



Civilian Property Realignment Act of 2011 (H.R. 1734): Analysis of Key Provisions

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Summary

In an effort to reduce the costs associated with maintaining thousands of unneeded and underutilized federal buildings, and to generate revenue through the sale of such properties, the 112th Congress is considering several real property reform bills. Perhaps the most comprehensive of these proposals is H.R. 1734, the Civilian Property Realignment Act (CPRA) of 2011. CPRA was introduced on May 4, 2011, and reported by the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management on May 25, 2011. CPRA was reported by the full committee on February 1, 2012, and passed by the House on February 7, 2012.

CPRA would establish a new, more centralized process for making decisions regarding the consolidation, reconfiguration, redevelopment, exchange, lease, sale, and conveyance of federal real property—actions collectively referred to as “realignment.” It would apply to all space owned and leased by executive branch agencies and government corporations, although the bill would exclude several categories of properties, including certain military installations, properties excluded for reasons of national security, and properties owned by the United States Postal Service.

The first step in the CPRA process would be for federal landholding agencies to develop recommendations for realigning their real property portfolios, and for reducing operating and maintenance costs. Agencies would submit these recommendations to the Administrator of the General Services Administration and the Director of the Office of Management and Budget, along with data on the properties owned and leased by each agency. The OMB Director, in consultation with the Administrator, would review the recommendations, revise them, and then submit the revised recommendations to a newly established Civilian Property Realignment Commission.

The Commission would be composed of nine members, all appointed by the President, with the chairperson requiring the advice and consent of the Senate prior to being seated. The Commission would hold public hearings, conduct its own independent review of agency real property portfolios, analyze the recommendations it received from the Administrator, and submit a final list of recommendations to the President, who may return it to the Commission for revisions, submit it to Congress, or take no action. If Congress passes, and the President signs, a joint resolution approving the Commission’s recommendations, then agencies would be required to begin implementing recommendations within two years of the date the President submitted recommended actions to Congress, and complete them within six years of that date.

This report describes and analyzes each step in the recommendation process, evaluates provisions that are intended to facilitate implementation of the Commission’s recommendations, and provides a discussion of additional transparency measures that may enhance congressional oversight of agency real property portfolios.

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Introduction

The management of federal real property has come under increased scrutiny in the 112th Congress, as Members, mindful of the fiscal challenges the government and the nation face, look for opportunities to reduce expenditures and increase revenue.¹ Real property reform is viewed as one way to achieve savings, because federal agencies own thousands of buildings that they do not need, and thousands more that they do not fully utilize.² These properties could generate revenue if they were sold or redeveloped, and operating costs could decline if agency workspace were consolidated into fewer buildings and the size of the federal real property inventory were reduced.

In addition to holding real property assets that are unneeded or underutilized, agencies have increasingly acquired new space by entering into leases, as opposed to the less expensive option of constructing new buildings—a complex problem that the Government Accountability Office (GAO) has repeatedly identified as a wasteful practice.³ By some estimates, the government could save billions of dollars in the next decade through improved real property asset management—funds which could be used to reduce the deficit, cut federal spending, or support other policy priorities.⁴ To that end, real property reform legislation has been introduced in both the House and the Senate in the 112th Congress, including the Civilian Real Property Realignment Act of 2011 (CPRA, H.R. 1734).⁵ In addition, the House of Representatives has held hearings on real property asset management this session.⁶

Civilian Property Realignment Act (H.R. 1734)

CPRA is the most comprehensive real property reform bill proposed so far in the 112th Congress. Introduced May 4, 2011, by Representative Jeff Denham, CPRA would draw on the military base realignment and closure (BRAC) model, by establishing an independent commission to assess civilian federal real property and to recommend actions for reducing the government's inventory of unneeded and underutilized holdings.⁷ During subcommittee markup of CPRA, Representative

¹ Real property includes buildings, structures, and land. Buildings include offices, warehouses, hospitals, laboratories, and housing. Structures include parking facilities, bridges, railroads, ports, weapons ranges, and storage sheds. This report does not address structures or land.

² Federal Real Property Council, *FY2009 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2010, p. 5.

³ U.S. Government Accountability Office, *Federal Real Property: An Update on High Risk Issues*, GAO-09-801T, July 15, 2009, p. 5.

⁴ Testimony of OMB Controller Daniel I. Werfel, in U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *How to Stop Sitting on Our Assets: A Review of the Civilian Property Realignment Act*, hearings, 112th Cong., 1st sess., May 12, 2011.

⁵ Other real property reform legislation introduced in the 112th Congress includes H.R. 665, the Excess Federal Building and Property Disposal Act of 2011; H.R. 1205, the Federal Real Property Disposal Enhancement Act of 2011; and S. 479, the Federal Real Property Disposal Enhancement Act of 2011. H.R. 1205 and S. 479 are not identical legislation.

⁶ U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *Can a Civilian BRAC Commission Consolidate Federal Office Space and Save Taxpayers Billions?*, hearing, 112th Cong., 1st sess., April 6, 2011, and *How to Stop Sitting on Our Assets: A Review of the Civilian Property Realignment Act*, hearing on H.R. 1473, 112th Cong., 1st sess., May 12, 2011.

⁷ For more information about the BRAC process, see CRS Report R40476, *Base Realignment and Closure (BRAC)*: (continued...)

Denham offered an amendment in the nature of a substitute, which was passed by voice vote the same day, May 25, 2011. The bill was reported by the full committee on February 1, 2012, and passed by the House on February 7, 2012.

CPRA would have a broad scope, applying to space owned and leased by all executive branch agencies and government corporations, although the bill would exclude several categories of properties, including certain military installations, properties excluded for reasons of national security, and properties owned by the United States Postal Service. The legislation would encompass most major real property asset management functions, collectively referred to as “realigning” actions, including the consolidation, reconfiguration, co-location, exchange, sale, redevelopment, and disposal of unneeded or underutilized properties. By comparison, other real property reform bills in the 112th Congress focus on a narrower set of asset management functions—typically the sale or transfer of unneeded buildings—or cover a smaller number of properties, such as those that are selected for a property disposal pilot project.

Development of Recommendations to the Commission

If enacted, the first step in the CPRA process would be for federal landholding agencies to develop their own recommendations for realigning their real property portfolios and for reducing operating and maintenance costs. Agencies would submit these recommendations to the Administrator of the General Services Administration (GSA) and the Director of the Office of Management and Budget (OMB) not later than 120 days after the start of each fiscal year, along with specific data on all of the properties they own, lease, or otherwise control.

The GSA Administrator and the OMB Director would have two responsibilities under CPRA. First, they would work together to develop criteria that would be used when determining which properties should be realigned, and what type of realignment should be recommended (e.g., sale or consolidation). The bill specifies that nine “principles” must be taken into account when establishing the criteria:

- The extent to which a property aligns with the current mission of the agency
- The extent to which there are opportunities to consolidate similar operations across or within agencies
- The potential costs and savings over time
- The economic impact on existing communities in the vicinity of the property
- The extent to which the utilization rate is being maximized and is consistent with non-government standards
- The extent to which leasing long-term space is reduced
- The extent to which the property could be redeveloped
- The extent to which the operating and maintenance costs are reduced
- The extent to which energy consumption specifically is reduced

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Transfer and Disposal of Military Property, by (name redacted).

As noted, the bill would require the OMB Director to establish a standard for utilization rates—usually defined as the ratio of occupancy to current design capacity—for government-owned and -leased space. The bill would permit the OMB Director to recommend actions that may improve space utilization at agencies where the ratio was below the standard.

The OMB Director, in consultation with the GSA Administrator, would then review the recommendations submitted by the agencies and revise the submissions, as needed, using the new criteria. The Administrator would then submit the revised recommendations, along with the criteria, to a newly established Civilian Property Realignment Commission.

Among the potential benefits of having GSA and the OMB Director review agency recommendations is that they are both currently heavily involved in real property management and have extensive expertise in both the disposal and acquisition of space. GSA handles the disposal of federal real property for all agencies, unless they have statutory authority to do so themselves. GSA also has the authority to acquire space for itself and for other agencies, either through leases or new construction, and oversees the Federal Buildings Fund (FBF), a multi-billion dollar revolving fund that finances GSA's real property acquisition activities. In addition, GSA promulgates the Federal Management Regulation, which establishes the real property management responsibilities for all GSA-controlled space. GSA also maintains the government's central real property database, the Federal Real Property Profile (FRPP), which includes data on the number of excess and surplus properties each agency holds, the condition of each property, and the annual costs of maintaining them. OMB works closely with agencies as they develop their capital asset plans, and chairs the Federal Real Property Council (FRPC). The FRPC is an interagency task force that includes the Senior Real Property Officers from each landholding agency, as well as representatives from OMB and GSA. The FRPC provides government-wide guidance on real property management and which data agencies are required to report to the FRPP. Given that GSA and OMB already work closely with agencies on real property issues, they may have sufficient expertise to take on the additional responsibilities of evaluating and revising agency recommendations prior to their submission to the Commission.

GSA and OMB both currently develop government-wide real property guidance, so they have potentially useful experience if called upon to develop the government-wide criteria by which recommendations would be made under CPRA. On the other hand, GSA has been criticized for failing to manage its own properties effectively, as demonstrated by the fact that it holds many excess and underutilized properties itself.⁸ Some may view these criticisms as evidence that GSA should not be entrusted with developing the criteria for CPRA recommendations, in which case the criteria would need to be developed by another body, perhaps by the Commission itself with input from the private sector as well as federal agencies.

Development of Recommendations to the President

A central component of CPRA is the establishment of a Civilian Property Realignment Commission, which would assess agency real property inventories and submit recommendations to the President regarding which properties should be realigned, and by what method. The Commission would be composed of nine members, each serving a six year term. The chairperson would be appointed by the President, with the advice and consent of the Senate. The President

⁸ U.S. Government Accountability Office, *Federal Real Property: The Government Faces Challenges to Disposing of Unneeded Buildings*, GAO-11-370T, February 10, 2011, pp. 4-8.

would appoint the other eight members of the Commission, but would also be required to consult with the Speaker of the House regarding the appointment of two members, the minority leader of the House regarding one member, the Senate majority leader regarding two members, and the minority leader of the Senate regarding one member. H.R. 1734 would also require that the Commission include members with expertise in commercial real estate and re-development, government management or operations, community development, or historic preservation. The Commission would terminate after six years.

The Commission would perform its own analysis of agency real property inventories and of the recommendations submitted by the Administrator and OMB Director. The Commission would be required to hold public hearings and develop an accounting system to help evaluate the costs and returns of various recommendations. The Commission would then submit a report to the President that would include its findings, conclusions, and recommendations. While the Commission “shall seek to develop consensus” in its recommendations, the report may include recommendations supported by only a majority of Commission members. The Commission would also be required to establish a website and post its recommendations on it. CPRA would require GAO to publish a report on the recommendations, including how properties were selected for realignment.

By requiring the President to seek the consent of the Senate and to consult with leaders in both chambers, Congress could influence the composition of the Commission. In addition, by establishing the types of background Commission members should have when appointed, CPRA could ensure that both public and private sector real property experience would be incorporated into the decision-making process. On the other hand, consultations with congressional leaders and Senate confirmation of the Commission chairperson could slow down the CPRA process, as happened during the 2005 BRAC round, when a Senator reportedly placed a hold on BRAC board nominees. As a result, eight of the nine board members were seated through recess appointments, which delayed the BRAC process for months.

Review by the President

The President would be required to review the Commission’s recommendations and submit, within 30 days of receiving them, a report to Congress that identifies which recommendations are approved, and which, if any, are not. If the President approves of all of the Commission’s recommendations, then he must submit a copy of the recommendations to Congress along with a certification of his approval. If the President disapproves of some or all of the Commission’s recommendations, he would be required to submit a report to Congress and to the Commission identifying the reasons for disapproval, and the Commission would have 30 days to submit a revised list of recommendations to the President. If the President approves of all of the revised recommendations, he must submit a copy of the revised recommendations along with a certification of his approval to Congress. If the President does not submit a report within 30 days of the receipt of the Commission’s original or revised recommendations, then the CPRA process terminates for the year. In effect, the President would be able only to approve or reject a complete list of recommendations. He would not be able to amend the Commission’s recommendations himself before approving them.

Congressional Consideration of the Recommendations

After receiving the recommendations approved by the President, Congress would have 45 days to review them, and debate their merits. Congress would be required to vote on a joint resolution of

approval by the end of that period. As with the President, Congress would have the authority only to act on the entire list, not to approve or disapprove of individual recommendations.

Requiring Congress to approve the entire list of recommended actions, rather than approving or disapproving of actions regarding each individual property, could reduce conflict between various stakeholders interested in the properties in question. Some civilian agencies have found their disposal efforts complicated by the involvement of state and local governments, non-profits, businesses, and community leaders with competing agendas. In 2002, for example, the United States Postal Service (USPS) identified a number of “redundant, low-value” facilities that it sought to close in order to reduce its operating costs. As part of the facility closure process, USPS was required to formally announce its intention to close each facility and solicit comments from the community. USPS ultimately abandoned its plans to close many facilities it identified—including post offices that were underutilized, in poor condition, or not critical to serving their geographic areas—in part due to political pressure from stakeholders.⁹ By moving the locus of decision-making away from agencies and placing it in the hands of an independent commission, CPRA may reduce the amount of pressure that stakeholders exert on the process.

While establishing a 45-day timeframe for congressional action does impose a measure of discipline on the legislative process, CPRA would limit the amount of time available to Congress for consideration of the recommendations—of which there may be hundreds—to a few weeks, which could reduce oversight of major real property actions. Consolidation projects, for example, are often complex, multi-year efforts, with long-term consequences for the agencies and communities involved, and for which Congress is asked to provide hundreds of millions, or even billions, of dollars. For this reason, Congress regularly holds hearings on major consolidation proposals. The effort to consolidate the Department of Homeland Security at St. Elizabeth’s in the District of Columbia, to cite one ongoing project, is estimated to cost \$3.26 billion, and has been the subject of several congressional hearings.¹⁰ The consequences of the project are wide ranging, and include changing traffic patterns in the District, relocating thousands of employees, and ensuring historic preservation requirements are met. Similar issues have been raised regarding the consolidation of Food and Drug Administration headquarters, a project that has received hundreds of millions of dollars since FY2000. Congress may not feel it has sufficient time, under the proposed time constraints, to thoroughly examine the costs, benefits, and implications of recommendations of a similar scale.

Implementation

If a joint resolution of approval were enacted, agencies would be required to begin implementation not later than two years from the date the President transmitted the recommendations to Congress, and to complete implementation no later than six years from the same date, unless notice is provided to the President and to Congress that “extenuating circumstances” have caused the delay. The GSA Administrator would be given the authority to “take such necessary and proper actions, including the sale, conveyance, or exchange of civilian real property, as required to implement the Commission recommendations,” as enacted. Other federal agencies must either use their existing authorities to implement the recommendations, or

⁹ U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 15.

¹⁰ U.S. Government Accountability Office, *Federal Real Property: DHS has Made Progress, but Additional Actions are Needed to Address Real Property Management and Security Concerns*, GAO-07-658, June 2007, p. 4.

work with GSA to do so. The Administrator would also have the authority to convey property for less than fair market value, or for no consideration at all. This would appear to permit agencies, either working through GSA or through their own authorities, to bypass steps in the existing disposal process. A property recommended for public sale, for example, may not have to go through the public benefit screening process. The House-passed version of the CPRA included an amendment, H.Amdt. 923, which would require the Secretary of the Department of Housing and Urban Development to screen certain properties for homeless use as required under the McKinney-Vento Act, “to the extent practicable.” The amendment would apply to properties identified for disposal in an enacted joint resolution of approval that were not more than 25,000 square feet or were valued at less than \$5 million.

Agencies have long argued that public benefit conveyance requirements, particularly those that require screening for homeless use, create an administrative burden that delays disposition and drives up maintenance costs. The Department of Energy, for example, told auditors that they had properties that they felt could be disposed of only by demolition, due to their condition or location, but that still had to go through the homeless screening process. VA officials have said the requirements of the McKinney-Vento Act can add as much as two years to the disposal process. These delays could be costly, as the government continues to incur operating and maintenance costs on unneeded properties until they are conveyed. CPRA, by generally limiting PBC screening to only those properties recommended for conveyance by the Commission, may generate savings by permitting agencies to bypass the screening process for certain properties. It is not clear how many properties would meet the criteria for homeless screening established by H.Amdt. 923, and how much of the potential savings would be reduced as agencies held onto those properties until the screening process was complete.

Funding

CPRA would establish two accounts: a salaries and expense account to fund the Commission’s administrative and personnel costs, and an asset proceeds and space management fund (APSMF) which is to be used to implement recommended actions. Both accounts would receive funds from appropriations—the bill includes a one-time appropriation of \$20 million for the salaries and expenses account and a \$62 million appropriation for the APSMF—but the APSMF would also receive the proceeds generated by the sale of properties pursuant to the Commission’s recommendations. The sales proceeds deposited in the APSMF account could only be used to cover the costs associated with implementing the Commission’s recommendations.

Agencies have long argued that permitting them to use net proceeds for further real property activities would help them dispose of more unneeded buildings. It is not clear, however, whether there will be sufficient net proceeds generated to enable agencies to undertake potentially costly real property actions as recommended by the committee, such as consolidating agency offices or bringing vacant buildings to market. For example, the cost of preparing properties for disposition—such as repairing structural or mechanical deficiencies—can be significant, and agencies often lack the funding needed to bring those properties to salable condition. The Department of Veterans Affairs, for example, estimated that it would need to spend about \$3 billion to repair the buildings in its portfolio that it rated in “poor” or “critical” condition—56% of which were vacant or underutilized, and therefore could be candidates for realignment. However, in FY2009, the government sold 2,200 buildings, but only netted \$50 million dollars. It is possible that the government owns higher-value properties that would generate a larger profit if sold—the market values of surplus properties are not made public—but with a soft real estate

market, there may be limited potential for generating significant amounts of net proceeds in the immediate future.

Leasing Authority

CPRA would require executive agencies seeking to acquire leased space to do so only by working through GSA. This restriction would not apply to properties of the Department of Veterans Affairs or to properties excluded for reasons of national security by the President. This requirement may facilitate oversight by consolidating leasing decisions with a single agency, although it is not clear whether this would restrict GSA's ability to delegate leasing authority to other agencies. If agencies were no longer able to use independent or delegated leasing authority, it could delay the acquisition of space needed to carry out their missions.

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