

**GAO**

Testimony

Before the Subcommittee on Courts and  
Competition Policy, Committee on the  
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# FEDERAL COURTHOUSE CONSTRUCTION

## Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs

Statement of Mark L. Goldstein, Director  
Physical Infrastructure Issues



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Highlights of [GAO-10-1068T](#), a testimony before the Subcommittee on Courts and Competition Policy, Committee on the Judiciary, House of Representatives.

## Why GAO Did This Study

The federal judiciary (judiciary) and the General Services Administration (GSA) are in the midst of a multi-billion dollar courthouse construction initiative, which has faced rising construction costs. For 33 federal courthouses completed since 2000, GAO examined (1) whether they contained extra space and any costs related to it; (2) how their actual size compares with the congressionally authorized size; (3) how their space based on the judiciary's 10-year estimates of judges compares with the actual number of judges; and (4) whether the level of courtroom sharing supported by the judiciary's data could have changed the amount of space needed in these courthouses. This testimony is based on GAO's June 2010 report; for that report, GAO analyzed courthouse planning and use data, visited courthouses, modeled courtroom sharing scenarios, and interviewed judges, GSA officials, and others.

## What GAO Recommends

The recommendations in GAO's related report include: GSA should (1) ensure courthouses are within their authorized size or provide notification when designed space exceeds authorized space (2) retain caseload projections to improve the accuracy of 10-year judge planning; and (3) establish and use courtroom sharing policies based on scheduling and use data. GSA and the judiciary agreed with most recommendations, but expressed concerns with GAO's methodology and key findings. GAO believes these to be sound, as explained in the report.

[View GAO-10-1068T or key components.](#)  
For more information, contact Mark L. Goldstein at (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov).

# FEDERAL COURTHOUSE CONSTRUCTION

## Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs

### What GAO Found

The 33 federal courthouses completed since 2000 include 3.56 million square feet of extra space consisting of space that was constructed (1) above the congressionally authorized size, (2) due to overestimating the number of judges the courthouses would have, and (3) without planning for courtroom sharing among judges. Overall, this space represents about 9 average-sized courthouses. The estimated cost to construct this extra space, when adjusted to 2010 dollars, is \$835 million, and the annual cost to rent, operate and maintain it is \$51 million.

Twenty seven of the 33 courthouses completed since 2000 exceed their congressionally authorized size by a total of 1.7 million square feet. Fifteen exceed their congressionally authorized size by more than 10 percent, and 12 of these 15 also had total project costs that exceeded the estimates provided to congressional committees. However, there is no requirement to notify congressional committees about size overages. A lack of oversight by GSA, including not ensuring its space measurement policies were followed and a lack of focus on building courthouses within the congressionally authorized size, contributed to these size overages.

For 23 of 28 courthouses whose space planning occurred at least 10 years ago, the judiciary overestimated the number of judges that would be located in them, causing them to be larger and costlier than necessary. Overall, the judiciary has 119, or approximately 26 percent, fewer judges than the 461 it estimated it would have. This leaves the 23 courthouses with extra courtrooms and chamber suites that, together, total approximately 887,000 square feet of extra space. A variety of factors contributed to the judiciary's overestimates, including inaccurate caseload projections, difficulties in projecting when judges would take senior status, and long-standing difficulties in obtaining new authorizations. However, the degree to which inaccurate caseload projections contributed to inaccurate judge estimates cannot be measured because the judiciary did not retain the historic caseload projections used in planning the courthouses.

Using the judiciary's data, GAO designed a model for courtroom sharing, which shows that there is enough unscheduled courtroom time for substantial courtroom sharing. Sharing could have reduced the number of courtrooms needed in courthouses built since 2000 by 126 courtrooms—about 40 percent of the total number—covering about 946,000 square feet of extra space. Judges raised potential challenges to courtroom sharing, such as uncertainty about courtroom availability, but those with courtroom sharing experience overcame those challenges when necessary, and no trials were postponed. The judiciary has adopted policies for future sharing for senior and magistrate judges, but GAO's analysis shows that additional sharing opportunities are available. For example, GAO's courtroom sharing model shows that there is sufficient unscheduled time for 3 district judges to share 2 courtrooms and 3 senior judges to share 1 courtroom.

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Mr. Chairman and Members of the Committee:

We are pleased to be here to discuss the results of our report on Federal Courthouse Construction issued June 21, 2010.<sup>1</sup> Since the early 1990s, the General Services Administration (GSA) and the federal judiciary (judiciary) have undertaken a multi-billion dollar courthouse construction initiative that has resulted in 66 new courthouses or annexes, with 29 additional projects in various stages of development. However, rising costs and other federal budget priorities threaten to stall the initiative. In 2008, for example, we found that increases in construction cost estimates for the Los Angeles, California courthouse had led to an impasse that has yet to be resolved.<sup>2</sup> Also, in fiscal year 2009, the judiciary's rent payments totaled over \$970 million. The judiciary has sought to reduce the payments through requests for rent exemptions from GSA and Congress through internal policy changes, such as annually capping rent growth and validating rental rates.

This testimony, based on our report, discusses, for 33 federal courthouses completed since 2000, (1) whether the courthouses contain extra space and any costs related to that space, (2) how the actual sizes of the courthouses compare with the congressionally authorized sizes, (3) how courthouse space based on the judiciary's 10-year estimates of the number of judges compares with the actual number of judges; and (4) whether the level of courtroom sharing supported by data from the judiciary's 2008 study of district courtroom sharing could have changed the amount of space needed in these courthouses. To address these objectives, we analyzed planning, construction, and budget documents associated with all 33 federal courthouses or major annexes completed from 2000 through March 2010. In addition, we selected 7 of the federal courthouses in our scope to analyze more closely as case studies.<sup>3</sup> We conducted the courthouse construction performance audit on which I am testifying from

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<sup>1</sup>GAO, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, [GAO-10-417](#) (Washington, D.C.: June 21, 2010).

<sup>2</sup>GAO, *Federal Courthouse Construction: Estimated Costs to House the L.A. District Court Have Tripled and There Is No Consensus on How to Proceed*, [GAO-08-889](#) (Washington, D.C.: Sept. 12, 2008).

<sup>3</sup>The seven case study courthouses include the Bryant U.S. Courthouse Annex in Washington, D.C.; the Coyle U.S. Courthouse in Fresno, California; the D'Amato U.S. Courthouse in Central Islip, New York; the DeConcini U.S. Courthouse in Tucson, Arizona; the Eagleton U.S. Courthouse in St. Louis, Missouri; the Ferguson U.S. Courthouse in Miami, Florida; and the Limbaugh, Sr., U.S. Courthouse in Cape Girardeau, Missouri.

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September 2008 to June 2010 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. More detail on our scope and methodology is available in the full report.

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## Background

The Administrative Office of the U.S. Courts is an organization within the judicial branch which serves as the central support entity for federal courts, and is supervised by the Judicial Conference of the United States. The Judicial Conference serves as the judiciary's principal policy-making body and recommends national policies and legislation, including recommending additional judgeships to Congress. The U.S. Courts Design Guide (Design Guide) specifies the judiciary's criteria for designing new court facilities and sets the space and design standards for court-related elements of courthouse construction. In 1993, the judiciary also developed a space planning program called AnyCourt to determine the amount of court-related space the judiciary will request for a new courthouse based on Design Guide standards and estimated staffing levels. GSA and the judiciary plan new federal courthouses based on the judiciary's estimated 10-year judge and space requirements. For courthouses that are selected for construction, GSA typically submits two detailed project descriptions, or prospectuses, for congressional authorization: one for site and design and the other for construction. Prospectuses are submitted to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure for authorization and Congress appropriates funds for courthouse projects, often at both the design and construction phases. GSA manages the construction contract and oversees the work of the construction contractor. After courthouses are occupied, GSA charges the judiciary and any other tenants rent for the occupied space and for their respective share of common areas.

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## Extra Space in Courthouses Cost an Estimated \$835 Million in Constant 2010 Dollars to Construct and \$51 Million Annually to Rent, Operate, and Maintain

Thirty-two of the 33 federal courthouses completed since 2000 include extra square feet of space, totaling 3.56 million square feet—overall, this space represents about 9 average-sized courthouses. The estimated cost to construct this extra space, when adjusted to 2010 dollars, is \$835 million,<sup>4</sup> and the annual cost to rent, operate, and maintain it is \$51 million. The extra space and its causes are as follows:

- 1.7 million square feet caused by construction in excess of congressional authorizations;
- 887,000 extra square feet caused by the judiciary overestimating the number of judges the courthouses would have in 10 years; and
- 946,000 extra square feet caused by district and magistrate judges not sharing courtrooms.<sup>5</sup>

In addition to higher construction costs, the extra square footage in these 32 courthouses results in higher annual operations and maintenance costs, which are largely passed on to the judiciary and other tenants as rent. Based on our analysis of the judiciary's rent payments to GSA for these courthouses at fiscal year 2009 rental rates, the extra courtrooms and other judiciary space increase the judiciary's annual rent payments by \$40 million. In addition, our analysis estimates that the extra space cost \$11 million in fiscal year 2009 to operate and maintain.<sup>6</sup> Typically, operations and maintenance costs represent from 60 to 85 percent of the costs of a facility over its lifetime, while design and construction costs represent about 5 to 10 percent of these costs.<sup>7</sup> Therefore, the ongoing operations

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<sup>4</sup>The estimated construction cost of the extra space was \$640 million in nominal (unadjusted) dollars. We adjusted for inflation, to constant 2010 dollars, using a price index for construction costs from the Bureau of Economic Analysis and Global Insight.

<sup>5</sup>Note: these numbers do not add to 3.56 million due to rounding.

<sup>6</sup>We did not attempt to calculate the rent attributable to the extra square footage due to exceeding congressionally authorized gross square footage because some of this extra square footage is for tenants other than the judiciary or occurs in building common or other space, the costs of which are not directly passed on to the judiciary in rent. We therefore calculated the annual operations and maintenance costs for all extra space due to exceeding congressionally authorized gross square footage and for the extra building common and other space due to overestimating the number of judges and judges not sharing courtrooms.

<sup>7</sup>The remaining lifetime costs include land acquisition, planning, renewal/revitalizations, and disposal.

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and maintenance costs for the extra square footage are likely to total considerably more in the long run than the construction costs for this extra square footage.

GSA cited concerns with our methodology. Our methodology applied GSA's policies and data directly from original documents and sources, and our cost estimation methodology balanced higher and lower cost construction spaces to create a conservative estimate of the costs associated with the extra space in courthouses. We believe that our findings are presented in a fair and accurate way and illustrate how past problems with the courthouse program could affect future courthouse projects.

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## Most Courthouses Exceed the Congressionally Authorized Size Due to a Lack of Oversight by GSA

Twenty-seven of the 33 federal courthouses constructed since 2000 exceed their congressionally authorized size,<sup>8</sup> resulting in about 1.7 million more square feet than authorized. Fifteen of the 33 courthouses exceed their congressionally authorized size by 10 percent or more. In all 7 of the case study courthouses, the increases in building common and other space were proportionally larger than the increases in tenant space, leading to a lower building efficiency than GSA's target of 67 percent.<sup>9</sup> Efficiency is important because, for a given amount of tenant space, meeting the efficiency target helps control a courthouse's gross square footage and therefore its costs.<sup>10</sup> According to GSA officials, controlling the gross square footage of a courthouse is the best way to control construction costs.

Twelve of the 15 courthouses that exceeded the congressionally authorized gross square footage by 10 percent or more also had total project costs that exceeded the total project cost estimate provided to congressional authorizing committees. Four of the 15 courthouses had

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<sup>8</sup>For all 33 courthouses in our scope, we used the congressionally authorized gross square footage for the construction of the courthouse. We compared the authorized gross square footage, including inside parking, with the actual gross square footage, including inside parking.

<sup>9</sup>In a building with 67 percent efficiency, 67 percent of the total gross square footage, excluding parking, consists of tenant space and the remainder consists of building common and other space.

<sup>10</sup>GSA defines the gross square footage of a building as the total constructed area of a building, which includes tenant spaces and building common and other spaces, such as lobbies and mechanical rooms—as well as indoor parking.

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total project costs that exceeded the estimate provided to the congressional authorizing committees, at the construction phase, by about 10 percent or more. GSA's annual appropriations acts include a provision stating that GSA may increase spending for a project in an approved prospectus by more than 10 percent if GSA obtains advance approval from the Committee on Appropriations. While GSA sought approval from the appropriations committees for the cost increases incurred for these 4 courthouses, GSA did not explain to these committees that the courthouses were larger than authorized and therefore did not attribute any of the cost increase to this difference. However, there is no statutory requirement for GSA to notify congressional authorizing or appropriations committees if the size exceeds the congressionally authorized square footage.

GSA lacked sufficient controls to ensure that the 33 courthouses were constructed within the congressionally authorized gross square footage. Initially, GSA had not established a consistent policy for how to measure gross square footage. GSA established a policy for measuring gross square footage by 2000, but has not ensured that this space measurement policy was understood and followed. Moreover, GSA has not demonstrated it is enforcing this policy because all 6 courthouses completed since 2007 exceed their congressionally authorized size. According to GSA officials, the agency did not focus on ensuring that the authorized gross square footage was met in the design and construction of courthouses until 2007.

According to a GSA official, at times, courthouses were designed to meet various design goals without an attempt to limit the size of the building common or other space to the square footage allotted in the plans provided to congressional authorizing committees – and these spaces may have become larger to serve a design goal as a result. Another element of GSA's lack of oversight in this area was that GSA relied on the architect to validate that the courthouse's design was within the authorized gross square footage without ensuring that the architect followed GSA's policies for how to measure certain commonly included spaces, such as atriums. Although GSA officials emphasized that open space for atriums would not cost as much as space completely built out with floors, these officials also agreed that there are costs associated with constructing and operating atrium space.

Though not a result of a lack of oversight, one additional contributor to the construction of more tenant space than planned is that the judiciary's automated space planning tool, AnyCourt, incorporates a standard square footage requirement for each district courtroom. However, according to

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GSA's space measurement policy, the amount of a courtroom's square footage doubles if the courtroom spans two floors. Without a mechanism to adjust AnyCourt's calculation of a planned courthouse's square footage to reflect GSA's space measurement policy when the design includes two-story courtrooms, GSA may not request sufficient gross square footage for courthouses with two-story courtrooms.

Recently, GSA has taken some steps to improve its oversight of the courthouse construction process by clarifying its space measurement policies and increasing efforts to monitor the size of courthouse projects during the planning stages. In May 2009, GSA published a revised space assignment policy to clarify and emphasize its policies on counting square footage. In addition, according to GSA officials, GSA established a collaborative effort in 2008 between its Office of Design and Construction and its Real Estate Portfolio Management to establish policy and practices for avoiding inconsistencies. It is not yet clear whether these steps will establish sufficient oversight to ensure that courthouses are planned and constructed within the congressionally authorized square footage.

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## Estimated Space Needs Exceeded Actual Space Needs, Resulting in Courthouses That Were Larger than Necessary

Of the 33 courthouses built since 2000, 28 have reached or passed their 10-year planning period and 23 of those 28 courthouses have fewer judges than estimated. For these 28 courthouses, the judiciary has 119, or approximately 26 percent, fewer judges than the 461 it estimated it would have, resulting in approximately 887,000 extra square feet. The extra space includes courtroom and chamber suites as well as the proportional allocation of additional public, mechanical spaces, and sometimes secure, inside parking space in new courthouses. We identified a variety of factors that led the judiciary to overestimate the number of judges it would have after 10 years, which include:

- *Inaccurate caseload growth projections:* In a 1993 report, we questioned the reliability of the caseload projection process the judiciary used.<sup>11</sup> For this report, we were not able to determine the degree to which inaccurate caseload projections contributed to inaccurate judge estimates because the judiciary did not retain the historic caseload projections used in planning the courthouses. Judiciary officials at three of the courthouses we visited indicated that the estimates used in planning for these

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<sup>11</sup>GAO, *Federal Judiciary Space: Long-Range Planning Process Needs Revision*, GAO/GGD-93-132 (Washington, D.C.: Sept. 28, 1993).



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courthouses inadvertently overstated the growth in district case filings and, hence, the need for additional judges.

- *Challenges predicting how many judges will be located in a courthouse in 10 years:* It is difficult to predict, for example, when a judge will take a reduced case-load through senior status or leave the bench entirely. It is also challenging to project how many requested judgeships will be authorized, how many vacancies will be filled, and where new judges will be seated.

The judiciary raised concerns that some extra space in courthouses exist because the judiciary did not receive all the new judge authorizations it requested. We recognize that some of the extra courtrooms reflect the historic trend that the judiciary has not received all the additional authorized judges it has requested.

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## Low Levels of Use Show That Judges Could Share Courtrooms, Reducing the Need for Future Courtrooms by More than One-Third

Our analysis indicates that courtroom sharing could have reduced the number of courtrooms needed in 27 of the 33 district courthouses built since 2000 by a total of 126 courtrooms—about 40 percent of the total number of district and magistrate courtrooms constructed since 2000.<sup>12</sup> In total, not building these courtrooms, as well as, their associated support, building common, and other spaces, would have reduced construction by approximately 946,000 square feet. Most courthouses constructed since 2000 have enough courtrooms for all of the district and magistrate judges to have their own courtrooms. According to the judiciary's data, courtrooms are used for case-related proceedings only a quarter of the available time or less, on average.<sup>13</sup> Using the judiciary's data, we applied generally accepted modeling techniques to develop a computer model for sharing courtrooms. The model ensures sufficient courtroom time for all case-related activities; all time allotted to noncase-related activities, such as preparation time, ceremonies, and educational purposes; and all events cancelled or postponed within a week of the event. The model shows the following courtroom sharing possibilities: 3 district judges could share 2

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<sup>12</sup>Our analysis indicates that sharing would not reduce the number of courtrooms in six courthouses for the following reasons: four already had sharing between judges; one has only one district and one magistrate judge; and one courthouse has only bankruptcy judges and is out of our scope for district and magistrate sharing opportunities.

<sup>13</sup>Federal Judicial Center, *The Use of Courtrooms in U.S. District Courts: A Report to the Judicial Conference Committee on Court Administration & Case Management* (Washington, D.C., July 18, 2008).

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courtrooms, 3 senior judges could share 1 courtroom, and 2 magistrate judges could share 1 courtroom with time to spare.

During our interviews and convening of an expert panel on courtroom sharing, some judges remained skeptical of sharing and raised potential challenges to courtroom sharing, but other judges with sharing experience said they have overcome those challenges when necessary without postponing trials. The primary concern judges cited was the possibility that all courtrooms could be in use by other judges and a courtroom might not be available. To address this concern, we programmed our model to provide more courtroom time than necessary to conduct court business. Additionally, most judges with experience in sharing courtrooms agreed that court staff must work harder to coordinate with judges and all involved parties to ensure everyone is in the correct courtroom at the correct time. Judges who share courtrooms in one district also said that courtroom sharing coordination is easier when there is a great deal of collegiality among judges. Another concern about sharing courtrooms was how the court would manage when judges have long trials. However, when the number of total trials is averaged across the total number of judges, each judge has approximately 15 trials per year, with the median trial lasting 1 or 2 days.<sup>14</sup> Therefore, it is highly unlikely that all judges in a courthouse will simultaneously have long trials. Another concern stated was that sharing courtrooms between district and magistrate judges was difficult due to differences in responsibilities and courtroom size. To address this concern, our model separated district and magistrate judges for sharing purposes.

In 2008 and 2009, the Judicial Conference adopted sharing policies for future courthouses under which senior district and magistrate judges will share courtrooms at a rate of two judges per courtroom plus one additional duty courtroom for courthouses with more than two magistrate judges. Additionally, the conference recognized the greater efficiencies available in courthouses with many courtrooms and recommended that in courthouses with more than 10 district judges, district judges also share. Our model's application of the judiciary's data shows that more sharing opportunities are available.

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<sup>14</sup>There are different definitions of what constitutes a trial. The median trial length reported here reflects Table C-8 from the Administrative Office of the United States Courts, *2008 Annual Report of the Director: Judicial Business of the United States Courts*. (Washington, D.C., U.S Government Printing Office, 2009).

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The judiciary stated that at the time the 33 courthouses we reviewed were planned, the judiciary's policy was for judges not to share courtrooms and that it would be more appropriate for us to apply that policy. Our congressional requesters specifically asked that we consider how a courtroom sharing policy could have changed the amount of space needed in these courthouses. The judiciary also raised concerns with the assumptions and methodology used in developing the courtroom sharing model. We carefully documented the data and parameters throughout our report so that our model could be replicated by anyone with access to the judiciary's data and familiarity with discrete event simulation. Our model provides one option for developing a sharing policy based on actual time during which courtrooms are scheduled and used.

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## Conclusions and Prior Recommendations

It is important for the federal judiciary to have adequate, appropriate, modern facilities to carry out judicial functions. However, the current process for planning and constructing new courthouses has resulted in the 33 federal courthouses built since 2000 being overbuilt by more than 3.5 million square feet. This extra space not only cost about \$835 million in constant 2010 dollars to construct, but has additional annual costs of about \$51 million in operations and maintenance and rent that will continue to strain GSA's and the judiciary's resources for years to come. This extra space exists because the courthouses, as built, are larger than those congressionally authorized; contain space for more judges than are in the courthouses at least 10 years after the space was planned, and, for the most part, were not planned with a view toward judges sharing courtrooms.

Thus, in our report we recommended that the Administrator of GSA take the following three actions:

- Establish sufficient internal control activities to ensure that regional GSA officials understand and follow GSA's space measurement policies throughout the planning and construction of courthouses. These control activities should allow for accurate comparisons of the size of a planned courthouse with the congressionally authorized gross square footage throughout the design and construction process.
- To avoid requesting insufficient space for courtrooms based on the AnyCourt model's identification of courtroom space needs, establish a process, in cooperation with the Director of the Administrative Office of the U.S. Courts, by which the planning for the space needed per courtroom

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takes into account GSA's space measurement policy related to two-story courtrooms when relevant.

- Report to congressional authorizing committees when the design of a courthouse exceeds the authorized size by more than 10 percent, including the reasons for the increase in size.

We also recommend that the Director of the Administrative Office of the U.S. Courts, on behalf of the Judicial Conference of the United States take the following three actions:

- Retain caseload projections for at least 10 years for use in analyzing their accuracy and incorporate additional factors into the judiciary's 10-year judge estimates, such as past trends in obtaining judgeships.
- Expand nationwide courtroom sharing policies to more fully reflect the actual scheduling and use of district courtrooms.
- Distribute information to judges on positive practices judges have used to overcome challenges to courtroom sharing.

GSA and the judiciary agreed with most of the recommendations, but expressed concerns with GAO's methodology and key findings. GSA concurred with our recommendation to notify the appropriate Congressional committees when the square footage increase exceeds the maximum identified in the prospectus by 10 percent or more. GSA did not concur with our recommendation to establish internal controls to ensure that regional GSA officials understand and follow GSA's space measurement policies throughout the planning and construction of courthouses; stating that their current controls and oversight are sufficient. The judiciary concurred with our recommendation to expand sharing policies based on a thorough and considered analysis of the data but raised concerns related to the applicability of our model as guidance for its system. The judiciary did not comment directly on its plans to retain caseload projection but stated that it will continue to look for ways to improve its planning methodologies. Finally the judiciary did not provide comment on its intent to distribute information on the positive practices judges have used to overcome challenges to courtroom sharing.

Mr. Chairman, this concludes our testimony. We are pleased to answer any questions you might have.

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## Contact Information

For further information on this testimony, please contact Mark L. Goldstein, (202) 512-2834 or by e-mail at [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 making key contributions to this testimony include Keith Cunningham, Assistant Director; Susan Michal-Smith; and Jade Winfree.

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