

## Landlords, Judiciary Brace For Federal Leasing Slimdown

By **Georgia Kromrei**

*Law360 (February 19, 2025, 4:53 PM EST)* -- The federal government's property management arm, the General Services Administration, is an executive agency, but it manages leases for another branch of government: the judiciary.

The GSA has signaled it is considering terminating some 7,500 leases, along with some judiciary leases. That gives the executive branch, through the GSA, a way to flex its muscle with the judicial branch, attorneys say.

Most of the 160 judiciary leases for which the GSA said it is weighing termination are offices, including chambers of circuit court judges that are not located in the same city as the court where oral arguments are heard. Only a handful are for leased courthouses.

Closing down the offices where circuit judges work day-to-day would drastically change their working conditions, potentially forcing them to live and work in the cities where the courts are located.

"Can the executive influence the judiciary by something as simple as office space? That's an interesting question," said Alexander B. Hastings, a D.C.-based Morgan Lewis & Bockius LLP partner who advises on federal government contracts. "It's a point of leverage between executive and judicial."

The Administrative Office of the U.S. Courts, in a Feb. 13 response to the GSA, which Reuters first reported, said that it "intends to work with GSA to ensure that judiciary operations in each of these locations can continue undisturbed."

Jackie Koszczuk, a spokesperson for the administrative office, declined to comment.

As the GSA pores over its leasing portfolio, on the other side of the table, lenders, landlords and institutional investors are scrambling to understand their exposure to federal leases.

The government effort has led to widespread confusion, because while the government is reducing the



Some federal leases may be low-hanging fruit for termination, while others would be more difficult and expensive for the government to terminate. (iStock.com/AndreyPopov)

federal workforce, it is also increasing in-person work, which would put pressure on its space needs.

"I think we're all in untested waters with the current administration and its directives," said Fred Gallo, a real estate partner at Morgan Lewis.

At this point, most lease terminations are hypothetical, and would not happen immediately. That's because the federal government cannot terminate leases for convenience, as it can with other contracts. The government can, however, terminate expired leases, or it can terminate a lease if it proves the tenant defaulted on its terms.

The GSA has apparently already shed some space. Initial savings from the three terminated leases amounted to \$1.6 million — but the Department of Government Efficiency account on the social media platform X said these were "the first steps to right-size the federal real estate portfolio of more than 7,500 leases."

As of Monday evening, DOGE listed 97 terminated leases on its "Wall of Receipts." In many cases, the savings DOGE claims is a fraction of the annual lease cost. In other cases, the savings is a multiple of the annual lease cost, because DOGE factored multiple years of rent payments into the savings.

For one terminated \$26 million lease for the Department of Labor in Washington, D.C., DOGE claimed \$7 million in total savings. An \$11 million lease it canceled for the Federal Trade Commission in Washington, D.C., yielded \$0 savings. A \$1.1 million public defender's office lease in Phoenix, Arizona, yielded \$5.8 million in savings.

### **Reduce, Reuse, Relocate**

Winnowing the federal government's space has become a focal point of the Trump administration's first month, but shrinking federal real estate — including that of the judiciary — has been a priority since the Obama administration.

"Going back to 2010, the federal government has shed a lot of space, and the judiciary is no exception," said Darian LeBlanc, a D.C.-based executive vice chair in Cushman & Wakefield's government services group.

Courts no longer need space for law libraries, because they are now housed digitally, for example. That leaves some underutilized space, which the GSA is interested in.

Underutilized court space could be used to house federal workers returning to in-office work, a possibility that does not thrill the courts.

The administrative office said in its Feb. 13 memo that courts should deny requests to house nonjudicial employees. Judiciary facilities aren't set up for nonjudicial work, the memo said, and court operations include confidential issues.

If housing workers from different agencies in one building is unusual, mixing workers from different branches is unheard of. Historically, the GSA has never blended workforces from different agencies or branches in a single building, LeBlanc said. But the current administration may not see a reason to maintain those divisions.

"I think these guys are saying, 'Who cares, everyone goes to a desk, and it doesn't matter what kind of building it is,'" LeBlanc said.

Federal leasing provisions do not prevent the U.S. government from swapping one tenant for another. There are even fewer constraints if the government owns the space outright, as it does in many cases with courthouses.

"The fact that the court controls the space doesn't supersede the U.S. government's owning the building that's overseen by GSA," said Robert C. MacKichan Jr., a partner at Holland & Knight LLP who previously served as general counsel at the GSA. "There is a specific clause that allows the government to substitute a tenant, so if one agency vacates they can put another agency in there."

For leased properties, conceptually, it's possible to substitute a tenant. In practice, making judiciary space suitable for other uses would be a big lift.

"Courthouses have highly specialized buildouts — courtrooms, for example — and the government has made a large investment in building out these spaces," said Kim Pagotto, a D.C.-based real estate partner at Dentons.

### **The Termination Playbook**

Some federal leases may be low-hanging fruit for termination, while others would be more difficult and expensive for the government to terminate. Gallo said his lender clients are taking stock of their holdings to understand the risks.

"Lenders are quietly looking at portfolios to see where they have exposure and how much," Gallo said.

Federal leases, including those of the judiciary, are composed of an initial firm term — a period when the government cannot terminate the lease without penalties — and a soft term, when the government can choose to extend or terminate at will. Landlords' first analysis is to understand at what point they are in the lease term, and how that could impact the government's decision.

"For more recent leases especially, with a long firm term still in place, terminating would not be a savvy decision [by the government] based on the potential damages," Gallo said. "But for an older vintage lease where you're in the extension term, they have to look more carefully."

Outside that framework, the government can terminate a lease if a tenant defaults on the terms of its lease. It's not always clear what could constitute a default.

Andrew J. Weiner, a real estate partner at Pillsbury Winthrop Shaw Pittman LLP who has advised federal leasing clients, said he is advising landlord clients to be "squeaky clean."

"The GSA can terminate leases for landlord default, and it's not clear what the level of default it would have to be before GSA would start rattling its sabers," Weiner said. "There have been instances in the past where the GSA has pulled a default out of thin air, and used it to threaten to terminate the lease."

Landlords don't just have the GSA to worry about. They are also likely to be under pressure from their lender, Weiner said.

"This is going to have an impact on your relationship with your ground lessor or your lender," Weiner said. "Even if you do not think [the government] is going to exercise a right to terminate, you're probably going to get a phone call from your lender saying, 'Have you heard from the GSA?'"

Commercial real estate landlords are already struggling with the high cost of borrowing — if they can get new bank financing at all — and having the threat of a GSA lease termination could "impact the already fraught calculus of refinancing," Weiner said.

While landlords face the most immediate impacts of GSA cancellations, there are wider risks. A major lease cancellation could have a wider impact. Office buildings losing their federal tenants could decimate surrounding parking fee and restaurant revenues, for example.

"There could be significant ripple effects," Gallo said.

Lenders, however, are not entirely unprotected from lease terminations. They typically require the borrower to maintain a rollover reserve to deal with the normal course of tenant rollovers. But federal leases are attractive in part because they are thought to be backed by the U.S. government. The existing reserves might not be sufficient, Gallo said.

Guarantee provisions in financing agreements may also have carve-outs that would be triggered by a major federal lease cancellation.

As you get higher up the commercial real estate food chain, risk is likely to be uneven, with some firms well buffered and others overexposed.

"You do have owners that are particularly exposed to federal leases," LeBlanc said. "There are funds and REITs that have made it their business to focus on federal leases simply because they were supported by the full faith and credit of the U.S. government."

--Editing by Robert Rudinger.