



WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RS22287>

February 2, 2009

Congressional Research Service

Report RS22287

*General Services Administration Prospectus Thresholds for
Owned and Leased Federal Facilities*

Clay H. Wellborn, Government and Finance Division

August 20, 2008

Abstract. Funding for authorized real property projects is normally provided through annual appropriations acts. Relatively small projects, however, do not require prospectus approval. Prospectus approval is required for new construction or leases in FY2009 only if the proposals are valued at more than \$2.66 million; for projects involving the alteration of leased space, the threshold value is \$1.33 million. Thresholds change annually to reflect changing construction costs and market circumstances. Under emergency circumstances, GSA does not need prospectus approval for emergency leases whose terms are not to exceed 180 days. Following recent large-scale disasters, however, GSA has had difficulty leasing space for displaced federal tenants because lessors were not willing to enter into 180-day leases when prospective non-federal tenants were willing to sign longer-term leases. Accordingly, committees in both chambers reported bills in the 109th Congress to extend the terms of emergency leases to five years, but neither house took final action. During the 110th Congress, GSA again proposed increasing the term of emergency leases to five years, but no bills addressing this matter were introduced. GSA may resubmit its proposal during the 111th Congress.



WikiLeaks



CRS Report for Congress

General Services Administration Prospectus Thresholds for Owned and Leased Federal Facilities

Clay H. Wellborn
Specialist in American National Government
Government and Finance Division

Summary

The General Services Administration (GSA) oversees GSA owned and leased federal buildings and courthouses.¹ As part of the authorization process for new construction or leasing proposals, GSA is required to submit for approval a prospectus containing project and cost specifications to the Office of Management and Budget (OMB) and to House and Senate committees. Funding for authorized real property projects is normally provided through annual appropriations acts. Relatively small projects, however, do not require prospectus approval. Prospectus approval is required for new construction or leases in FY2009 only if the proposals are valued at more than \$2.66 million; for projects involving the alteration of leased space, the threshold value is \$1.33 million. Thresholds change annually to reflect changing construction costs and market circumstances. Under emergency circumstances, GSA does not need prospectus approval for emergency leases whose terms are not to exceed 180 days. Following recent large-scale disasters, however, GSA has had difficulty leasing space for displaced federal tenants because lessors were not willing to enter into 180-day leases when prospective non-federal tenants were willing to sign longer-term leases. Accordingly, committees in both chambers reported bills in the 109th Congress to extend the terms of emergency leases to five years, but neither house took final action. During the 110th Congress, GSA again proposed increasing the term of emergency leases to five years, but no bills addressing this matter were introduced. GSA may resubmit its proposal during the 111th Congress. This report will be updated as circumstances warrant.

The General Services Administration (GSA) is the federal government's primary civilian real property management agency, with 11 regional offices that oversee GSA owned and leased federal buildings and courthouses. As of August 4, 2008, GSA — through its Public Buildings Service (PBS) — owned or leased more than 342 million square feet of work area for 1.1 million federal employees in 2,100 American

¹ This report was originally written by Stephanie Smith, who has retired from CRS. The currently listed author revised and updated the report to reflect the prospectus thresholds for 2009.

communities. Of that total, 51% is government-owned; 49% is leased from the private sector.²

Authorizing and Appropriating for Federal Buildings

Until Congress enacted the Public Buildings Act in 1926, construction authority for each federal building was approved and funded in separate pieces of legislation.³ The 1926 act provided the basic authority for the construction of federal buildings through the congressional authorization and appropriation process. Congress later enacted the Public Buildings Act of 1949 to authorize the planning, site acquisition, and design of federal buildings located outside of Washington, DC, and for improvements to existing federal buildings.⁴ Congress also enacted the Federal Property and Administrative Services Act of 1949, which established the General Services Administration (GSA), and gave the GSA Administrator responsibility for administering federal real property.⁵ 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.⁶ 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 was vested in the federal government at the end of the contract period, which could range from 10 to 30 years. When authority for lease-purchase contracts expired in 1957, Congress approved a successor statute, the Public Buildings Act of 1959.⁷ The 1959 act re-established earlier requirements to provide for direct federal construction of public buildings through the congressional authorization and appropriation process. This act, as amended and re-codified over the years, remains the basic statute authorizing the GSA Administrator to construct, own, lease, maintain, and renovate buildings to serve civilian agencies of the federal government.⁸

GSA is responsible for the design and construction of its buildings and courthouses, and for repairs and alterations to existing facilities. As part of the President's annual budget submission to Congress, GSA requests funding for new construction projects, as well as for renovation and leasing projects. Congress authorizes appropriations, however, through the prospectus approval process, which is discussed below.

Prospectus Requirements and Thresholds. Under the Public Buildings Act, as amended, GSA is required to submit a formal document, known as a prospectus, first to the Office of Management and Budget (OMB), and then to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure, as part of the process to authorize and appropriate funds for acquiring

² U.S. General Services Administration, "Public Buildings Service," at [<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelId=-13303>], visited Aug. 14, 2008.

³ 44 Stat. 630.

⁴ 63 Stat. 176.

⁵ 63 Stat. 377; 41 U.S.C. § 251 et seq.

⁶ 68 Stat. 518.

⁷ 73 Stat. 478; 40 U.S.C. § 3301-3315.

⁸ This authority also extends to federal courthouses, but not to the legislative branch.

additional space and facilities for federal agencies.⁹ Each prospectus includes project specifications, cost estimates, and an anticipated completion schedule for the proposed project. For FY2008, a prospectus is required for new construction, repairs, or leasing proposals valued at \$2.59 million or more. A prospectus is also required for proposed alterations in GSA leased space valued at \$1.29 million or more.¹⁰ For FY2009, those amounts rise to \$2.66 million and \$1.33 million, respectively, as shown in **Table 1**, below.

Congressional approval of the prospectus is authorization to appropriate funds for the project. Congress appropriates funds for GSA's authorized construction and leasing projects each fiscal year through the Financial Services and General Government appropriations bill. Once the proposed construction and repairs projects receive congressional funding, GSA's Public Buildings Service contracts with private sector firms for design and construction work through the appropriate formal bidding process.

**Table 1. Prospectus Thresholds for Federal Buildings
FY1959-FY2009**

Fiscal Year(s)	Construction, Repairs and Alterations, and Leases	Alterations in Leased Space
1959-1971 ^a	\$200,000	—
1972-1988 ^b	\$500,000	—
1989-1991 ^c	\$1,500,000	\$750,000
1992	\$1,525,000	\$762,500
1993	\$1,600,000	\$800,000
1994	\$1,650,000	\$825,000
1995	\$1,670,000	\$835,000
1996	\$1,680,000	\$840,000
1997	\$1,740,000	\$870,000
1998	\$1,810,000	\$905,000
1999	\$1,890,000	\$945,000
2000	\$1,930,000	\$965,000
2001	\$1,990,000	\$995,000
2002	\$2,130,000	\$1,065,000
2003	\$2,213,000	\$1,106,500
2004	\$2,290,000	\$1,145,000

⁹ 40 U.S.C. § 3307.

¹⁰ The Public Buildings Act Amendments of 1988 (102 Stat. 4049) increased the prospectus threshold to \$1.5 million, with the amount to be adjusted annually as determined by the Department of Commerce's composite index of construction costs.

Fiscal Year(s)	Construction, Repairs and Alterations, and Leases	Alterations in Leased Space
2005	\$2,360,000	\$1,180,000
2006	\$2,410,000	\$1,205,000
2007	\$2,540,000	\$1,270,000
2008	\$2,590,000	\$1,295,000
2009	\$2,660,000	\$1,330,000

Source: General Services Administration, GSA Annual Prospectus Thresholds, at: [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=16247&noc=T]. See also Federal Management Regulation § 102-73.35.

- a. 73 Stat. 478.
- b. 86 Stat. 216.
- c. 102 Stat. 4049.

Meeting Emergency Needs

In times of emergency or disaster, the normal prospectus thresholds and procedures are modified to facilitate rapid recovery so that displaced federal agencies can get back to work. Current law authorizes the GSA Administrator to enter into an emergency lease agreement during any period “declared by the President to require emergency leasing authority. An emergency lease may not be for more than 180 days without congressional approval of a prospectus for the lease.”¹¹

Especially severe circumstances, however, may have ramifications that extend well beyond 180 days. For example, Hurricane Katrina, which struck the Gulf Coast on August 29, 2005, caused significant property and infrastructure damage to 83 GSA-owned and leased federal buildings and courthouses in Louisiana, Alabama, and Mississippi. The damage necessitated the eventual relocation of 2,600 federal employees from 28 federal agencies.¹² Although not all GSA facilities suffered major structural damage in the affected areas, supporting critical infrastructure was severely impaired or destroyed — such as water, electricity, sewage systems, or even accessible roads to reach the federal facilities. The storm also resulted in environmental conditions that might have threatened the health and safety of federal employees in the affected areas. Moreover, many federal employees were forced to evacuate to areas located away from federal facilities when their homes were destroyed by Hurricane Katrina.

GSA deals with the 180-day limitation on non-prospectus emergency leases by working with displaced tenant agencies to constrain requirements so that the value of the

¹¹ 40 U.S.C. § 3307(e).

¹² U.S. Congress, Senate Committee on Environment and Public Works, *Emergency Lease Requirements Act of 2005*, report to accompany S. 1708, 109th Cong., 2nd sess., S.Rept. 109-214 (Washington: GPO, 2006), p. 1. Hereafter cited as S.Rept. 109-214. For a detailed discussion, see CRS Report RS22281, *General Services Administration Federal Facilities Affected by Hurricane Katrina*, by Stephanie Smith.

emergency lease will not exceed the threshold for congressional prospectus approval. If the threshold is not exceeded, the term of emergency-related leases may exceed 180 days without triggering the time-consuming process of preparing, presenting, and obtaining congressional approval for a prospectus. On the other hand, GSA says that constraining the needs to be met by the emergency lease can and does lead to relocating some displaced agencies in work space that is less than fully satisfactory.¹³

Congressional committees in both chambers agreed that the 180-day limitation on emergency leases of space for displaced agencies was problematic. In the 109th Congress, the Senate Committee on Environment and Public Works proposed increasing the maximum term of emergency leases to 180 days to five years, saying,

Past experience with emergency leasing showed that a 6-month lease term (180 days) for prospectus-level space was unattainable, due to the reluctance of building owners to agree to such short-term leases for office space with GSA because competitors are able to offer longer lease terms. In addition to this challenge posed by the market, circumstances arising from natural disasters or other unforeseen events will likely necessitate locating displaced Federal workers in emergency housing solutions for greater than the currently allowed 180 days.¹⁴

The House Committee on Transportation and Infrastructure also recommended an increase to five years for emergency leases related to Hurricanes Katrina and Rita. Both committees reported bills to their respective chambers,¹⁵ but by the end of the 109th Congress, neither chamber had taken final action and both bills died.

Proposals Before the 110th Congress. To date in the 110th Congress, no legislation has been introduced to amend prospectus thresholds for lease, construction, or repair federal facilities under emergency circumstances. However, on March 13, 2008, the General Services Administration sent to Congress “a comprehensive legislative proposal to improve the federal government by increasing its efficiency and effectiveness.”¹⁶ The proposal would, among other things, lengthen the maximum term of an emergency lease that does not require congressional approval of a prospectus from 180 days to five years. The GSA proposal has not been formally introduced in either chamber of Congress.

Outlook for the 111th Congress. As noted above, GSA has found that following major emergencies and disasters, local lessors will not offer 180-day leases for displaced federal agencies when displaced commercial and other private tenants are willing to agree to longer leases. Such market behavior is not likely to change, but the current statutory prospectus requirement for longer leases can potentially impede speedy response and recovery action by GSA following major emergencies and disasters. Accordingly, during

¹³ Telephone conference call with PBS Assistant Commissioner Chip Morris, et al., August 19, 2008.

¹⁴ S.Rept. 109-214, p. xx

¹⁵ S. 1708 and H.R. 4125, 109th Congress. Both bills are described in Appendix A.

¹⁶ U.S. General Services Administration, “GSA Announces Enhancement Act of 2008,” GSA#10468, March 13, 2008. Available on the GSA website at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=24174&noc=T]. Visited Aug. 14, 2008.

the 111th Congress and under the next executive administration, GSA may again present its legislative proposal to extend the term of emergency leases to five years.

Appendix: Legislation in the 109th Congress

S. 1708. On September 15, 2005, Senator James Inhofe and 11 bipartisan co-sponsors introduced S. 1708, the Emergency Lease Requirements Act of 2005. The proposed legislation would have amended current law to authorize the GSA Administrator to enter into emergency lease agreements during a major disaster or other emergency declared by the President or the head of a federal agency under applicable federal law. The term of an emergency lease could not have exceeded five years without congressional approval of a lease prospectus. The GSA Administrator would have been required to submit an annual report describing any emergency lease to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works by April 1 of each year. On September 15, 2005, S. 1708 was referred to the Senate Committee on Environment and Public Works. The bill was reported without amendment on January 26, 2006, and placed on the Senate Legislative Calendar. No further action was taken before adjournment of the 109th Congress.

H.R. 4125. On October 25, 2005, Representative Bill Shuster and two bipartisan co-sponsors introduced H.R. 4125. The bill would have authorized the GSA Administrator to make repairs on federal buildings that were damaged by Gulf Coast hurricanes without prior congressional approval of a prospectus. The proposed legislation would also have authorized the GSA Administrator to enter into emergency lease agreements for up to five years. The GSA Administrator's emergency authorities would have been valid for one year following enactment of H.R. 4125. At least five days before making any building repairs, the GSA Administrator would have been required to submit reports to the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee detailing costs and completion estimates. No later than 15 days after completion, the GSA Administrator would have been required to submit a final report stating total repair costs. The proposed legislation would also have required the GSA Administrator to submit a detailed report to the House and Senate Committees no later than 10 days after entering into an emergency lease agreement. H.R. 4125 was reported favorably by the House Committee on Transportation and Infrastructure on October 26, 2005, by voice vote. No additional action was taken before adjournment of the 109th Congress.