



The House Committee on
Transportation & Infrastructure

PROBLEMS ON PENNSYLVANIA AVENUE:

GSA's Mishandling of the Old Post Office
Lease to the Trump Organization

December 2021

SELECTED RECORDS

MISCELLANEOUS GSA-TRUMP INTERNATIONAL HOTEL RECORDS

TRUMP
INTERNATIONAL HOTEL

**-PROBLEMS ON PENNSYLVANIA AVENUE-
House Committee on Transportation and Infrastructure
Miscellaneous GSA-Trump Hotel Records**

December 2021

-ENCLOSURES-

- Corrective Action Plan (CAP) Evaluation of GSA's Management and Administration of the Old Post Office Building Lease
- Response to GSA Corrective Action Plan for Report JE19-002
- Excerpts from GSA's Outlease Program Guide, August 2020
- Excerpts from GSA's Outlease Contract Administration
- Emails between GSA and Committee on Transportation and Infrastructure staff, May-April, 2021
- Trump Old Post Office LLC Structure Chart, December 2, 2016
- Letter from Trump Old Post Office LLC attorney Stefan Passantino to GSA Contracting Officer Kevin Terry, April 17, 2019
- Letter from GSA General Counsel Jack St. John to Chair DeFazio and Chair Titus, February 28, 2020
- Letter from GSA General Counsel Jack St. John to Chair DeFazio, November 12, 2019
- Letter from GSA Associate Administrator Gianelle Rivera to Chairs DeFazio and Titus, March 30, 2021
- Letter from GSA Associate Administrator Gianelle Rivera to Chair DeFazio and Chair Titus, May 5, 2021
- Letter from Chairs DeFazio and Titus to GSA Administrator Murphy, September 10, 2019
- Letter from Chairs DeFazio and Titus to GSA Administrator Murphy, October 17, 2019
- Letter from Chair DeFazio and Subpoena issued to GSA Administrator Murphy, October 24, 2019
- Letter from Chairs DeFazio and Titus to GSA Administrator Murphy, December 20, 2019

**Evaluation of GSA's Management and Administration of the Old
Post Office**

Building Lease (JE19-002)

OFFICE OF PORTFOLIO MANAGEMENT AND CUSTOMER ENGAGEMENT

Corrective Action Plan

Designated Responding Official: [REDACTED], Assistant
Commissioner, PBS Office of Portfolio Management and
Customer Engagement (PT)

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

Date: March 29, 2019

Recommendation (Only one recommendation per page)

1. We recommend that before continuing to use the language [in Section 37.19 of the Old Post Office (OPO) outlease], GSA determine the purpose of the Interested Parties provision, conduct a formal legal review by OGC that includes consideration of the Foreign and Presidential Emoluments Clauses, and revise the language to avoid ambiguity.

<u>Action to be Taken Step by Step</u>	<u>Supporting Documentation to be sent to the GAO/IG Audit Management Division</u>	<u>Documentation Will be Sent Last Day</u>
001 Review existing outlease forms to determine what, if any, revisions need to occur. Update outleasing forms as necessary.	Copy of revised outleasing forms, if applicable	September 30, 2019
002 Update the Outleasing Program Guide	Copy of revised Outleasing Program Guide	December 31, 2019
003 Update forms section on outleasing website with updated outleasing forms (if applicable)	Screenshot of updated outleasing site, specifics on section with most current forms, and replace existing Outlease Program Guide with newest version	December 31, 2019
004 Update Outleasing Contract Training to address recommendation findings	Copy of updated Outleasing Contract Training slide deck	March 30, 2020

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U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

May 8, 2019

TO: DANIEL W. MATHEWS
Commissioner
Public Buildings Service (PBS)

STUART BURNS
Assistant Commissioner
Portfolio Management and Customer Engagement (PT)
[REDACTED]

FROM: PATRICIA D. SHEEHAN
Assistant Inspector General for Inspections (JE)

SUBJECT: Response to GSA's Corrective Action Plan – *Evaluation of GSA's Management and Administration of the Old Post Office Building Lease* (Report Number: JE19-002)

We have reviewed the action plan and consider it nonresponsive to the report recommendation. This memorandum notifies you that resolution has not been accomplished.

Our recommendation was that before continuing to use the language, GSA:

- (1) determine the purpose of the Interested Parties provision of the lease;
- (2) conduct a formal legal review by OGC that includes consideration of the Foreign and Presidential Emoluments Clauses; and
- (3) revise the language to avoid ambiguity.

The Interested Parties provision is in continuous active use in the Old Post Office Building lease and other historical ground leases, such as the Tariff Building and David W. Dyer Federal Building and Courthouse. The steps you have identified do not pertain to the Interested Parties provision in the OPO ground lease, and others, as the provision did not derive from existing outlease forms, the Outleasing Program Guide, an outleasing website, or Outleasing Contract Training.

We would like to schedule a meeting to resolve the matter. Please contact me at

[REDACTED] [@gsaig.gov](mailto:[REDACTED]@gsaig.gov) or [REDACTED]



The Outlease Program Guide



Office of Portfolio Management and Customer Engagement
General Services Administration
Public Buildings Service
Second Edition
August 2020

INTRODUCTION

Outleases are Opportunities

Outleasing is responsible asset management. Renting vacant or underutilized space temporarily not needed by the Federal community to the private sector improves Funds from Operations (FFO), an asset's revenue stream and decreases non-revenue-producing space. Outleasing is an interesting business discipline, touching nearly every business line in the Public Buildings Service (PBS) and yet is more in alignment with private sector real estate development than with GSA core real estate activities. Outleasing has grown far beyond the days when it was just about finding private sector tenants for vacant or underutilized space in Government-owned or -leased space. Outleasing is, of course, still concerned with filling vacant Government-owned or -leased office space if no Federal tenants are available, but today it is also about food courts and farmers markets, rooftop antennas, solar panels, special events, and movie shoots.

GSA was granted authority to outlease vacant and underutilized space in buildings under GSA's jurisdiction, custody or control in the Federal Property and Administrative Services Act of 1949. The oldest locatable guide on outleasing is the 1985 GSA Handbook, Outlease Program Policy and Procedures. Characteristic of the handbooks of that time, the handbook was prescriptive, identifying all aspects of the transaction and how each step was to be performed. Over the next decade, the handbook was updated several times and ultimately suspended in 1996 when the Centers of Expertise were created. The Retail Center of Expertise issued the Retail Tenant Guide containing outlease guidance in 2000. Since that time, outleasing has grown beyond vacant and underutilized office space to include special events (*e.g.*, movie shoots) historic buildings, rooftop commercial antennas, food courts, parking garages, ground sites, and green technologies, such as solar farms.¹

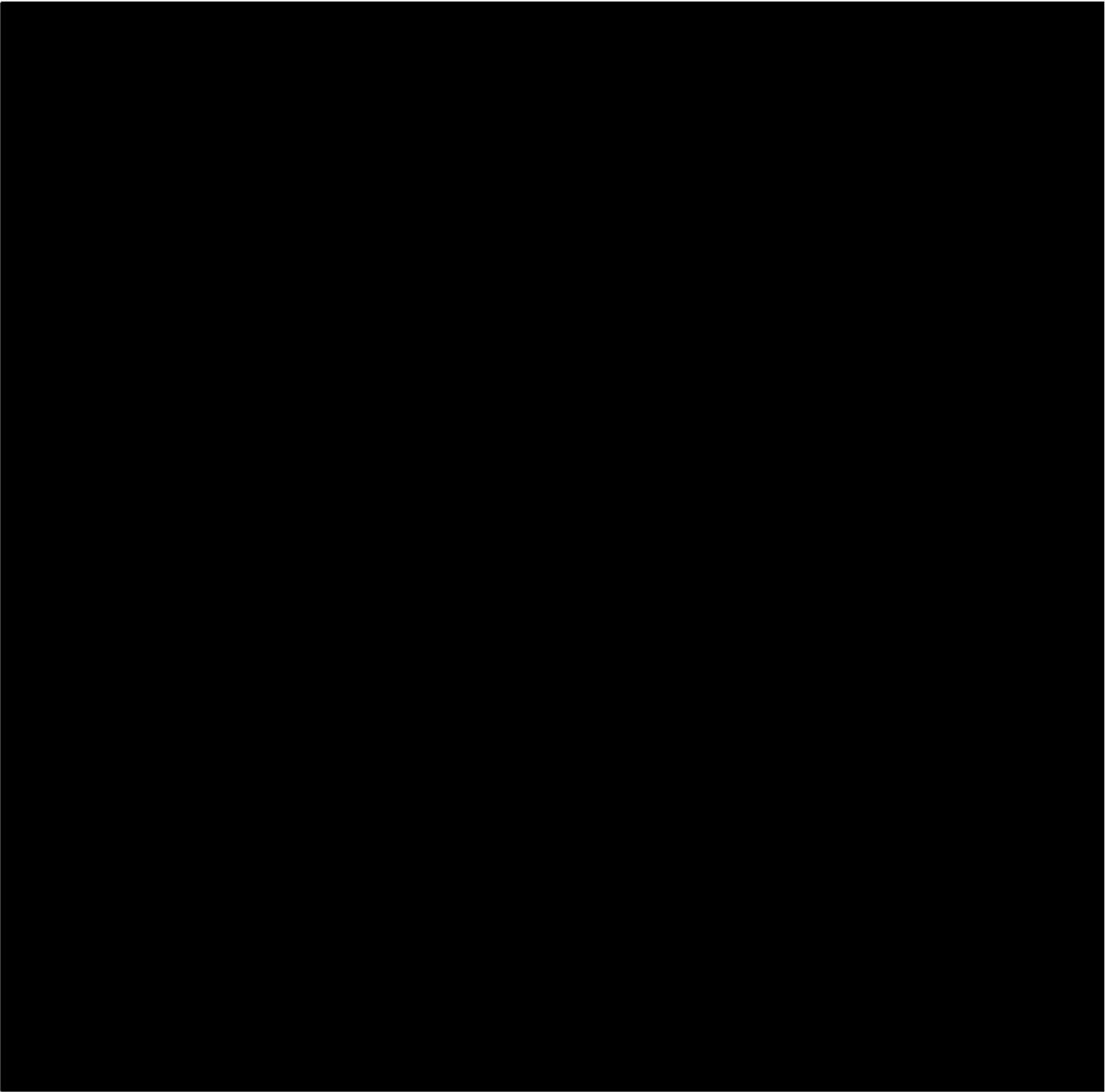
Now outleasing is regarded as a valuable asset management tool, maximizing an asset's revenue generation, helping to maintain a healthy revenue stream for that asset during times when the Federal community population is in flux or keeping a revenue stream for an asset that is being transitioned for sale. Outleasing crosses several business lines and multiple disciplines, requiring high levels of collaboration across GSA.

¹For the complete list of authorities, please see the Outlease Authorities section.

GROUND LEASES

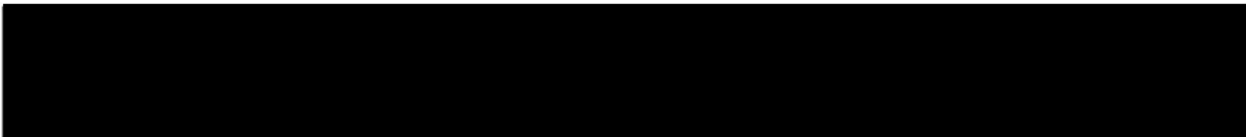
GSA has the authority under Section 111 of the National Historic Preservation Act to outlease historic properties that are not needed for current or projected agency purposes when it is determined that an outlease will adequately ensure the preservation of the historic property. In some cases, the Government outleases an entire historic property or a predominant portion of the historic property using a long-term (50+ year) ground lease. This type of agreement is typical and necessary when the Government is seeking an adaptive use of a historic building that requires a significant investment from a developer that can only be recaptured over a longer term.

Outleasing through a ground lease is not a typical project and requires extensive planning, analysis and execution. As such, this type of project requires a large multi-disciplinary team that typically includes, at a minimum, a Project Manager, Outleasing Contracting Officer, Asset Manager, Architect, Project Engineer, Historic Preservation Specialist, Environmental Specialist, and Regional Counsel. While not required by law, GSA follows the FAR and CICA's best practices, as they benefit the public interest by maximizing full and open competition. Additionally, ground leases typically require a custom lease contract that is unique to the negotiated terms and conditions between the Government and the tenant; please be sure you are consulting with the Central Office outlease program leads prior to entering negotiations for a ground lease agreement.



Interested Parties Clause

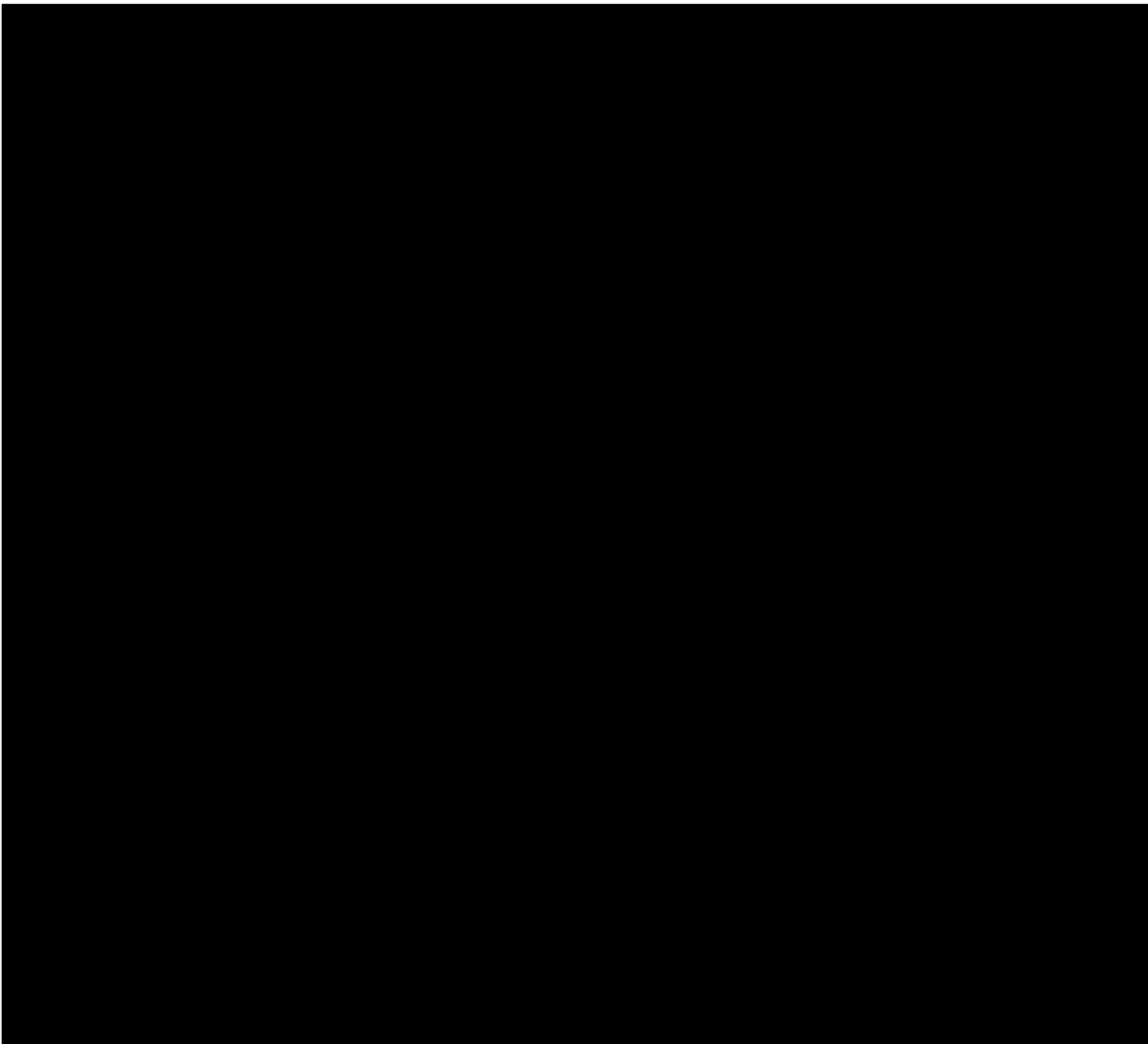
Beginning July 2020, all standardized GSA outlease forms will contain a revised “Interested Parties” clause. This provision was included in GSA’s ground lease agreements, and a similar clause was included in both the standardized Outlease lease document (GSA 3486) and the General Terms of the Lease (GSA 1743 - Now Obsolite). The Revocable License form (GSA 1582) also has been updated and now includes the provision referenced below. The Revocable License form did not previously contain such a clause. The clause, which is statutorily based, prohibits a

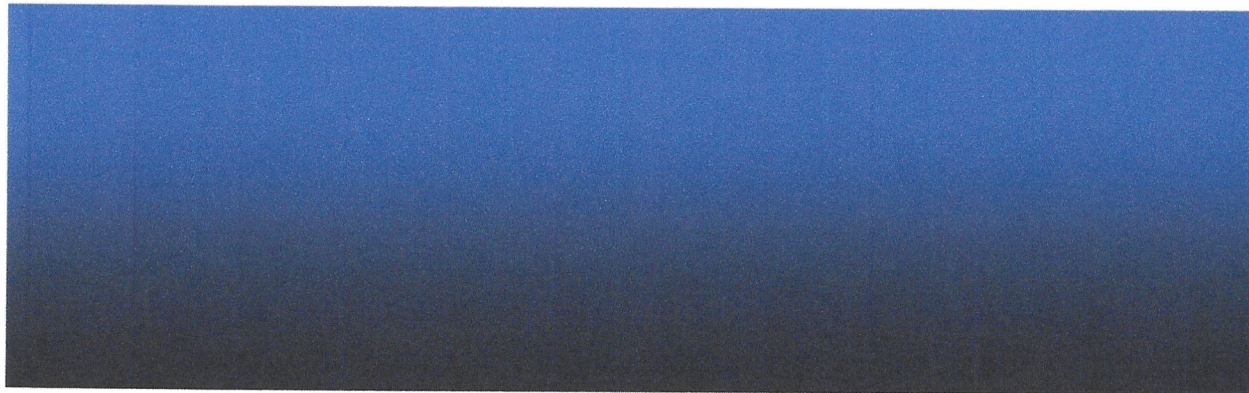


Member of or Delegate to Congress or a Resident Commissioner from benefiting from a contract with the United States Government. The provision reads as follows:

The provisions of 18 U.S.C. § 431 (Contracts by Member of Congress) and 41 U.S.C. § 6306 (Prohibition on Members of Congress making contracts with the Federal Government), as such provisions may be revised from time to time, are hereby incorporated in this Lease by this reference, as if set forth in full.

GSA outlease Contracting Officers must familiarize themselves with this requirement and include this provision in all GSA outlease agreements. Any contract in violation of these statutory provisions will be considered null and void. Consultation with the Office of Regional Counsel is advised, if there are any questions regarding this clause during the contract drafting and negotiation process.





Outlease Contract Administration

May 2020

Outleasing Contract Authority



A Contracting Officer Representative's (COR) responsibilities include:

- **Pre-Award:** Market space, negotiate terms and generate contracts in coordination and under the the direction of the Outleasing Contracting Officer.
- **Post-Award:** Actions taken to obtain lessee compliance with outlease contract requirements. The COR's actions include technical, financial, and administrative actions in support of the Outlease Contracting Officer, as outlined in the Attachment. It may include additional task requests as needed by the outlease contracting activity including support throughout the outlease lifecycle.
- See [Contracting Officer's Representative Designation Letter for complete list](#)

Outleasing Contract Authority



A COR does not have the authority to:

- Execute, award, agree to, or sign any contracts for services or outlease amendments.
- Demand that the lessee perform any task or make changes to, grant deviations from, or waive any of the terms and conditions of the contract.
- Resolve or make decisions concerning any claims or disputes concerning a question of fact or law.
- Allow the improper use of government property.
- Receive or accept goods and services not expressly required by the contract.
- See [Contracting Officer's Representative Designation Letter for complete list](#)

Outleasing Contract Authority



Outlease Contract Administration Includes:

- Monitoring the space usage - Is the tenant using the space according to the terms of the contract?
- Adhering to security requirements
- Monitoring utility usage, cleaning and trash removal
- Confirming timely rent payment
- Determining percentage rent changes
- Determining rent abatements or other relief, if applicable
- Termination for convenience
- Confirming that current certificate of insurance naming GSA/U.S. Government as additional insured is in effect



“Interested Parties”

Miscellaneous Statutes Incorporated by Reference Parties to this agreement are hereby put on notice that the following laws are incorporated by reference: [18 U.S.C. § 431](#) and [41 U.S.C. § 6306\(a\)](#), as such laws may be revised from time to time.

18 U.S.C. § 431

“Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in whole or in part, any contract or agreement, made or entered into in behalf of the United States or any agency thereof, by any officer or person authorized to make contracts on its behalf, shall be fined under this title. All contracts or agreements made in violation of this section shall be void;..”

41 U.S.C. § 6306(a)

“A Member of Congress may not enter into or benefit from a contract or agreement or any part of a contract or agreement with the Federal Government.



Variable Rent Outleases

- This rental rate structure is common when month-to-month income is highly variable and there is a need for the tenant and landlord to share the in the risks and rewards.

- Variable rent provisions are customary in the following types of outleases:
 - Retail (% of sales)
 - Restaurant (% of sales)
 - Hotel (% of gross revenue)
 - Commercial Parking (rent is based on parking occupancy)
 - Special Events (% of gross revenue)

- Outlease Contracts must include language which would allow the Government to reasonably verify the rental consideration received is in accordance with the contract terms.



Variable Rent Outleases

- The LCO or COR must reconcile reports generated by the tenant as required in the outlease contract in order to verify the accuracy of the rent payments. (occupancy reports, profit and loss statements etc.)
- The LCO must produce an annual memorandum to the file confirming that the LCO has reconciled the rent payments in accordance with the outlease contract and the tenant's supporting documentation.
- The National Outleasing Program Managers will conduct an annual audit to ensure regional compliance with contract administration responsibilities for variable rent outleases.



Delinquent Outlease Process

GSA's Responsibilities:

- **OA Tool Billing Accuracy:** The Outlease Inventory Report is issued monthly. Review for accuracy. If the information is in error, check that the report information mirrors the Final OA3 and original contract. Updating errors in the OA will update the BAAR system and be reflected in the next month's report. If the error in the report is something other than an OA entry error, email USDA Finance at [REDACTED]
[REDACTED]
- **Timely Rent Processing:** The Delinquency Report is issued monthly and shows only those outleases that are behind in their payments (delinquent) and whether the account is disputed. Review past due accounts to make certain the account is truly past due or perhaps is being reported past due because data entry is late or account information (such as a change in the contract) has not been updated and made final in OA Tool.



Delinquent Outlease Process

USDA Finance Responsibilities:

- Delinquency follow up on aged receivables
- Print and mail dunning notices
- Refer non-Federal debt over 120 days to Treasury
- After 120 days, USDA Finance will refer the account to the Department of the Treasury for collection.
- Treasury may pursue the debtor for up to 10 years.
- Treasury has the authority to offset tax refunds to satisfy the Government's claim of debt and may report the delinquent lessee to the Credit Bureaus.
- Treasury adds a 20% penalty to the delinquent balance. If Treasury is successful in collecting the debt, the funds are credited to GSA; USDA Finance then reverses the write-off less the penalty.



Eviction Reasons

1. **Failure to pay rent.**
2. **Failure to maintain required general liability coverage**, with GSA/U.S. Government named as an additional insured.
3. **Failure to use the space as agreed in the contract**; includes storage of hazardous materials, signs of living in the space, running a business versus dead storage; interference with sprinkler/fire suppression/mechanical equipment.
4. **Encroachment:** occupying spaces outside of the contracted space



Eviction Process

1. The CO assembles a folder with copies of all pertinent contract documents and submits to the regional counsel's office, with a cover memo recommending pursuing eviction action.
2. If regional counsel agrees to pursue eviction, the eviction action is referred to the local U.S. Attorney's Office by regional counsel.
3. All negotiations with lessee are conducted through an assigned Assistant U.S. Attorney in consultation with GSA's regional counsel.
4. The U.S. Attorney's office will work with the GSA facilities management office to coordinate move-out actions.

From: [REDACTED] <[REDACTED]@gsa.gov>
Sent: Thursday, May 20, 2021 3:05 PM
To: [REDACTED] <[REDACTED]@mail.house.gov>
Cc: [REDACTED] <[REDACTED]@gsa.gov>; [REDACTED] <[REDACTED]@mail.house.gov>;
[REDACTED] <[REDACTED]@mail.house.gov>; [REDACTED] <[REDACTED]@gsa.gov>; [REDACTED]
[REDACTED] <[REDACTED]@mail.house.gov>; [REDACTED] <[REDACTED]@mail.house.gov>
Subject: Re: Chat this Afternoon

Hey [REDACTED],

Please find attached the requested documents.

Thanks,

[REDACTED]
Office of Congressional and Intergovernmental Affairs
U.S. General Services Administration
1800 F Street, N.W.
Washington, D.C. 20405
Office: [REDACTED]
Email: [REDACTED]@gsa.gov

On Tue, May 18, 2021 at 7:20 PM [REDACTED] <[REDACTED]@mail.house.gov> wrote:

[REDACTED],

Thanks for the information and response. We were hoping you could please provide T&I with the following documents/records you referenced below:

- A copy of the new **Outleasing Program Guide** updated on October 31, 2020.
- A copy of the **updated outleasing form template** that includes the interested parties clause – updated on October 31, 2020.
- A copy of the relevant **updated Outleasing Contract Training records** that address recommendation findings that was updated on January 29, 2021.

Thanks very much. If you need a formal letter from Chair DeFazio requesting these items please let us know.

Best,

[REDACTED]

From: [REDACTED] <[REDACTED]@gsa.gov>
Sent: Monday, May 17, 2021 7:40 AM
To: [REDACTED] <[REDACTED]@mail.house.gov>
Cc: [REDACTED] <[REDACTED]@gsa.gov>; [REDACTED] <[REDACTED]@mail.house.gov>; [REDACTED] <[REDACTED]@mail.house.gov>; [REDACTED] <[REDACTED]@gsa.gov>
Subject: Re: Chat this Afternoon

Good morning, [REDACTED],

Thank you for the opportunity to clarify GSA's response to Item #6 of the Committee's letter. The Office of Inspector General recommended that before GSA continues to use the language in Section 37.19 of the Old Post Office outlease, GSA determine the purpose of the Interested Parties provision, conduct a formal legal review by the Office of General Counsel (OGC) that includes consideration of the Foreign and Presidential Emoluments Clauses, and revise the language to avoid ambiguity. To address the Inspector General's recommendation, GSA previously developed a Corrective Action Plan (CAP) that is outlined below, which the agency has completed. As described below, GSA has discontinued use of the language found in Section 37.19 in its outleasing forms.

To the extent questions arise in the future regarding these or similar provisions, GSA will undertake an appropriate legal review at that time, consistent with its standard practices.

001 Review existing outlease forms to determine what, if any, revisions need to occur. Update outleasing forms as necessary.

GSA replaced the interested parties clause in its existing outleasing forms with the following:

L. The provisions of the United States Code set forth at 18 U.S.C. § 431 (Contracts by Member of Congress) and 41 U.S.C. § 6306 (Prohibition on Members of Congress making contracts with Federal Government), as such provisions may be revised from time to time, are hereby incorporated in this Lease by this reference, as if set forth in full.

GSA completed this step on July 31, 2020.

002 Update the Outleasing Program Guide

GSA updated its Outleasing Program Guide to provide guidance with regards to the new outleasing paragraph addressing 18 U.S.C. § 431 (Contracts by Member of Congress) and 41 U.S.C. § 6306 (Prohibition on Members of Congress making contracts with Federal Government).

GSA completed this step on October 31, 2020.

003 Update forms section on outleasing website with updated outleasing forms (if applicable)

GSA replaced the interested parties clause in all outleasing form templates.

GSA completed this step on October 31, 2020.

004 Update Outleasing Contract Training to address recommendation findings

GSA completed this step on January 29, 2021.

Regards,

[REDACTED]

[REDACTED]

Office of Congressional and Intergovernmental Affairs
U.S. General Services Administration
1800 F Street, N.W.
Washington, D.C. 20405
Office: [REDACTED]
Email: [REDACTED]@gsa.gov

On Tue, Apr 6, 2021 at 1:30 PM [REDACTED] <[REDACTED]@mail.house.gov> wrote:

Hi [REDACTED],

We are particularly interested in clarifying GSA's response to item #6 in the Committee's letter regarding GSA's implementation (or lack of implementation) of the GSA OIG's recommendation in their January 2019 report (<https://www.gsaig.gov/content/evaluation-gsas-management-and-administration-old-post-office-building-lease>). It seems as though what you laid out in your written response was that GSA believes it has fully and appropriately responded to the GSA OIG's recommendations. However, as you know the GSA OIG determined that GSA's 'corrective action plan' was, in fact, non-responsive to the OIG's recommendation.

- The question that the Committee asked in our March 16, 2021 letter to GSA regarding this issue was: "What actions, if any, has GSA taken since President Trump left office to reevaluate GSA's position on the OIG recommendation and does GSA now have any intention of implementing the OIG recommendation?" We take it from the response that GSA provided to the Committee that GSA has **not** reevaluated GSA's position on the OIG recommendation and does **not** have any intention of implementing the GSA OIG's recommendation from their January 2019 report.

We wanted to clarify that this is the case and that GSA has not taken and does not plan to take any follow-up action to address the outstanding GSA OIG recommendation, which is how we are interpreting GSA's response.

Thanks very much.

Best,

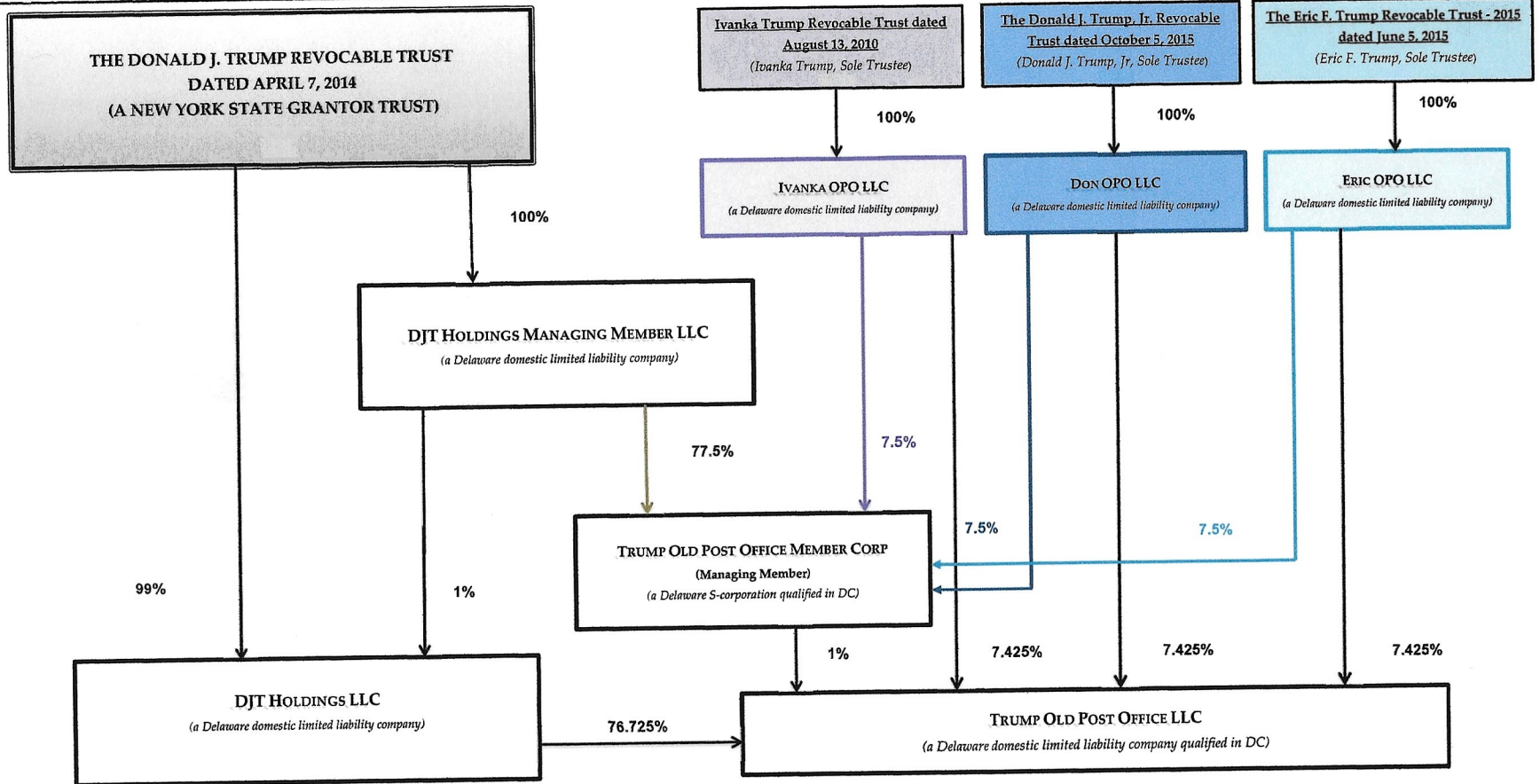
[REDACTED]

PRIVILEGED AND CONFIDENTIAL INFORMATION. NOT SUBJECT TO RELEASE TO THE PUBLIC UNDER THE FREEDOM OF INFORMATION ACT.

TRUMP OLD POST OFFICE LLC

Structure Chart

REVISED 12/2/16





Michael Best & Friedrich LLP
Attorneys at Law
Stefan Passantino

██████████@michaelbest.com

April 17, 2019

Via Email (██████████@gsa.gov) and U.S. Mail

United States General Services Administration
301 7th Street, S.W.
Washington, D.C. 20407
Attention: Kevin Terry

Re: Ground Lease, dated as of August 5, 2013, by and between the United States of America, acting by and through the Administrator of General Services, and Trump Old Post Office LLC (as amended, the “Lease”)

Dear Mr. Terry,

We are counsel to Trump Old Post Office LLC (“Tenant”)¹. Reference is made to your April 3, 2019 letter to Tenant and to the letter dated January 22, 2019 from the Chairman (the “Chairman”) of the Committee on Transportation and Infrastructure of the United States House of Representatives (the “Committee”) to the General Services Administration (“GSA”).

Tenant strongly objects to the GSA’s release of any Confidential Information to the Chairman, the Committee or otherwise. As you are aware, the Lease imposes certain duties of confidentiality on the parties. Moreover, the Chairman’s request for Confidential Information lacks any legitimate legislative purpose. The Constitution does not give Congress a blanket “oversight” power. Congress can seek information only as “an adjunct” to some other legislative power. *Watkins v. United States*, 354 U.S. 178, 187(1957); *Kilbourn v. Thompson*, 103 U.S. 168, 190 (1880). The Constitution insists that the “ruthless exposure of private lives” that accompanies such a request be “justified by a specific legislative need.” *Watkins*, 354 U.S. at 205. Rather, the Chairman is using his position on the Committee to instigate yet another political attack on the President. But requests from Congress based on politics and partisanship are not valid, even if transmitted by subpoena.

Congressional inquiries, like all government conduct, must respect the “First Amendment freedoms” of “speech,” “political belief,” or “association.” *Watkins*, 354 U.S. at 188. Those freedoms prohibit Congress from harassing political opponents or retaliating against disfavored speech. *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 (1990); *Lozman v. City of Riviera Beach*, 138 S.Ct. 1945, 1949 (2018). Illegal retaliation occurs whenever the target’s speech or politics

¹ Capitalized terms used but not defined herein shall have the meaning given to them in the Lease.

United States General Services Administration

Page 2

April 17, 2019

motivated Congress' actions "at least in part." *Cruise-Gulyas v. Minard*, 918 F.3d 494, 497 (6th Cir. 2019). There is no reason, legislative, contractual or otherwise, that the GSA should yield to the partisan pressure being applied by the Chairman.

Without limiting the foregoing, Tenant further objects to the GSA's release of any Confidential Information of a financial nature based on the immediate and irreparable injury that such release would cause Tenant. Certain Confidential Information requested by the Chairman, including without limitation, the monthly reports submitted by Tenant describing revenues, expenses and budgets, sets forth the proprietary business practices implemented by Tenant in its administration of the Hotel. Disclosure of this Confidential Information would cause Tenant to suffer a significant disadvantage in the market as competitors could use such information to undercut the pricing at the Hotel.

We respectfully request that the GSA respond to the Chairman declining to disclose any Confidential Information and that the GSA forward a copy of its response to Tenant.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

[REDACTED]

Stefan Passantino

SP: [REDACTED]



Office of General Counsel

February 28, 2020

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

The Honorable Dina Titus
Chairwoman
Subcommittee on Economic Development, Public Buildings and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

Dear Chairman DeFazio and Chairwoman Titus:

Thank you for your February 7, 2020, letter to Administrator Murphy regarding the potential assignment of the tenant's interest in the Old Post Office Building lease agreement. The General Services Administration (GSA) is committed to accommodating the House Committee on Transportation and Infrastructure's (Committee) interest in this matter to the greatest extent possible. However, as you know, we have no information about the identity or even existence of a potential buyer at this time. While we are in no position to answer hypothetical questions about GSA's future actions, we can assure you that GSA will at all times adhere to the terms of the lease and the law, no matter what scenario ultimately arises.

We are monitoring all developments regarding the tenant's potential assignment of its interest in the lease and will be prepared to respond to the tenant upon its submission of documents related to any such assignment. GSA is committed to responsibly administering all of the leases to which it is a party and ensuring that these contracts are fully enforced. This lease is no different in this respect than the rest of the leases we administer. We will continue to abide by our obligations under the lease, insist that our lessee continue to do the same, and remain prepared to assert the Government's rights and remedies under the lease, if necessary.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405

www.gsa.gov

To the extent the Committee would like to work with us on legislation regarding GSA's outleasing activities, please let us know how we may be of assistance. I am available at [REDACTED] if you have any questions.

Sincerely,

[REDACTED]

Jack St. John
General Counsel



November 12, 2019

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

Dear Chairman DeFazio:

I write in response to the House Committee on Transportation and Infrastructure's (Committee) October 24, 2019, letter and subpoena to Emily W. Murphy, the Administrator of General Services. As you know, the U.S. General Services Administration (GSA) has for months engaged in good-faith efforts to accommodate the Committee's interest in the Old Post Office Building lease, including the production of over 10,000 pages of documents to the Committee. In fact, the only documents in GSA's possession that are requested by your October 24 subpoena and have not already been produced are confidential financial records provided to GSA by the tenant pursuant to the terms of the lease and certain confidential legal memoranda prepared by the Office of General Counsel.

GSA has previously explained to the Committee that the lease agreement between GSA and the tenant constrains our ability to disclose the tenant's confidential financial information outside the agency except under certain enumerated circumstances. We view the service of a properly authorized congressional subpoena to be one of those circumstances and are therefore willing to offer the Committee an accommodation for that request. In order to accommodate both GSA's interest in preserving the confidentiality of proprietary information provided by those who seek to do business with the government and the Committee's stated interest in the particular financial records at issue, GSA is willing to provide the Committee an in-camera review of the requested financial records at a mutually agreeable time during the week of November 18, 2019, provided the Committee agrees not to publicly disclose the information contained in those records without GSA's consent.¹

¹ The need for this non-disclosure agreement is underscored by our experience with a similar congressional request during the 114th Congress, when GSA produced some of the tenant's confidential financial information to Members of the House Committee on Oversight and Government Reform. Despite GSA's written request that the Members keep the information confidential and not disclose any of it publicly without GSA's consent, the information subsequently was released publicly without any consultation with GSA, much less our consent, in a letter posted on your Committee's website.

With regard to your request for legal memoranda prepared by the Office of General Counsel, we have explained that those documents are highly deliberative in nature and contain legal advice and attorney-client communications that implicate core confidentiality interests of the Executive Branch.² Accordingly, GSA is not prepared to provide those legal memoranda to the Committee.

Finally, contrary to public statements issued by the Committee, GSA has not coordinated its response to the Committee's oversight with the Trump Organization or its representatives. However, given the tenant's equities in the financial records at issue, I am copying the tenant's counsel on this letter to provide notice of the upcoming disclosure.

Please feel free to contact me at [REDACTED] with any questions.

Sincerely,

[REDACTED]
Jack St. John
General Counsel

cc: The Honorable Sam Graves, Ranking Member
Stefan C. Passantino, Esq.

² See Response to Congressional Requests for Information regarding Decisions made under the Independent Counsel Act, 10 U.S. Op. Off. Legal Counsel 68, 79 (1986) ("The reasons for the constitutional privilege against the compelled disclosure of executive branch deliberations have special force when legal advice is involved."). See also U.S. v. Nixon, 418 U.S. 683 at 705 ("Human experience teaches that those who expect the public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.").



Office of Congressional and
Intergovernmental Affairs

March 30, 2021

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

The Honorable Dina Titus
Chairwoman
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Madam Chairwoman:

Thank you for your letter dated March 16, 2021, regarding the Committee's continued oversight of the U.S. General Services Administration's (GSA) Public Buildings Service and the Trump International Hotel lease of the Old Post Office building. Your inquiry has been forwarded to me for response.

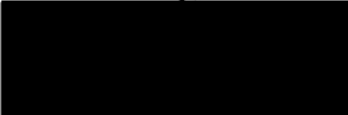
GSA takes seriously our responsibility to manage federal buildings and space under the agency's control, and effectively administer our contracts with federal and private partners. We recognize the importance of the Committee's oversight of contracts GSA is a party to, including the Trump International Hotel and Old Post Office building lease agreement. GSA is committed to cooperating with the Committee on this matter.

Enclosed, we provide the responses immediately available to the Committee's March 16 inquiries, and will continue to work on the responses and documents requested that require additional time to review and gather. GSA is working diligently to gather materials, and will provide all additional responsive documents in the future. For ease of reference, each question or document request the Committee listed in its March 16, 2021, letter is set out in full, enclosed, along with GSA's response.

Again, GSA is committed to collaboratively working with the Committee on this matter, and will provide additional information as it becomes available. If you have any additional questions and concerns, please contact me at [REDACTED]

U.S. General Services Administration
1800 F Street NW
Washington, DC 20405
www.gsa.gov

Sincerely,


Gianelle E. Rivera
Associate Administrator

Enclosures

cc: The Honorable Sam Graves, Ranking Member
Committee on Transportation and Infrastructure

The Honorable Daniel Webster, Ranking Member
Subcommittee on Economic Development, Public Buildings, and Emergency
Management Committee on Transportation and Infrastructure

Attachment A**1. Tenant related records.**

As requested previously, please provide the following:

- a. All Legal Memoranda and/or opinions created by GSA or any other federal entity pursuant to GSA's Old Post Office lease agreement.
- b. All monthly reports submitted by the tenant describing revenues, expenses, and budgets, pursuant to GSA's Old Post Office lease agreement with the Tenant
- c. Profit statements for the Tenant for the calendar years 2016, 2017, 2018, 2019, 2020, and for January 2021 submitted to GSA under the Old Post Office lease agreement
- d. All memoranda or other communications provided by the White House, GSA, or any other federal agency referring or related to the Old Post Office lease agreement.

GSA RESPONSE:

GSA is committed to working with the Committee on this matter. We are currently reviewing your request and collecting relevant documentation. We will respond as soon as we are able.

2. Reputation of the Lessee:

In the wake of the January 6, 2021, riots at the U.S. Capitol, instigated by former President Trump, numerous entities have either terminated their contracts and/or relationship with the Trump Organization. This has included the Professional Golfers' Association (PGA) of America; Aon, an insurance brokerage firm headquartered in London; the local New York City government; Professional Bank, Signature Bank, BankUnited, and Frankfurt, Germany-based Deutsche Bank.

- Given the potential impact the termination of these relationships may have on the Trump Organization and the Trump Old Post Office, LLC, is GSA contemplating or considering examining whether former President Trump and/or the Trump Organization should be prevented from contracting with the federal government in the future?

GSA RESPONSE:

The determination as to whether an entity should be prevented from contracting with the Federal Government falls under the administrative suspension and debarment processes. These administrative processes ensure that the Government contracts only with presently-responsible contractors. GSA's suspension and debarment review typically begins with a referral from GSA's Office of Inspector General or another

Government investigative agency. These referrals normally report completed investigations, or the initiation or completion of criminal or civil court actions. GSA's Suspension & Debarment Official, a career Federal employee, works independently to ensure that decisions are made in an unbiased manner.

3. Trump Organization Valuation of Assets:

There have been multiple allegations that the Trump Organization has a practice of deflating the value of assets for tax purposes and inflating the value of assets when applying for loans. Former President Trump borrowed \$250 million from Deutsche Bank to finance the renovations for the Trump International Hotel. Section 37.15 of the Trump Hotel lease, "Tenant's Representations," states that "[a]ll statements, reports and other documents delivered by Tenant pursuant to this Lease ... shall be true and accurate in all material respects and fairly present the condition or information required thereby."

- As a result of these allegations, has GSA commenced any review of any documentation or statements provided by the Trump Organization to GSA to ensure their adequacy, accuracy, and truthfulness?
- If so, please identify when any review(s) commenced, when they were completed, as well as the title of any such review(s). Please also provide to the Committee a copy of each review that was conducted.

GSA RESPONSE:

Section 37.15 of the lease provides:

"Tenant hereby makes the following representations and warranties, solely for the benefit of Landlord, as of the Commencement Date"

Section 37.15 sets forth six separate subsections, listed as (a) through (f). The lease defines "Commencement Date" as the date of the lease, which is August 5, 2013.¹ As a general matter, GSA relies on the representations of an applicant during a contracting action.² The type of information requested from Trump Old Post Office LLC under Section 37.15(f) mainly involved the capability of the party to deliver on the terms of the contract (e.g., the provision of a security deposit under Section 34). The hotel opened in the fall of 2016, and the tenant has continued to make the required rental payments every month.

4. Executive Order 13991:

¹ By way of additional background, and since the Committee's question references Deutsche Bank, it is GSA's understanding that the construction loan was not yet in place as of August 5, 2013.

² See, e.g., FAR 4.12-Representations and Certifications.

President Biden's January 20, 2021, Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing requires the provision of guidance to federal agencies regarding air filtration in federal buildings and buildings which house federal employees and contractors. Properties outleased by GSA to private entities are still federally-owned property and as such, federal rules apply to these properties.

- Properties outleased by GSA to private entities are still federally-owned property and as such, federal rules apply to these properties. How is GSA implementing President Biden's order in leased, owned, and outleased federal properties?
- How is GSA ensuring that the mandate is being followed? How is GSA ensuring that the mandate is being followed at the Trump Hotel? If GSA has engaged in any correspondence with any of its outleased properties, including the Trump International Hotel, regarding their requirements to abide by federal laws and regulations related to the COVID-19 pandemic, please provide copies of all of that correspondence to the Committee.

GSA RESPONSE:

*In one of her first all-agency communications, the Acting Administrator alerted the agency about the new Executive Order and specifically noted that, "Among the expectations of executive agencies in the Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing is to immediately require compliance with CDC guidelines. GSA will lead by example, and today, I want to reinforce that **all GSA employees and contractors on-site in federal buildings or on federal lands are required to wear masks and maintain physical distance.**"³*

In response to your question pertaining to the Old Post Office, the requirement to wear masks does not apply to GSA's outleases, as they are not primarily occupied by Federal employees or Federal contractors.

5. Request for Relief:

- Did the Trump Old Post Office, LLC or the Trump Organization request or receive any financial relief from the federal government related to the COVID-19 pandemic?

GSA RESPONSE:

As previously indicated by GSA in its May 2020 response, "To date, GSA has not received from the Tenant any written request for rent relief, and no such relief has been granted."⁴ We do note, however, that on May 21, 2020, GSA and representatives of the Trump Old Post Office LLC participated in a telephone call.

³ Emphasis in original.

⁴ Emphasis added.

During that call, the parties discussed financial relief relating to the operation of the hotel. The GSA representatives explained the Public Buildings Service's Guidance on Handling Outleasing Rent Deferral and Waiver Requests (May 6, 2020). To date, Trump Old Post Office LLC has not submitted a written request as required by the guidance, and no financial relief has been provided by GSA.

6. GSA Office of Inspector General Unimplemented Recommendation:

In its January 16, 2019, "Evaluation of GSA's Management and Administration of the Old Post Office Building Lease" report, the GSA OIG issued one recommendation: "that before continuing to use the language [in Section 37.19, Interested Parties provision of the lease], GSA determine the purpose of the Interested Parties provision, conduct a formal legal review by OGC that includes consideration of the Foreign and Presidential Emoluments Clauses, and revise the language to avoid ambiguity." The Trump Administration disregarded this recommendation and instead sought to remove such lease provisions altogether.

- What actions, if any, has GSA taken since President Trump left office to reevaluate GSA's position on the OIG recommendation and does GSA now have any intention of implementing the OIG recommendation?

GSA RESPONSE:

As noted in its January 9, 2019, response to the OIG's recommendation, "[T]he agency agrees with the report's single recommendation and will take action consistent with that recommendation prior to continuing to use the language of Section 37.19 of the Old Post Office building lease in the future." As part of its Critical Action Plan, GSA committed to discontinue the use of the language contained in Section 37.19 of the Old Post Office outlease in future outleases. To that end, GSA drafted a revised interested parties clause, updated its Outleasing Program Guide to provide enterprise-wide guidance, updated its national training materials, and standardized its outlease forms to contain the new clause.⁵

GSA values its relationship with the OIG and with its oversight committees in Congress. GSA welcomes suggestions from the Committee on the ways in which GSA could improve its standard outleasing language to avoid future concerns.

7. Recent Amendments to the Lease or Changes to Tenant's Ownership Structure:

- Have any amendments to the Trump Hotel Lease been made since November 6, 2020?

⁵ See, e.g., GSA Forms 1582 (revocable license), 1743 (general terms of lease), and 3486 (lease of real property).

- Has GSA been notified by the tenant of any changes to the tenant's interests, ownership structure, or any other status for which the tenant must notify GSA under the lease?
- If the answer to either question is affirmative, please provide the Committee with copies of all records referring or related to such changes.

GSA RESPONSE:

GSA regularly posts amendments to the lease to the agency's Electronic Reading Room.⁶ To date, there have been seven amendments; however, no amendments have been made since November 6, 2020. Similarly, since November 6, 2020, GSA has not been notified by the tenant of any changes to the tenant's interests, ownership structure, or any other status for which the tenant must notify GSA under the lease.

8. Audits, Notices, and Amendments:

Please also provide the following:

- a. All audits submitted by the tenant pursuant to the Old Post Office lease agreement;
- b. All formal notices pursuant to the Old Post Office lease agreement not already produced to the Committee:
 - i. from GSA to the tenant
 - ii. from the tenant to GSA; and
- c. All amendments to the Old Post Office lease agreement not already produced to the Committee.

GSA RESPONSE:

GSA is reviewing this request and working on compiling documents that are responsive to requests 8a., 8b., and 8c., which would include all applicable audits, and per the Committee's clarification to GSA on March 25, 2021, all applicable formal notices and amendments since the May 2019 GSA production to the Committee.

⁶ <https://www.gsa.gov/reference/freedom-of-information-act-foia/electronic-reading-room>.



**Office of Congressional and
Intergovernmental Affairs**

May 5, 2021

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

The Honorable Dina Titus
Chairwoman
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Madam Chairwoman:

This is a follow-up to my letter of March 30, 2021, responding to your March 16, 2021, inquiry regarding the Trump International Hotel lease of the Old Post Office building, located at 1100 Pennsylvania Avenue NW, Washington, DC. The U.S. General Services Administration (GSA) has gathered additional responsive material to remaining portions of your request. Included in this production are records responsive to items 1.b. (monthly financial statements from the tenant), 1.c. (annual financial statements), 8.a. (audits), 8.b. (formal notices), and 8.c. (lease amendments). GSA is unable to provide materials responsive to item 1.a. (legal memoranda), as this category of materials constitutes confidential internal executive branch legal advice. GSA will continue working with your staff to process item 1.d.

Please note that the records provided with this letter are produced pursuant to the official Committee and Subcommittee request dated March 16, 2021, referenced above. These materials contain trade secrets or confidential commercial or financial information that is exempt from public release under the Freedom of Information Act or other applicable laws or regulations. Therefore, you must not copy, share, distribute, or otherwise disclose the information in any manner, without prior coordination and approval from GSA.

If you have any questions or concerns, please contact me at [REDACTED]

Sincerely,

[REDACTED]
Gianelle E. Rivera
Associate Administrator

Enclosures

cc: The Honorable Sam Graves, Ranking Member
Committee on Transportation and Infrastructure

The Honorable Daniel Webster, Ranking Member
Subcommittee on Economic Development, Public Buildings, and Emergency
Management Committee on Transportation and Infrastructure



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

September 10, 2019

Ms. Emily W. Murphy
Administrator
U.S. General Services Administration (GSA)
1800 F Street NW
Washington, DC 20405

Dear Administrator Murphy:

We are writing to respond to your request for the legislative purpose supporting our January 22, 2019, letter seeking information and documents related to the General Services Administration's (GSA) leasing of the Old Post Office Building (OPO) and your refusal to provide the committee with business records related to this lease. Under Rule X of the Rules of the House of Representatives, the House Committee on Transportation and Infrastructure has legislative and oversight jurisdiction over "[p]urchase of sites and construction of post offices, custom-houses, Federal courthouses, and Government buildings within the District of Columbia" and "[p]ublic buildings and occupied or improved grounds of the United States generally."¹ As you are aware, the Old Post Office Building is a federally-owned building located in the District of Columbia redeveloped pursuant to the Old Post Office Building Redevelopment Act of 2008.²

While we do appreciate the records GSA has already provided to the committee, your agency has specifically refused to provide several categories of records, including financial documents of the Trump Old Post Office LLC ("Tenant") and GSA legal memos and opinions regarding the Old Post Office lease. Your agency has also claimed that GSA has not challenged the committee's oversight authority, yet GSA has relied on the attorney representing the Tenant who has made claims asserting our "request for Confidential Information lacks any legitimate legislative purpose" in your response to our staff.³ In addition, GSA has claimed that "GSA is bound by its contractual obligations, which protect from disclosure certain Confidential Information, as defined by the terms of the lease." Neither of these claims have any bearing on our committee's oversight of GSA, our investigation

¹ Rules of the House of Representatives, 116th Cong. Rule X(1)(r) (2019), accessed here: <https://rules.house.gov/sites/democrats.rules.house.gov/files/116-1/116-House-Rules-Clerk.pdf>.

² Old Post Office Building Redevelopment Act of 2008, Pub. L. No. 110-359, 122 Stat. 4005 (2008).

³ Letter from Stefan Passantino, attorney at Michael Best & Friedrich LLP, representing Trump Old Post Office LLC ("Tenant") to Kevin Terry, the General Services Administration's (GSA's) Contracting Officer on the Old Post Office lease, April 17, 2019.

into the federal lease of the Old Post Office building to the Trump International Hotel or our request to obtain copies of relevant records to help inform this inquiry.

In actuality, Section 37.1 of the ground lease between the United States (as “Landlord”) and the Tenant makes three specific references to circumstances where “Confidential Information” may be disclosed by GSA. The first includes consent from the Tenant, which in this case is the Trump Old Post Office LLC, which owns and manages the Trump International Hotel. Importantly, President Trump is the sole beneficiary of a trust with a controlling interest in the Trump Old Post Office LLC. Your agency appears to be solely relying on this first reference in the lease for its response to our committee regarding your refusal to provide relevant business records. However, GSA fails to reference the second or third categories in the lease which clearly permits GSA to provide confidential business information to “any other agency or department of the United States who need to know such information in performance of their duties on behalf of the United States” and as required by law or who are “not employees of Landlord [GSA] but who need to know such information in performance of their work on behalf of the United States...”⁴

The Committee on Transportation and Infrastructure has a clear oversight duty to examine the management of your agency, its programs, projects and leases. We can see no legitimate rationale for any claim that the Old Post Office lease should fall into a special category and be excluded from appropriate congressional oversight and review. The committee’s oversight of your agency and request for GSA’s legal memos and opinions regarding this building, and the business records of the Tenant of a federal building owned by GSA is legitimate, proper and justified.

The Tenant’s attorney attempts to dictate to GSA what your proper role is in responding to a congressional inquiry.⁵ The attorney misconstrues Congress’s legitimate oversight authority and attempts to thwart our committee’s investigation into legitimate issues regarding the Constitutional Clauses relevant to this lease and the apparent conflicts-of-interest that exist between President Trump and the leasing of the Old Post Office building for use by the Trump International Hotel.

There are clearly multiple legitimate reasons for our committee to be examining GSA’s lease of the Old Post Office Building to the Trump International Hotel. However, it is not beholden upon the committee to proactively identify any ultimate legislative action or potential oversight goal regarding any of our investigations. As the Supreme Court has previously ruled, “valid legislative” inquiries do not need to be publicly declared to make them valid, and their ultimate outcome does not need to be “predictable.”⁶ “Nor is the legitimacy of a congressional inquiry to be defined by what it produces,” according to the Supreme Court opinion in *Eastland v. United States Servicemen’s Fund*.⁷

⁴ Ground Leaser by & between the U.S. (as “Landlord”) & Trump Old Post Office LLC (as “Tenant”), Lease No.: GS-LS-11-1307 (Aug. 5, 2013).

⁵ Interestingly, GSA did not raise any issues about T&I’s legislative purpose in seeking records regarding the Old Post Office building lease or the request for business related financial data from the Trump International Hotel generated as a result of this lease until these issues were raised by the counsel to the Trump Old Post Office LLC, months after our inquiry had begun.

⁶ Todd Garvey, “Legislative Purpose and Adviser Immunity in Congressional Investigations, Congressional Research Service (CRS), May 24, 2019, accessed here: <https://www.crs.gov/reports/pdf/LSB10301>.

⁷ *Eastland v. United States Servicemen’s Fund*, U.S. Supreme Court, No. 73-1923, Argued: January 22, 1975; Decided: May 27, 1975, accessed here: <https://caselaw.findlaw.com/us-supreme-court/421/491.html>.

In regard to confidential business information, congressional committees frequently request and are granted confidential business records in order to fulfill their required oversight duties to the public. Both Democratic and Republican chairs of committees and subcommittees have routinely been provided with confidential business sensitive information from both federal agencies and private entities.⁸ Restrictions limiting distribution of confidential business records to the public under the Freedom of Information Act (FOIA), for instance, simply do not apply to Congress.⁹

The business records and GSA legal memos and opinions regarding the Trump International Hotel that the committee has requested may lead to legislation within its jurisdiction, including, but not limited to, federal real property, federal real property disposal, federal leasing practices, improvement or changes to GSA's leasing management procedures and related issues. As you are keenly aware, one of the committee's duties is to oversee GSA's management of its real property portfolio and GSA's implementation of public private partnerships. Efforts not to fulfill our request for key information relevant to the Old Post Office building lease hamper our ability to conduct legitimate oversight of these issues.

While we appreciate the records that GSA has provided to the committee so far, providing a cover page of the monthly financial reports and related financial information we requested is wholly inadequate. GSA has cited attorney-client privilege and deliberative process privilege in withholding legal memos from the committee. Ultimately, the committee has discretion in accepting these privileges and can consider the need for the documents for the committee's ability to fulfill its constitutional oversight role.¹⁰ We expect that GSA will fulfill its obligation to the U.S. Congress, our committee and the public by providing the totality of the information we have sought. We await delivery of those records.

As we have indicated in our previous letter, please deliver one set of these records to the Majority Staff in Room 2165 of the Rayburn House Office Building and one set of records to the Minority Staff in Room 2164 of the Rayburn House Office Building. Any questions regarding this request should be directed to [REDACTED], T&P's Majority Oversight Counsel at [REDACTED].

⁸ There are multiple examples of confidential business records being provided to Congress. In 2012, for instance, the former Republican Chairman of the House Committee on Oversight and Government Reform, Darrell Issa, received confidential business information regarding an investigation into certain projects being funded by the Department of Energy, see here: https://www.governmentattic.org/18docs/DOEcongCorres_2012-2013uu.pdf. Earlier this year the Committee on Transportation and Infrastructure wrote to and received confidential business information from both The Boeing Company and the Federal Aviation Administration (FAA) as part of the committee's investigation into the 737 MAX aircraft. Previously, our committee has requested and received from GSA and other federal agencies Confidential Information that was proprietary or procurement sensitive information generated by private developers for federal GSA projects. Specific GSA projects include the Securities and Exchange Commission (SEC) lease at Constitution Center in Washington, D.C. and a U.S. Department of Health and Human Services (HHS) lease at a private site in the state of Maryland. The committee in turn used that information to consider potential legislative changes to federal leasing and federal real property issues.

⁹ Elaine Halchin, Todd Garvey, et al., "Congressional Oversight Manual," Congressional Research Service (CRS), December 19, 2014, accessed here: <https://www.crs.gov/reports/pdf/RL30240>

¹⁰ 2 U.S.C. §190d; Elaine Halchin, Todd Garvey, et al., "Congressional Oversight Manual," Congressional Research Service (CRS), December 19, 2014, accessed here: <https://www.crs.gov/reports/pdf/RL30240>

The Honorable Emily W. Murphy

September 10, 2019

Page 4

Thank you for your assistance in this matter.

Sincerely,



PETER A. DeFAZIO
Chair



DINA TITUS
Chair
Subcommittee on Economic Development,
Public Buildings, and
Emergency Management

cc: The Honorable Sam Graves, Ranking Member
Committee on Transportation & Infrastructure

The Honorable Mark Meadows, Ranking Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

October 17, 2019

The Honorable Emily Murphy
Administrator
General Services Administration (GSA)
1800 F Street, NW
Washington, DC 20405

Dear Administrator Murphy:

The General Services Administration (“GSA”) continues to withhold key documents from the House Transportation and Infrastructure Committee (“the Committee”). The Committee has legislative and oversight jurisdiction over GSA and its public buildings program, including the Old Post Office Building lease to the Trump International Hotel. The Committee is concerned with GSA oversight of the lease due to potential conflicts of interest and constitutional emoluments violations on the part of the President who has refused to divest from his financial interests in the hotel.

As Ranking Member of the Committee, Mr. DeFazio sent several requests to GSA for documents related to the lease and only received extremely limited information in response. In January 2019, as Chair of the Committee and Chair of the Subcommittee on Economic Development, Public Buildings and Emergency Management (“Subcommittee”) we both sent a letter to you requesting several categories of documents related to this lease.¹ While GSA has produced some records to the Committee, to date GSA has failed to provide the Committee with critical categories of records we require to conduct appropriate congressional oversight of your agency and this lease, including financial records and legal memos and opinions related to the Old Post Office lease. Below is a snapshot of correspondence between GSA and the Committee over the past year on this subject:

- January 22, 2019: Letter from Chair DeFazio and Subcommittee Chair Titus to GSA requesting records related to the Old Post Office lease.
- February 2019: GSA provides first production of documents to the Committee.

¹ Letter to GSA Administrator Emily Murphy, Jan. 22, 2019, available here: <https://transportation.house.gov/news/press-releases/chairman-defazio-rep-titus-press-gsa-on-the-repeated-refusal-to-respond-to-questions-surrounding-trumps-conflicts-of-interest>.

- May 2019: GSA provides second production of documents to the Committee and GSA forwards to the Committee an April 2019 letter from an attorney at the Trump Old Post Office LLC, which owns the Trump International Hotel, to GSA in which this attorney falsely disputes the Committee's legislative authority for obtaining financial records related to the hotel lease.
- July 12, 2019: GSA emails Committee staff asserting attorney client and deliberative process privilege over GSA legal memoranda and opinions related to the hotel lease and requesting that the Committee provide its legislative purpose for requesting financial records related to the hotel lease.
- September 2019:
 - September 10, 2019: Chair DeFazio and Subcommittee Chair Titus send a letter to you, as Administrator of GSA, clarifying the Committee's clear, broad, and legitimate oversight authority to obtain the requested financial documents and objecting to GSA's assertions of privilege regarding the legal records requested in the January 22, 2019 letter.
 - September 25, 2019: Subcommittee Hearing titled, "Landlord & Tenant: Trump Administration Oversight of the Trump International Hotel Lease."
- October 1, 2019: Letter from Chair DeFazio and Subcommittee Chair Titus to GSA reiterating the request for outstanding documents and requesting that GSA conduct an audit and examine hotel financial records pursuant to the lease. The deadline for responding to that letter and providing these records was October 16, 2019.

As part of the document production accommodation process, the Committee has made clear that we have the authority to receive and review all of the records requested in the January 2019 letter. GSA Public Buildings Commissioner Daniel Mathews affirmed the Committee's legitimate oversight authority at the September 25 hearing. As documented in the Committee's September 10, 2019² and October 1, 2019³ letters to GSA, of particular concern to the Committee are the financial records and legal memos and opinions related to the lease. Therefore, GSA must provide the Committee with the following records by Wednesday, October 23, 2019:

- "All Legal Memos or opinions created pursuant to the Old Post Office lease agreement." This should include all draft versions of these records.

² Letter to GSA Administrator Emily Murphy, Sept. 10, 2019, available here: <https://transportation.house.gov/imo/media/doc/2019-09-10%20DeFazio-Titus%20Letter%20Response%20to%20GSA.pdf>.

³ Letter to GSA Administrator Emily Murphy, Oct. 1, 2019, available here: [https://transportation.house.gov/imo/media/doc/2019-10-01%20LTR%20GSA%20-%20Requesting%20Audit%20of%20Old%20Post%20Office%20\(002\).pdf](https://transportation.house.gov/imo/media/doc/2019-10-01%20LTR%20GSA%20-%20Requesting%20Audit%20of%20Old%20Post%20Office%20(002).pdf).

Administrator Murphy

October 17, 2019

Page 3

- “All monthly reports submitted by the tenant describing revenues, expenses, and budgets, pursuant to the Old Post Office lease agreement.”
- All “profit statements for the Trump International Hotel for 2016, 2017, 2018,” and 2019.

If your agency does not produce all of these records by Wednesday, October 23, 2019 to the Committee, I will be forced to use the compulsory process and issue a subpoena soon after to obtain these and all other outstanding documents responsive to this Committee’s January 22, 2019 request letter. The Committee also reserves the right to include additional document requests in the subpoena.

Thank you for your assistance in this matter. Any questions regarding this request should be directed to [REDACTED] on the Majority Staff at [REDACTED]

Sincerely,


PETER A. DeFAZIO
Chair


DINA TITUS
Chair
Subcommittee on Economic
Development, Public Buildings, and
Emergency Management

cc: The Honorable Sam Graves, Ranking Member
Committee on Transportation & Infrastructure

The Honorable Mark Meadows, Ranking Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

Katherine W. Dedrick, Staff Director

October 24, 2019

Paul J. Sass, Republican Staff Director

The Honorable Emily Murphy
Administrator
General Services Administration (GSA)
1800 F Street, NW
Washington, DC 20405

Dear Administrator Murphy:

Pursuant to my Committee's oversight of the Trump International Hotel lease at the Old Post Office Building, we are hereby transmitting a subpoena to GSA that compels you to produce the documents set forth in the accompanying schedule to the committee by November 4, 2019.

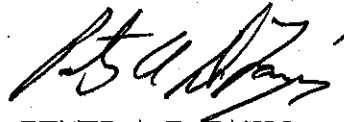
This subpoena is being issued by the Committee on Transportation and Infrastructure (Committee) under the Rules of the House of Representatives in exercise of its oversight and legislative jurisdiction. As you are aware, this Committee has jurisdiction over federal public buildings including the Trump International Hotel at the Old Post Office Building. As Chair of the Committee, it is my duty to ensure that GSA is appropriately managing the hotel lease and that the property is not being used for unethical or unconstitutional purposes. The enclosed subpoena demands documents necessary for the committee to conduct appropriate oversight of your agency and this lease.

On October 17, 2019 Subcommittee on Economic Development, Public Buildings, and Emergency Management Chair Dina Titus joined me in sending you a letter giving you until Wednesday, October 23, 2019 to furnish the Committee with financial records and legal memoranda related to the lease. The letter stated, "[i]f your agency does not produce all of these records by Wednesday, October 23, 2019 to the Committee, I will be forced to use the compulsory process and issue a subpoena soon after to obtain these and all other outstanding documents responsive to this Committee's January 22, 2019 request letter." This subpoena is a result of your agency's failure to comply with this request.

Administrator Emily W. Murphy
October 24, 2019
Page 2

Specific instructions regarding the production of these documents is included in the subpoena schedule attached to this letter. Please contact staff for the Committee on Transportation and Infrastructure at (202) 225-4472 to arrange for the delivery of these documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. DeFAZIO". The signature is stylized and cursive.

PETER A. DeFAZIO
Chair

cc: The Honorable Sam Graves, Ranking Member
Committee on Transportation and Infrastructure

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

The Honorable Emily W. Murphy, Administrator, U.S. General Services Administration

To _____

You are hereby commanded to be and appear before the
Committee on Transportation and Infrastructure

_____ of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2165 Rayburn House Office Building, Washington, DC 20515
Date: November 4, 2019 Time: 10:00am

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

To any authorized staff member or the U.S. Marshals Service _____

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
the city of Washington, D.C. this 24th day of October, 2019.

Pat A. DeFazio
Chairman or Authorized Member

Attest:
Robert F. Reeves, Deputy Clerk
Clerk

PROOF OF SERVICE

Subpoena for The Honorable Emily W. Murphy, Administrator, U.S. General Services Administration

Address 1800 F St NW

Washington, DC 20405

before the Committee on Transportation and Infrastructure


*U.S. House of Representatives
116th Congress*

Served by (print name) Jill Harrelson

Title Deputy Counsel

Manner of service Electronic

Date 10/24/19

Signature of Server 

Address 2165 Rayburn House Office Building

Washington, DC 20515

SCHEDULE

The House Committee on Transportation and Infrastructure requires that you, Emily W. Murphy, Administrator, U.S. General Services Administration, are hereby required to produce, in accordance with the attached Definitions and Instructions, the following unredacted documents and communications in your possession, custody, or control:

1. Any and all communications, from June 16, 2015 to the present, referring or related to the Old Post Office building lease agreement (GS-LS-11-1307), sent or received between contracting officer Kevin Terry, and any other GSA employee, and any of the following:
 - i. Donald J. Trump,
 - ii. Ivanka Trump,
 - iii. Donald Trump Jr.,
 - iv. Eric Trump, or
 - v. David Orowitz.
 - b. Any and all communications sent or received between Timothy Horne and
 - i. the Donald J. Trump campaign for president, and
 - ii. the Donald J. Trump presidential transition.
 - c. Any and all memoranda and opinions from the GSA Office of General Counsel's Office referring or related to the Old Post Office lease agreement.
 - d. All "formal notices" pursuant to the Old Post Office lease agreement
 - i. from GSA to the tenant, or
 - ii. from the tenant to GSA.
 - e. All documents submitted by the tenant pursuant to the Old Post Office lease agreement, including but not limited to monthly reports, that describe revenues, expenses, and budgets.
 - f. All written guidance provided by the White House or any federal agency related to the Old Post Office lease agreement.
2. Documents sufficient to show how profits generated by the Trump International Hotel are calculated and the amounts that GSA is entitled to receive on an annual or monthly basis. Specifically, documents that demonstrate:
 - a. How often Trump International Hotel calculates the profits,
 - b. How often profit information is provided to GSA,
 - c. Eligible expenses that are itemized by Trump International Hotel,
 - d. Projected revenue information provided by Trump International Hotel, and
 - e. Any mechanisms GSA is entitled to use to validate profit calculations.
 3. All "profit statements" for the Trump International Hotel from January 1, 2016 to present.

4. Any guidance provided by the White House or any federal agency to GSA with regard to the Old Post Office lease agreement.
5. Documents sufficient to show whether any of the following White House employees have been recused from participating in decisions related to the Old Post Office lease.
 - a. Ivanka Trump, and
 - b. Jared Kushner.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matters, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation nota a part of original text is considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The term "any" means both any and all. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term "including" shall be construed broadly to mean "including, but not limited to."
5. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

6. The term "Company" means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
7. The term "identify," when used in a question about individuals, means to provide the following information: (1) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.
8. The term "related to" or "referring or relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
9. The term "employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
10. The term "individual" means all natural persons and all persons or entities acting on their behalf.
11. "Person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, division, departments, joint ventures, proprietorships, syndicates, or other legal business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units, thereof.
12. "Documents in possession" means (a) documents in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party. This includes but is not limited to documents that are or were held by your attorneys.
13. "Formal notice" means any communication required under the provisions of the lease.
14. "Profit" means any profit, revenue, and sales.

INSTRUCTIONS

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Please produce documents in PDF and native versions.
7. For PDFs, all PDF files must meet the following requirements:
 - a. All PDFs must be unitized i.e. each PDF must represent a discreet document; a single PDF cannot contain multiple documents.
 - b. All PDFs must contain embedded text to include all discernable words within the document, not selected text.
 - c. The PDF file will be named as the Bates range, with all document text contained within.
8. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and

explain the circumstances under which the document ceased to be in your possession, custody, or control.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
12. All documents shall be Bates-stamped sequentially and produced sequentially.
13. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2165 Rayburn House Office Building and the Minority Staff in Room 2164 Rayburn House Office Building.
14. Upon completion of the production, submit a written certification signed by you, or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

Katherine W. Dedrick, Staff Director

December 20, 2019

Paul J. Sass, Republican Staff Director

The Honorable Emily W. Murphy
Administrator
U.S. General Services Administration (GSA)
1800 F Street NW
Washington, DC 20405

Dear Administrator Murphy:

As you are well aware, the House Committee on Transportation and Infrastructure (“Committee”) issued a subpoena to the U.S. General Services Administration (GSA) on October 24, 2019, seeking records that GSA had failed to provide to the Committee in response to a January 22, 2019, records request letter, specifically regarding financial records and legal memos relating to the Old Post Office (OPO) Building lease to the Trump International Hotel. Despite our best efforts to work with GSA to consider reasonable accommodations in this process, GSA has failed to comply with this subpoena.

It gives us no comfort that under your direction GSA is resisting not just the legitimate oversight efforts of the U.S. Congress but also the oversight efforts of your own internal Inspector General (IG). Our government is built upon checks and balances, and as Members of Congress we have an obligation to perform critical oversight of the Executive Branch. Your steadfast refusal to comply with these efforts is not just disconcerting but an affront to the democratic institutions that the United States has been founded upon.

The GSA IG’s most recent Semiannual Report to Congress¹ highlighted your agency’s refusal to implement the IG’s recommendations in its January 2019 report on the OPO Building lease², including the revision of language in GSA leases to avoid future ambiguity and to clearly articulate that Federally elected officials are barred from participating in leases of Federal buildings in order to comply with the Emoluments Clauses of the U.S. Constitution. Rather than implementing the IG’s recommendations, however, your agency has stuck with its decision that,

¹ “Semiannual Report to the Congress,” Office of Inspector General (OIG), U.S. General Services Administration (GSA), April 1, 2019-September 30, 2019, accessed here: <https://www.gsaig.gov/sites/default/files/semiannual-reports/GSA-OIG-SAR-11-2019%20508.pdf>.

² “Evaluation of GSA’s Management and Administration of the Old Post Office Building Lease,” JE19-002 (Redacted), Office of Inspector General (OIG), U.S. General Services Administration (GSA), January 16, 2019, accessed here: <https://www.gsaig.gov/content/evaluation-gsas-management-and-administration-old-post-office-building-lease>

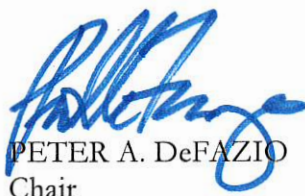
according to the IG, “improperly ignored the Constitution’s Emoluments Clauses.” As highlighted in your recent response to the Committee’s Questions for the Record (QFRs), GSA has decided only to include language in outleases barring conflicts with Members of Congress and has intentionally ignored the conflicts-of-interest posed by the President of the United States.

Given the clear concerns raised by GSA’s improper handling of the OPO Building lease by the IG and others, the relevance of our Committee’s request for financial records and legal memos related to the lease cannot be overstated. We wrote to you on September 10, 2019, detailing the Committee’s request for these records and the Committee’s legitimate oversight authority to obtain these documents. As that letter noted, “Under Rule X of the Rules of the House of Representatives, the House Committee on Transportation and Infrastructure has legislative and oversight jurisdiction over “[p]urchase of sites and construction of post offices, custom-houses, Federal courthouses, and Government buildings within the District of Columbia” and “[p]ublic buildings and occupied or improved grounds of the United States generally.”³ The OPO is a Federally-owned building located in the District of Columbia redeveloped pursuant to the Old Post Office Building Redevelopment Act of 2008.⁴


Since we originally wrote to you in January 2019, GSA has made no efforts at accommodations regarding our request for legal memos related to the leasing of the OPO Building to the Trump International Hotel. Furthermore, your General Counsel has refused to accept reasonable accommodations on the part of the Committee relating to access to the financial records that would have permitted our staff to review these records “in camera” and would have provided GSA with ample notice if we decided that the public release of this information or references to it was necessary to fulfill the Committee’s obligation to conduct appropriate oversight of GSA and was in the public’s interest.

Through these actions, your agency has engaged in a pattern of obstruction and obstinance that is unacceptable and damaging to GSA’s ability to manage taxpayer funds in a transparent manner. We strongly encourage you to comply with this subpoena and stop placing President Trump above the U.S. Constitution and the laws of the United States. If not, we look forward to directly asking you about your refusal to comply with this subpoena at a hearing early next year so that you can explain to us and the American public why you have chosen to abrogate your legal responsibility.

Sincerely,



PETER A. DeFAZIO
Chair



DINA TITUS
Chair
Subcommittee on Economic Development,
Public Buildings, and
Emergency Management

³ Rules of the House of Representatives, 116th Cong. Rule X(1)(r) (2019), accessed here: <https://rules.house.gov/sites/democrats.rules.house.gov/files/116-1/116-House-Rules-Clerk.pdf>.

⁴ Old Post Office Building Redevelopment Act of 2008, Pub. L. No. 110-359, 122 Stat. 4005 (2008).

Administrator Emily Murphy

December 20, 2019

Page 3

cc: The Honorable Sam Graves, Ranking Member
Committee on Transportation & Infrastructure

The Honorable Mark Meadows, Ranking Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management