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## FEDERAL COURTHOUSES

# Most Recommended New Construction Projects Do Not Qualify Under Improved Capital-Planning Process

Statement of Mark L. Goldstein, Director  
Physical Infrastructure Issues



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United States Government Accountability Office  
Washington, DC 20548

Chairman Bill Shuster, Ranking Member Nick J. Rahall, II, and Members of the Committee:

I am pleased to be here today to discuss the federal judiciary's (judiciary) capital-planning efforts for new courthouses. Since the early 1990's, the judiciary and the General Services Administration (GSA) have undertaken a multibillion-dollar federal courthouse construction program. To date this program has resulted in 78 new courthouses or annexes<sup>1</sup> and 16 projects that are currently in various stages of development. However, rising costs and other budget priorities have slowed the construction program. In addition, we previously found that recent federal courthouses had been constructed larger than necessary because of poor planning, oversight, and inefficient courtroom use.<sup>2</sup> In 2008, the judiciary began using a new capital-planning process, called the Asset Management Planning (AMP) process, to assess, identify, and rank its space needs. Judiciary officials said that the AMP process addresses concerns about growing costs and incorporates best practices related to capital planning.

Today, we are releasing a report that addresses the (1) the extent to which the judiciary's capital-planning process aligns with leading practices and provides information needed for informed decision making related to new courthouses and (2) the extent to which courthouse projects recommended for funding in fiscal years 2014 to 2018 were assessed under the judiciary's AMP process.<sup>3</sup> My statement highlights the key

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<sup>1</sup>An annex is an addition to an existing building. For the purpose of this testimony, projects that include construction of an annex are considered new courthouse projects.

<sup>2</sup>See GAO, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, [GAO-10-417](#) (Washington, D.C.: June 21, 2010). Specifically, we found that 33 federal courthouses completed from 2000 to 2010 included 3.56-million square feet of extra space that cost an estimated \$835 million to construct and \$51 million annually to operate and maintain. We recommended that GSA should: (1) ensure that courthouses are within their authorized size or notify congressional committees; and that the judiciary should: (2) retain caseload projections to improve the accuracy of its 10-year judge planning and (3) establish and use courtroom-sharing policies based on scheduling and use data. GSA and the judiciary agreed with the recommendations, but expressed concerns with GAO's methodology and key findings. GAO believes these to be sound, as explained in the report. Our recommendations have not yet been implemented.

<sup>3</sup>GAO, *Federal Courthouses: Proposed Construction Projects Should Be Evaluated under New Capital-Planning Process*, [GAO-13-263](#) (Washington, D.C.: April 11, 2013).

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findings and recommendations of this report. Our review focused on courthouse projects on the judiciary's current 5-year plan for fiscal years 2014 to 2018. As part of this work, we analyzed judiciary and GSA documents, interviewed judiciary and GSA officials in their Washington, D.C., headquarters and visited federal courthouses in Anniston, Alabama, and Macon and Savannah, Georgia. We selected these sites because the courthouses were highly ranked by the judiciary for replacement. We conducted this performance audit from March 2012 to April 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## **AMP Process Represents Progress in Capital Planning but Does Not Provide Needed Information to Decision Makers**

The AMP process, which the judiciary has applied to about 67 percent of its courthouses, represents progress by the judiciary in aligning its capital-planning process with leading capital-planning practices, but the document the judiciary uses to request courthouse construction projects from Congress lacks transparency and key information. For example, the AMP process better aligns with leading practices for identifying real property needs by establishing a comprehensive, nationwide 328-factor analysis of every courthouse, whereas the previous process only assessed courthouses when requested by a local judicial district. However, the AMP process does not fully align with several leading practices due to, for example, its lack of linkage to the judiciary's strategic plan. Two courthouse projects illustrate how the AMP process has changed the way the judiciary evaluates its need for new courthouses. Specifically, two projects listed on a previous 5-year plan (covering fiscal years 2012 through 2016) were re-evaluated under AMP—San Jose, California, and Greenbelt, Maryland. Both had ranked among the top 15 most urgent projects nationwide under the previous capital-planning process, and as such, the judiciary prioritized them for new construction in 2010. However, after the judiciary evaluated the San Jose and Greenbelt projects under the AMP process, their nationwide rankings fell to 117 and 139, respectively. Judiciary officials explained that this drop was largely because of the completion of additional AMP assessments, coupled with reduced space needs in both locations because of

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courtroom-sharing.<sup>4</sup> Following the change in rankings, GSA and the judiciary determined that repair and alteration projects that reconfigure existing space in these two locations could alternatively address the judiciary's needs. The judiciary added that its decision saved taxpayers money. As a result, at the request of the judiciary, the Judicial Conference of the United States removed the two projects from the 5-year plan.

However, the judiciary's current 5-year plan—the end product of its capital-planning process—does not align with leading practices for a long-term capital plan in several ways and, as a result, lacks transparency and key funding information. Specifically, judiciary's one-page 5-year plan, as shown in figure 1, does not provide a summary of why each project is more urgent than others, information on complete cost estimates, and alternatives to new construction the judiciary considered. Although the 5-year plan lists about \$1.1 billion in estimated costs, which are the funds described as needed for that specific 5-year period, these costs only include part of the project phases. The estimated cost of all project phases—site acquisition, building design, and construction—comes to \$1.6 billion in 2013 dollars.<sup>5</sup> In addition, while no longer included in the 5-year plan, the judiciary estimated that it would need to pay GSA \$87 million annually in rent, or \$1.6 billion over the next 20 years,<sup>6</sup> to occupy these courthouses if constructed. Although a \$3.2-billion combined project cost and rent estimate provides a more complete presentation of the project costs, that estimate could change based on GSA's redesign of projects because of changes in the judiciary's needs. In addition, the \$3.2-billion estimate does not include life-cycle costs, such as furniture and GSA disposal of existing facilities, which would also have to be included for the cost estimates of life-cycle costs<sup>7</sup> are necessary for accurate and informed capital planning.

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<sup>4</sup>The judiciary's courtroom-sharing policies for senior district, magistrate, and bankruptcy judges allow it to reduce the scope of its courthouse projects.

<sup>5</sup>Inflated to current year based upon averages of monthly indexes from U.S. Department of Labor, Bureau of Labor Statistics.

<sup>6</sup>GSA charges judiciary rent based upon the 20-year return on investment of the cost of courthouse construction. Our analysis of rent is based on OMB's published discount rate. OMB, *2013 Discount Rates for OMB Circular No. A-94*, Memorandum M-13-04 (Washington, D. C.: Jan. 24, 2013).

<sup>7</sup>OMB's *Capital Programming Guide* defines the cost of a capital asset is its full life-cycle cost, including all direct and indirect initial costs for planning, procurement, operations, maintenance, and disposal.

**Figure 1: Judiciary's 5-year Courthouse Project Plan for Fiscal Years 2014 to 2018, as of September 12, 2012**

**Five-Year Courthouse Project Plan for FYs 2014-2018**  
**As Approved by the Judicial Conference of the United States**  
**September 11, 2012**  
 (estimated dollars in millions)

FY 2014			Cost	Score
1	Mobile, AL*	Add'l. C	\$54.9	59.8
2	Nashville, TN	Add'l. S&D / C	\$144.0	67.3
3	Savannah, GA	Add'l. C	\$95.5	61.3
4	Norfolk, VA	Add'l S&D	\$12.0	57.4
			<b>\$306.4</b>	

FY 2015			Cost	Score
1	San Antonio, TX	Add'l. S&D / C	\$117.4	61.3
2	Charlotte, NC	C	\$165.7	58.5
3	Greenville, SC	C	\$78.8	58.1
4	Harrisburg, PA	C	\$118.6	56.8
			<b>\$480.5</b>	

FY 2016			Cost	Score
1	Norfolk, VA	C	\$104.7	57.4
2	Anniston, AL	Add'l. D / C	\$41.0	57.1
3	Toledo, OH	C	\$109.3	54.4
			<b>\$255.0</b>	

FY 2017			Cost	Score
1	Chattanooga, TN	S&D	\$21.5	37.3
2	Des Moines, IA	S&D	\$43.0	35.3
			<b>\$64.5</b>	

FY 2018			Cost	Score
			<b>\$0.0</b>	

*S = Site; D = Design; C = Construction; Addl. = Additional*  
 All cost estimates subject to final verification with GSA.

\* Congress provided \$50.0 out of \$104.9 million needed for Mobile, AL in December 2009

Source: Federal judiciary.

Note: The higher the "score," the greater the space need urgency.

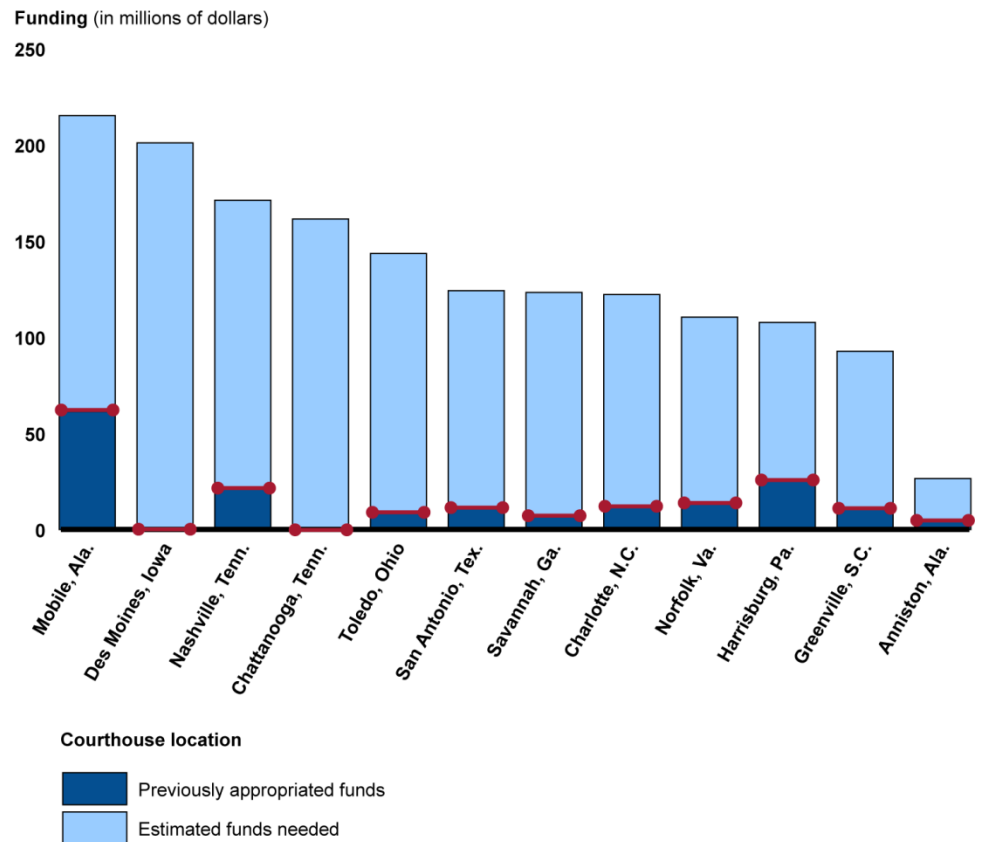
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Since fiscal year 1995, Congress has appropriated about \$177 million of the estimated \$1.6 billion needed for 10 of the 12 projects on the 5-year plan, mostly for site acquisition and designs (see fig. 2). None of the projects has begun construction, and only the Mobile project has received any construction funding. According to GSA officials, the agency has not received funding for the design of two projects (Chattanooga and Des Moines). Of the remaining 10 projects that have design funding, one is in the design process and nine are on hold. According to GSA officials, some of the projects on hold must be re-designed to accommodate policy and other requirements relating to, for example, changes such as courtroom-sharing and energy management.<sup>8</sup> For example, the design of the Savannah courthouse project was completed in 1998 and now needs extensive re-design to accommodate changes mandated by policy shifts, including improved security and a reduced number of courtrooms needed. GSA officials said that only the design of the Nashville project—though oversized by one floor—is likely to remain largely intact because it would be more cost-effective to rent the additional space to other tenants than to completely re-design the project.

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<sup>8</sup>See, e.g., Exec. Order No. 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, 72 Fed. Reg. 3919 (Jan. 26, 2007) (Executive Order 13423 was codified into law by section 746 of the Omnibus Appropriations Act, 2009 (Pub. L. No. 111-8, 123 Stat. 524, 693)); Exec. Order No. 13514, *Federal Leadership In Environmental, Energy, and Economic Performance*, 74 Fed. Reg. 52117 (Oct. 8, 2009); and the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492).

**Figure 2: Funding Status of Judiciary’s 5-year Plan for Courthouse Projects, 2013**



Source: GAO analysis of federal judiciary and GSA data.

## Most Courthouse Projects Were Not Evaluated under AMP Process and Do Not Meet AMP Criterion for New Construction

The judiciary has not applied the AMP process to 10 of the 12 construction projects on the current 5-year plan dated September 2012. These 10 projects were evaluated under the judiciary’s prior capital-planning process and approved based on their urgency levels as determined under that process. Judiciary officials said that they did not want to delay the projects or force them to undergo a second capital-planning process review because the judiciary had already approved the projects. Only 2 projects on the current 5-year plan were assessed under the AMP process—Chattanooga, Tennessee, and Des Moines, Iowa. Judiciary officials said these projects were added to the 5-year plan in September 2010 because they had the highest priority rankings of the projects that had undergone an AMP review at that time. Judiciary

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officials explained that these projects also had GSA feasibility studies that recommended new construction. However, the Chattanooga and Des Moines projects have not retained their top rankings as the judiciary has continued to apply the AMP process to additional courthouses. Specifically, judiciary documents show that more than a dozen other projects not included on the current 5-year plan now rank above the Chattanooga and Des Moines projects, six of which recommend new construction. For example, we visited the federal courthouse in Macon, Georgia, which now ranks higher than either the Chattanooga or Des Moines projects. The Macon courthouse suffers from numerous operational and security issues typical of historic courthouses, but it is not included on the 5-year plan. As we previously noted, the judiciary also applied the AMP process to 2 other projects that were included on an older 5-year plan (2012 to 2016)—San Jose and Greenbelt—and subsequently removed them after the projects received substantially lower priority rankings. The change in the rankings of the 4 projects calls into question the extent to which the projects remaining on the 5-year plan represent the judiciary’s most urgent projects and whether proceeding with these projects while hundreds of AMP reviews remain to be done represents the most fiscally responsible path.

We recognize that conducting AMP reviews of the 10 projects on the 5-year plan would involve additional costs; however, not conducting AMP reviews on these projects could involve spending \$3.2 billion over the next 20 years on courthouses that may not be the most urgent projects. While the AMP process only partially aligns with leading practices in capital-planning, it is a significant improvement over the capital-planning process the judiciary used to choose 10 of the 12 projects on the 5-year plan.

We found that 10 of the 12 projects the judiciary recommends on the current 5-year plan do not qualify under the AMP process criterion of requiring two or more additional courtrooms to qualify for new construction. The judiciary’s previous capital-planning process for new courthouse projects had no minimum additional courtroom requirement. In contrast, the AMP process stipulates that a new courthouse is justified when an existing courthouse has a deficit of two or more courtrooms, based on the number of judges located there after applying courtroom-



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sharing policies.<sup>9</sup> The judiciary bases its estimates for the number of courtrooms needed on the number of existing judges and the projected number of new judges it will have in 15 years.<sup>10</sup> We found that 10 of 12 cities with projects on the 5-year plan currently have enough courtrooms in existing courthouses in those cities based on the judiciary's standards, and 3 of those cities have more courtrooms than needed. Only 5 of the 12 projects on the 5-year plan currently need additional courtrooms, and of those, only the Charlotte and Greenville projects would qualify under the AMP criterion because both need three additional courtrooms.

We visited two courthouses on the current 5-year plan that were selected as new construction projects under the prior capital-planning process that do not qualify under the AMP courtroom shortage criterion—Savannah and Anniston that were built in 1899 and 1906, respectively. These historic courthouses qualified for new construction under the previous process because of space needs and security and operational deficiencies because of their age, condition and building configuration. According to judiciary and GSA officials, neither courthouse meets current standards for (1) the secure circulation of prisoners, the public, and courthouse staff and (2) the adjacency of courtrooms and judge's chambers. Nevertheless, neither of these courthouses would qualify for new construction under the AMP criterion as both have a sufficient number of existing courtrooms for all the judges.<sup>11</sup>

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<sup>9</sup>We did not assess if the shortage of courtrooms alone is the most appropriate criterion for requesting new construction from GSA, but the establishment of a clear criterion adds an element of transparency that was lacking in the judiciary's previous capital-planning process.

<sup>10</sup>[GAO-10-417](#). We previously found that the judiciary has overestimated the number of judges it would have after 10 years. However, the judiciary's estimate of the number of future judges for the current 5-year plan projects does not affect the number of courtrooms needed for those projects.

<sup>11</sup>According to GSA officials, regardless of whether a project is on the 5-year plan, GSA is responsible for ensuring that courthouses are adequately maintained.

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## Judiciary Needs to Take Actions to Better Align AMP Process with Leading Practices and Evaluate 5-Year Plan Projects

In the report that we are releasing today, we are making several recommendations to improve the judiciary's capital-planning process, enhance the transparency of that process, and allow for more informed decision making related to the federal judiciary's real property priorities. We are recommending that the Director of the Administrative Office of the U.S. Courts (AOUSC), on behalf of the Judicial Conference of the United States, take the following actions:

- Better align the AMP process with leading practices for capital-planning. This should include linking the AMP process to the judiciary's strategic plan and developing and sharing with decision makers a long-term capital investment plan. In the meantime, future 5-year plans should provide comprehensive information on new courthouse projects, including:
  - a summary of why each project qualifies for new construction and is more urgent than other projects, including information about how the AMP process and other judiciary criteria for new courthouse construction were applied to the project;
  - complete cost estimates of each project; and
  - the alternatives to a new project that were considered, including courtroom-sharing, and why alternatives were deemed insufficient.
- Impose a moratorium on projects on the current 5-year plan until AMP evaluations are completed for them and then request feasibility studies for courthouse projects with the highest urgency scores that qualify for new construction under the AMP process.

AOUSC agreed with our recommendation to link the AMP process to the judiciary's strategic plan, but cited concerns that additional information would duplicate information that GSA already provides Congress. While we agree that the judiciary already provides some information on its recommended projects and funding estimates to stakeholders in the form of the 5-year plan, implementing our recommendation would better align that information with leading practices by making it more complete and transparent. AOUSC disagreed with our recommendation for a moratorium on all projects currently on the 5-year plan because completing AMP evaluations for those projects would unnecessarily delay the projects and exacerbate existing security and structural issues with the existing courthouses. We recognize that the AMP process represents progress by the judiciary in better aligning its capital-planning process

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with leading practices. As a result, we believe that it is imperative for the judiciary to complete AMP evaluations before proceeding with any 5-year plan projects.

Chairman Bill Shuster, Ranking Member Nick J. Rahall, II, and Members of the Committee, this concludes my prepared statement. I would be happy to answer any questions that you may have at this time.

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## Contacts and Acknowledgments

For further information regarding this testimony, please contact Mark L. Goldstein at (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Keith Cunningham, Assistant Director; George Depaoli; Colin Fallon; Geoffrey Hamilton; James Leonard; Faye Morrison; and Sara Ann Moessbauer.

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