp. 4-8, at <http://www.gao.gov/assets/130/125472.pdf>.

⁵ U.S. Government Accountability Office, *Managing Federal Real Property*, at https://www.gao.gov/highrisk/managing_federal_property/why_did_study#t=1.

⁶ FY2016 data do not include annual operating costs related to unutilized and underutilized buildings. That information was last reported in the *FY2010 Federal Real Property Profile Report*, published by the General Services Administration (GSA). In FY2010, GSA reported that the cost of maintaining and operating unutilized and underutilized buildings exceeded \$1.65 billion.

statutory disposal requirements, the cost of preparing properties for disposal, conflicts with stakeholders, and a lack of accurate real property data.⁷

Identifying Unneeded Space

Agencies are required to continuously survey property under their control to identify any property that they no longer need to carry out their missions—excess property—and to “promptly” report that property as excess to the General Services Administration (GSA).⁸ Agencies are then required to follow the regulations prescribed by GSA when disposing of unneeded property or to follow independent or delegated statutory authority.⁹ GSA’s regulations, in turn, implement statutory disposal requirements, which are discussed below.¹⁰

Statutory Disposal Requirements

The steps in the real property disposal process are established by statute. Agencies must first offer to transfer properties they do not need (excess properties) to other federal agencies, who generally pay market value for excess properties they wish to acquire.¹¹ Unneeded properties that are not acquired by federal agencies (surplus properties) must then be offered to state and local governments, and qualified nonprofits, for use in accomplishing public purposes specified in statute, such as creating public parks or providing services to the homeless.¹² Agencies may convey surplus properties to state and local governments, and qualified nonprofits, for public benefit at less than fair market value—even at no cost.¹³ Surplus properties not conveyed for public benefit are then available for sale at fair market value or are demolished (or, in some cases abandoned) if the property could not be sold due to the condition or location of the property.¹⁴

Agencies have argued that these statutory requirements slow down the disposition process, compelling agencies to incur operating costs while the properties are being screened.¹⁵ For example, real property officials have said the McKinney-Vento Act (P.L. 100-77)—which mandates that all surplus property be screened for homeless use—can extend the time it takes to dispose of certain properties by months or years.¹⁶ Because public benefit conveyance requirements are set in law, agencies do not have the authority to skip screening, even for surplus properties that could not be conveyed anyway. Real property experts with the Army, for example, told auditors they had properties they believed could be disposed of only by demolition, due to their condition or location, but that still had to be screened, thereby adding as much as six months

⁷ U.S. Government Accountability Office, *Federal Real Property: Efforts Made, but Challenges Remain in Reducing Unneeded Facilities*, GAO-16-869, September 2016, pp. 3-5, at <https://www.gao.gov/assets/690/680008.pdf>.

⁸ 40 U.S.C. §524(a).

⁹ *Ibid.*

¹⁰ The disposal provisions of GSA’s real property regulations do not apply to agencies with independent authority to dispose of their own properties.

¹¹ 40 U.S.C. §102.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ 40 U.S.C. §545.

¹⁵ There are benefits to these requirements as well, but they are not the focus of this report.

¹⁶ U.S. Government Accountability Office, *Federal Real Property: More Useful Information to Providers Could Improve the Homeless Assistance Program*, GAO-14-739, September 2014, p. 21, at <http://www.gao.gov/products/GAO-14-739>.

to the disposal process and forcing the Army to pay maintenance costs that could have been avoided.¹⁷

Statutes pertaining to environmental remediation or historic preservation also add time to the process. It may take agencies years of study to assess the potential environmental consequences of a proposed disposal and to develop and implement an abatement plan, as required by law.¹⁸ Similarly, the National Historic Preservation Act requires agencies to plan their disposal actions so as to minimize the harm they cause to historic properties, which may include additional procedures, such as consulting with historic preservation groups at the state, local, and federal levels.¹⁹

Disposal Costs

Unneeded buildings are often among the older properties in an agency's portfolio. As a consequence, agencies sometimes find expensive repairs and renovations may be needed before the properties are fully functional, meet health and safety standards, and comply with historic preservation requirements. The poor condition of these properties may deter potential buyers or lessees, particularly if they must cover the cost of required improvements as a condition of acquiring the properties. Similarly, agencies that wish to demolish vacant buildings face deconstruction and cleanup costs that, at times, exceed the cost of maintaining the property—at least in the short run—which may encourage real property managers to retain a property rather than dispose of it.²⁰ Federal agencies frequently cite the cost of complying with environmental regulations as a major disincentive to disposal.²¹

Stakeholder Conflict

Some agencies have found their disposal efforts are complicated by the involvement of stakeholders with competing agendas. The Department of the Interior (DOI) has said that the competing concerns of local and state governments, historic preservation offices, and political factors can stymie the disposal of some of its unneeded real property.²² Similarly, the VA has found that communities sometimes oppose disposals that would result in new development, and veterans groups have opposed disposing of building space if that space would be used for purposes unrelated to the needs of veterans.²³ These conflicts can result in delay, or even cancellation of proposed disposals, which, in turn, prevent agencies from reducing their inventories of unneeded properties.²⁴

¹⁷ Ibid.

¹⁸ U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 41.

¹⁹ 16 U.S.C. §470.

²⁰ U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 13, 2007, pp. 40-41, at <https://www.gao.gov/assets/260/259410.pdf>.

²¹ Ibid.

²² Ibid., p. 16.

²³ U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5, at <https://www.gao.gov/assets/290/280516.pdf>.

²⁴ There is no government-wide real property guidance for addressing stakeholder conflicts.

Real Property Management and Oversight

In addition to the obstacles mentioned above, data about agency real property portfolios—which might be useful for congressional oversight—appear to be potentially inaccurate, and some government-wide data are accessible only to GSA. Moreover, agencies sometimes enter into leases rather than seek funding for new construction when acquiring space, even when the leased space might be more expensive over time.

Availability and Quality of Real Property Data²⁵

The Federal Real Property Profile (FRPP) is the government’s most comprehensive source of information about real property under the control of executive branch agencies. GSA manages the FRPP and collects real property data from 24 of the largest landholding agencies each year. Other agencies are encouraged, but not required, to report data to GSA.²⁶ The data elements that participating agencies collect and report are determined by the Federal Real Property Council (FRPC), an interagency taskforce that is funded and chaired by the Office of Management and Budget (OMB). The other members of the FRPC are agency senior real property officers (SRPOs) and GSA.

The FRPP contains data that could enhance congressional oversight of federal real property activities, such as the number of excess and surplus properties held by major landholding agencies and the annual costs of maintaining those properties. Historically, GSA has not permitted direct access to the FRPP by Congress on the grounds that the data are proprietary. GSA does respond to some requests for real property data from congressional offices, but GSA staff query the database and provide the results to the requestor.

Some FRPP data are made public through an annual summary report posted on GSA’s website, but the summary reports may be of limited use for congressional oversight.²⁷ Most of the data are highly aggregated and limited information is provided on an agency-by-agency basis. Certain data, such as building utilization rates at each agency, or the number of excess and surplus properties each agency holds, are not available to Congress or the public. This can limit the ability of Congress to compare the performance of agencies, which in turn can limit its ability to identify the policies and practices used by the most successful agencies and hold poorly performing agencies accountable.

The quality of the FRPP data has also been questioned. GAO audits have found, for example, that real property data were unreliable in key areas, such as annual operating costs, and often were not reported correctly by agencies.²⁸ Another GAO report reexamined weaknesses in FRPP data

²⁵ For more information on real property data, see CRS Report R44286, *Federal Real Property Data: Limitations and Implications for Oversight*, by Garrett Hatch.

²⁶ Executive Order 13327, “Federal Real Property Asset Management,” 69 *Federal Register* 5897, February 4, 2004. According to the provisions of E.O. 13327, only the 24 agencies listed in 31 U.S.C. 901(b)(1) and (b)(2), which are subject to the Chief Financial Officers Act, are required to report real property data to GSA. Those agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; the Environmental Protection Agency; General Services Administration; National Aeronautics and Space Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; Social Security Administration; and United States Agency for International Development.

²⁷ The annual real property summary reports may be found on GSA’s Federal Real Property Report Library website, at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=23962.

²⁸ U.S. Government Accountability Office, *High-Risk Series: An Update*, GAO-15-290, February 2015, p. 139, at

collection practices, noting that key data elements—such as buildings’ maintenance needs and utilization rates—are not consistently and accurately captured in the database.²⁹ The GAO report concluded that problems with FRPP data collection result in agencies “making real property decisions using unreliable data.”³⁰

Data quality problems may result from changing definitions. The FRPC stopped reporting data on underutilized and not utilized buildings in its FY2011 real property report.³¹ It began reporting the data again in FY2013, but with different definitions than those used in FY2010.³² The old definitions were based on the amount of space occupied in a building, while the new definitions are based on the frequency with which space was in use. Under the new definitions, the FRPC reported 5,532 underutilized and not utilized buildings in FY2013, down from 77,700 in FY2010—a 93% decrease in three years.³³ By FY2014, the number of underutilized and not utilized buildings reported decreased to 4,971, a 94% decline from FY2010.³⁴ Inconsistencies like this have led GAO to conclude that the FRPC’s data on underutilized and not utilized federal real property are not reliable.³⁵

The annual summary reports also omit data that might enhance congressional oversight. The FRPP contains, for example, the number of excess and surplus properties held by each agency and the annual operating costs of those properties—issues about which Congress has expressed ongoing interest. The summary report, however, only provides the number and annual operating costs of disposed assets, thereby providing the “good news” of future costs avoided through disposition while omitting the “bad news” of the ongoing operating costs associated with excess and surplus properties the government maintains.

Overreliance on Leasing

The government’s ongoing “overreliance on costly leased space” is one of the primary reasons federal real property continues to be designated as a “high risk” issue by GAO.³⁶ The percentage of square feet leased by GSA—which leases property for itself and on behalf of many agencies—is nearly equal to the percentage of square feet it owns. According to GAO, leasing space is typically more expensive than owning space over the same time period. GAO cited, for example,

<http://www.gao.gov/assets/670/668415.pdf>.

²⁹ U.S. Government Accountability Office, *Federal Real Property: Current Efforts, GAO Recommendations, and Proposed Legislation Could Address Challenges*, GAO-15-688T, June 2015, p. 6, at <http://www.gao.gov/assets/680/670808.pdf>.

³⁰ Ibid.

³¹ Federal Real Property Council, *2011 Guidance for Real Property Inventory Reporting*, October 4, 2011, at http://www.gsa.gov/graphics/ogp/2011_RealPropInventory_User_Guidance.pdf.

³² Federal Real Property Council, *2013 Guidance for Real Property Inventory Reporting*, August 15, 2013, at http://www.gsa.gov/portal/mediaId/178911/fileName/2013_Data_Dictionary_VERSION_2_912.action.

³³ Federal Real Property Council, *FY2013 Federal Real Property Summary Data Set*, p. 8, at <http://gsa.gov/portal/content/102880>. Federal Real Property Council, *FY2010 Federal Real Property Report*, p. 6, at http://gsa.gov/graphics/ogp/FY_2010_FRPP_Report_Final.pdf.

³⁴ Federal Real Property Council, *FY2014 Federal Real Property Profile, Summary Data Set, Table 15*, at <http://www.gsa.gov/portal/content/102880>.

³⁵ U.S. Government Accountability Office, *Federal Real Property: Better Guidance and More Reliable Data Needed to Improve Management*, GAO-14-757T, July 26, 2014, p. 8, at <http://gao.gov/assets/670/665085.pdf>.

³⁶ U.S. Government Accountability Office, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, GAO-17-317, February 2017, p. 84, at <http://www.gao.gov/assets/690/682765.pdf>.

a long-term operating lease that cost an estimated \$40.3 million more than if the agency had purchased the same building.³⁷

The decision to lease rather than purchase space may be driven by operational requirements—such as the United States Postal Service (USPS) leasing space in areas that it believes will optimize the efficiency of mail delivery. Agencies often choose to lease rather than purchase space because of budget scoring rules, even if the decision to lease is not the most cost-effective long-term option. Under the Budget Enforcement Act of 1990, an agency must have budget authority up-front for the government’s total legal commitment before acquiring space. Thus, if an agency were to construct or purchase a building, it would need up-front funding for the entire cost of the construction or acquisition, but leased space only requires the annual lease payment plus the cost of terminating the lease agreement.

In addition to the budget scoring issue, some agencies have been granted independent leasing authority, which means they do not have to work with GSA to acquire leased space. Some agencies with independent leasing authority, such as the USPS and VA, have established in-house real property expertise, while other agencies with independent authority have not. The Securities and Exchange Commission (SEC), for example, entered into a \$557 million, 10-year lease for 900,000 square feet, which the SEC’s inspector general (IG) called “another in a long history of missteps and misguided leasing decisions made by the SEC since it was granted independent leasing authority.”³⁸ The IG found that “inexperienced senior management” at the SEC made poor decisions that led to acquiring three times the amount of space needed—the original estimate provided to Congress was for 300,000 square feet—and bypassing other locations that were closer and less expensive.³⁹

Federal Assets Sale and Transfer Act (FASTA)

Real property disposition historically has been a relatively decentralized process. Numerous federal agencies have the authority to dispose of some or all of the properties they hold. Some agencies have very broad authority to dispose of properties by any method, while others only have the authority to dispose of certain types of properties, or to only use certain disposal methods. Under this decentralized structure, agencies have identified unneeded assets and disposed of them in piecemeal fashion, often limited by the budgetary resources available for disposition activities. The Federal Assets Sale and Transfer Act of 2016 (FASTA, P.L. 114-287), by contrast, requires a more centralized process, whereby disposal decisions will be based on the recommendations of a newly created board rather than individual agencies. Moreover, the board may recommend the disposal of hundreds or even thousands of properties at one time.

Scope

FASTA applies to all federal executive branch agencies and wholly owned government corporations, but properties on military installations are excluded, as are most Coast Guard properties and properties located outside the United States that are operated or maintained by the Department of State or the Agency for International Development. Properties controlled by Indian and Native Alaskan tribes, the USPS, and the Tennessee Valley Authority are also excluded, as

³⁷ Ibid.

³⁸ Securities and Exchange Commission, Office of Inspector General, *Report of Investigation: Improper Actions Relating to the Leasing of Office Space*, May 16, 2011, p. 2, at <https://www.sec.gov/files/oig-553.pdf>.

³⁹ Ibid.

well as properties used for certain federal programs or power projects. The OMB Director may also exclude properties for reasons of national security.

Development of Recommendations

Agency Recommendations

The first step in disposing of unneeded properties under FASTA is for federal landholding agencies to develop their own recommendations for reducing unused space and operating and maintenance costs. Agencies are required to submit these recommendations to GSA and OMB not later than 120 days after the start of each fiscal year, along with specific data on each of the properties they own and lease. The data include, for each property, its

- age and condition,
- operating costs,
- history of capital expenditures,
- sustainability metrics,
- square footage, and
- the number of federal employees that work there.

Agency recommendations must categorize properties according to whether they should be sold, transferred, exchanged, consolidated, relocated, redeveloped, reconfigured, or outleased—a range of options which are referred to collectively as “realignment.” Agencies may also recommend properties be declared excess or surplus if they have not already been so designated.

Review and Revision of Agency Recommendations

FASTA then requires the GSA Administrator and the OMB Director to develop criteria they will use to determine which properties should be realigned and what type of realignment should be recommended. FASTA specifies nine principles that must be taken into account when establishing the criteria:

1. the extent to which a property could be sold, redeveloped, or outleased in a manner that would produce the best value;
2. the extent to which the operating and maintenance costs would be reduced through the consolidation, colocation, and reconfiguration of space;
3. the extent to which a property aligns with the current mission of the agency;
4. the extent to which the utilization rate is being maximized and is consistent with nongovernment standards;
5. the potential costs and savings over time;
6. the extent to which leasing long-term space would be reduced;
7. the extent to which there are opportunities to consolidate similar operations across or within agencies;
8. the economic impact on existing communities in the vicinity of the property; and
9. the extent to which energy consumption specifically would be reduced.

The criteria must include utilization rate standards that apply to each category of space, such as office space and warehouse space. Once the criteria are established, OMB and GSA must apply them to the list of agency recommendations and revise that list as deemed appropriate.

Public Buildings Reform Board

The OMB Director must then submit the revised recommendations, along with the criteria, to a newly established Public Buildings Reform Board. The board is to be composed of a chairperson appointed by the President with the advice and consent of the Senate, and six other members, also appointed by the President. In making appointments to the board, the President is required to consult with the Speaker of the House of Representatives regarding two members, the majority leader of the Senate regarding two members, the House minority leader regarding one member, and the Senate minority leader regarding one member. FASTA directs the President to ensure that the board includes members with expertise in commercial real estate, space optimization and utilization, and community development. Board members are each appointed to a six-year term, and the board itself terminates six years from the date FASTA was enacted.

The board is required to review the recommendations submitted by OMB, but it is not bound by them. The board is required to perform an independent review of agency inventories, and it may reject, accept, or modify OMB's recommendations, and add recommendations of its own. As part of the review process, the board is required to develop an accounting system to help in evaluating the costs and returns of various recommendations. The board shall have access to the same data that agencies provided to OMB and GSA, and agencies are required to provide any additional information the board requests. In addition, the board may receive and review proposals submitted by state and local officials and the private sector, which the board is required to consider. The board shall hold public hearings when developing its recommendations.

As part of its recommendations, the board must identify at least five "high-value" federal properties to sell. These properties may not be listed as excess or surplus, and must have a total estimated fair market value of at least \$500 million and not more than \$750 million.⁴⁰ Each of these properties may be disposed of only through sale. The high-value list is subject to the same review and approval process as the much longer list of recommendations.

Once the board finalizes its recommendations, it is required to submit them in a report to the OMB Director and post them on a website established by the board for that purpose. The report may only include recommendations supported by at least a majority of commission members. GAO is required to publish a report on the recommendations, including a review of the methodology used to select properties for realignment.

Review by OMB

The OMB Director has 30 days to review the board's recommendations and submit a report to Congress that discusses the decision to approve or disapprove them. If the Director approves all of the board's recommendations, then he must submit a copy of the recommendations to Congress along with a certification of his approval. If the Director disapproves some or all of the board's recommendations, he must submit a report to Congress and to the board identifying the reasons for disapproval, and the board would have 30 days to submit a revised list of recommendations to the Director. If the Director approves all of the revised recommendations, he must submit a copy of the revised recommendations along with a certification of approval to Congress. If the Director does not submit a report within 30 days of the receipt of the commission's original or revised recommendations, then the process terminates.

⁴⁰ This provision identifies possible opportunities to generate revenue from properties that are being utilized by agencies and therefore have not been declared excess or surplus. Given the relatively high market value of these properties, it is possible the government could generate significant revenue from selling them, even after accounting for the costs of relocating the federal employees that work there, if that were required under the terms of the sale.

Implementation

If the OMB Director approves a set of board recommendations, federal agencies must begin implementation of all recommendations within two years from the date Congress received them, and complete implementation within six years. Agencies must work in consultation with GSA, and within their existing authorities to implement board recommendations, although they may contract with real estate companies for assistance. The OMB Director has the authority to exclude a property from the board's recommendations if the Director determines the property is suitable for use as a public park or recreation area by a state or local government.

In addition, several sections of the U.S. Code that pertain to real and personal property conveyances, particularly those for public benefit, would not apply to recommended disposals. The McKinney-Vento Homeless Assistance Act still applies to properties that are included in the approved set of recommendations but which the HUD Secretary determines are suitable for use providing services to the homeless. However, FASTA amends McKinney-Vento by shortening the screening and application process for these properties.

FASTA requires the Comptroller General to annually monitor and review the implementation activities of federal agencies and report to Congress his findings and recommendations. In addition, the act precludes actions taken pursuant to recommendations from judicial review.

Environmental Considerations

If the board recommends the disposal of a property on which hazardous material was stored for more than one year, known to have been released, or disposed of, federal agencies may agree to transfer the deed of such property only under certain conditions. First, the deed must comply with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 §§ et seq.). Second, the head of the disposing agency must certify either (1) the cost of all environmental restoration, waste management, and other environmental compliance activities that would otherwise be paid for by the disposing agency are equal to or greater than the fair market value of the property; or (2) if such costs are lower than fair market value the recipient of the property agrees to pay the difference between fair market value and such costs.

Once a property has been certified, the agency may pay the recipient of the property the lesser of the amount by which the costs incurred by the recipient for environmental compliance exceed fair market value, or the amount by which the costs that would have been incurred by the disposing agency exceed fair market value.

The disposing agency must provide to the property recipient all of the information it possesses on environmental restoration, waste management, and compliance activities.

Funding

FASTA established both a salaries and expenses account to fund the board's administrative and personnel costs, and an asset proceeds and space management fund (APSMF) that will be used to implement recommended actions. Both accounts may receive funds from appropriations but the APSMF is also authorized to receive the proceeds generated by the sale of real property pursuant to the board's recommendations. All of the funds deposited in the APSMF account may only be used to cover the costs associated with implementing the board's recommendations. The President is required to include in his budget submission an estimate of the proceeds that are the result of the board's recommendations and the funding needed to implement them.

Agency Retention of Net Proceeds

After the board terminates, federal agencies are authorized to retain the net proceeds from the disposal of real property they control. Net proceeds may only be used for further disposal activities and only as authorized in annual appropriations acts. Any net proceeds not expended for disposal activities are required to be used for deficit reduction.

Real Property Database

FASTA requires the GSA Administrator to establish and maintain a “single, comprehensive, and descriptive” database of all real property under the control of federal agencies. The database must include, for each property, its

- size in square feet and acreage;
- geographic location, including a physical address and description;
- relevance to the agency’s mission, presently and in the future;
- level of utilization, including whether it is excess, surplus, underutilized, or unutilized, and the number of days it has been so designated;
- annual operating costs; and
- replacement value.

The database must permit users to search and sort properties, and download data. Once operational, the database must be made available, at no cost, to federal agencies and the public.

Analysis of FASTA Disposal Process

Numerous provisions of FASTA have the potential to mitigate weaknesses in the real property disposal process and enhance oversight. There are also potential drawbacks to certain provisions, and some real property weaknesses are only tangentially addressed.

Development of Recommendations

One potential advantage of the FASTA process is that it incorporates a variety of perspectives. Agencies initiate the process, using detailed knowledge of their portfolios to propose disposal actions that they believe make the most sense in terms of their mission. A government-wide perspective is added in the next step, when GSA and OMB jointly review and revise agency recommendations. By looking at the federal portfolio as a whole, OMB and GSA may see opportunities for dispositions across agencies that individual agencies do not, such as consolidation or colocation of agency personnel. In addition, OMB and GSA may see opportunities to apply new ideas to multiple agencies. If an agency recommended reducing costs related to warehouse maintenance through a particular method, for example, OMB and GSA might recommend other agencies with warehouse space use that method as well. A third perspective is added by the Public Buildings Reform Board, an independent body whose members may have expertise different than that of executive branch employees involved in developing the list of recommendations. That diversity of expertise—which may include private sector work in real estate development or community development—may enable the board to identify opportunities for the government to sell properties that agencies may not have thought were marketable, or consider the effects of disposing of multiple properties from different agencies in a single city or region.

A diversity of perspectives may also hinder consensus on recommendations, particularly if it results in disagreement between OMB and the board. If the OMB Director's philosophy emphasizes certain methods of disposition over others, for example, and a majority of the board favors a different approach, then that disagreement could potentially result in the OMB Director rejecting some of the board's recommendations and terminating the FASTA disposal process for a given year.

Role of Congress

Congress has an indirect role in developing FASTA recommendations through its advisory role on board appointees. A potential benefit of this limited presence is that it may reduce the pressure exerted by local stakeholders on disposal decisions. By keeping Congress at a distance from the recommendation process, FASTA encourages stakeholders to work with the board, which has a nationwide perspective and is not subject to public elections.

Conversely, FASTA may be perceived to put Congress at an institutional disadvantage relative to the executive branch. The OMB Director works with GSA to develop an initial list of recommendations to the board and has the authority to approve or disapprove of the board's recommendations. This process may be seen as giving OMB two opportunities to directly influence the final recommendations, whereas Congress has only an indirect presence through the board. At no time is Congress able to vote on any recommendations under FASTA.

Changes to the Conveyance Process

As noted, prior to FASTA, all federal properties were required to be screened for use by state and local governments and nonprofits, a process which added weeks to months to the disposal process. While some properties would eventually be conveyed to these entities, the majority would not, meaning agencies incurred operating and maintenance costs on many properties unnecessarily while the screening process took place. By exempting the board's recommendations from many conveyance screening requirements, FASTA may enable agencies to dispose of unneeded properties in a less costly and more efficient manner. These exemptions may not necessarily result in fewer properties being conveyed to state and local governments and nonprofits. The board may still recommend conveyances, and nearly all board recommendations are eligible for review by HUD to determine whether any properties might be suitable for use providing assistance to the homeless. In addition, the OMB Director has the authority to exclude any property from the board's recommendations if he determines that it might be suitable for use by a state or local government as a public park or recreation area.

It could be argued that centralizing conveyance decisions might, under some circumstances, reduce the number of properties available to state and local governments and nonprofits. FASTA does not instruct the board to give precedence to any particular disposal method, and some properties that might be used for public benefit if conveyed might also be valued by the private sector. The board and the OMB Director may approve recommendations to sell some of those properties rather than convey them, whereas before FASTA state and local governments and nonprofits would have been given the first opportunity to acquire all unneeded properties.

Disposal Costs

Federal agencies have argued that they are unable to dispose of many of their unneeded properties because they lack sufficient funding. FASTA may help address that concern by providing funding for recommended disposals through appropriations and from the sale of civilian properties.

Notably, FASTA requires that the board recommend the sale of at least five properties with an estimated fair market value of \$500 million to \$750 million. However, these properties are not to be listed as excess or surplus—meaning agencies have not declared them to be unneeded. It is not clear how these properties will be identified. It is also not clear how much revenue might be generated by the sale of civilian properties, since the FRPP does not provide sales proceeds data on an agency-by-agency basis.

Real Property Data

FASTA requires GSA to establish a publicly accessible real property database that may enhance oversight and policymaking. The new database must provide information that may help Congress monitor agency portfolios, such as the utilization rate and annual operating costs of each property. The database is not required to include other data that Congress might find useful. Agencies estimate a dollar amount for the repair needs of their buildings and structures as part of their FRPP reporting, but these estimates are then folded into a formula for calculating a “condition index” for each building, which is not reported. Given that repair needs are an obstacle to disposing of some properties, Congress may find it useful to have agency repair estimates reported for each building to help inform funding decisions.

Concluding Observations

FASTA primarily addresses the disposal of unneeded properties, but its objectives include reducing the government’s reliance on leased space. Information comparing the cost of leasing to the cost of building or buying space might enhance oversight of long-term operating leases. As discussed earlier in this report, one of the primary reasons GAO has listed federal real property management as a high-risk area since 2003 is that the government increasingly acquires space through leases rather than by constructing or purchasing buildings.⁴¹ The prospectus approval process provides Congress with an opportunity to exercise oversight of GSA’s lease decisions. Prior to seeking appropriations, GSA is required to obtain congressional authorization for constructing, purchasing, leasing, or renovating real property when the estimated cost of the project exceeds a given threshold.⁴² To that end, GSA submits a prospectus to two committees—the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure—for each proposal that exceeds the threshold. The prospectus provides detailed information about the project, including its location and estimated cost. By law, a project that exceeds the threshold may not receive appropriations unless both committees pass resolutions approving of the prospectus.

Given the size of its portfolio, and its role as the procurer of space for numerous other agencies, congressional oversight of GSA’s prospectus-level lease proposals has broad implications. The usefulness of the prospectus approval process as an oversight tool, however, may be limited by the fact that GSA is not required to present data that directly compare the cost of leasing with the cost of owning space. This means that Congress may be unable to determine whether it is being asked to approve the most cost-effective option for meeting an agency’s real property needs.

One option for potentially improving oversight of GSA leases would be to mandate that GSA include comparative cost data in its prospectuses. This would not be a completely new step for

⁴¹ U.S. Government Accountability Office, *High-Risk Series: An Update*, GAO-13-283, February 2013, p. 107.

⁴² The threshold is established by the GSA Administrator under the authorities provided at 40 U.S.C. 3307. For FY2018 the lease threshold is \$3.095 million.

GSA to take: in the 1980s and throughout the early part of the 1990s, GSA's lease prospectuses included a comparison of the costs of leasing space to constructing or buying it.⁴³ GSA discontinued reporting comparative cost data in the mid-1990s, it said, because funding for construction and purchase alternatives was so limited that they were not considered realistic alternatives.⁴⁴

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⁴³ U.S. Government Accountability Office, *Federal Real Property: Greater Transparency and Strategic Focus Needed for High-Value GSA Leases*, GAO-13-744, September 2013, p. 21.

⁴⁴ *Ibid.*